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## STATUTORY INSTRUMENTS

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# 1981 No. 1675

## The Magistrates' Courts (Northern Ireland) Order 1981

### PART XI

#### RECOGNIZANCES AND BAIL

##### *General provisions with regard to recognizances*

##### **Amount of recognizance**

**135.** A recognizance shall be in such amount as appears sufficient to ensure the performance of its conditions.

##### **General power to order sureties to any recognizance**

**136.** Any power of a magistrates' court or of a member of the Royal Ulster Constabulary to require or authorise a recognizance of any kind to be entered into or to fix the amount of any recognizance shall include the power to require or, as the case may be, authorise the recognizance to be entered into with a surety or sureties.

##### **Acceptance of deposit of money or valuable security in lieu of sureties to a recognizance**

**137.—**(1) Any magistrates' court or member of the Royal Ulster Constabulary may accept or authorise the acceptance of the deposit of a sum of money or other valuable security in lieu of sureties for the due performance of the conditions of a recognizance.

(2) Where a court of summary jurisdiction estreats the recognizance, it may order the forfeiture of the whole or any part of any sum of money or other valuable security deposited under paragraph (1).

(3) The amount of the sum deposited or the valuable security shall be specified in the recognizance.

(4) Where the condition of the recognizance is duly performed the sum or security shall be repaid or returned to the person who deposited it.

##### **Estreating of recognizances**

**138.—**(1) Without prejudice to Article 151, where the condition of a recognizance is to appear at the Crown Court or county court the recognizance shall be liable upon breach of that condition to be estreated by that court; otherwise recognizances entered into before, or in connection with, proceedings pending in or before a magistrates' court may, without prejudice to any other mode of enforcement, be enforced by a court of summary jurisdiction.

[<sup>F1</sup>(2) Paragraphs (2A) and (2B) apply where—

- (a) a recognizance to keep the peace or to be of good behaviour or to keep the peace and be of good behaviour has been entered into before a magistrates' court; or

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- (b) it is a condition of any recognizance that a person appears before a magistrates' court or at a police station; or
- (c) any other recognizance may be enforced by a court of summary jurisdiction.

(2A) If, in the case of a recognizance a condition of which is that an accused appears before a magistrates' court, the accused fails to appear in accordance with the condition, the court shall—

- (a) order the estreat of the recognizance; and
- (b) direct the issue of a summons to any surety for that person requiring the surety to appear before a court of summary jurisdiction on a date specified in the summons to show cause why he should not pay the sum in which he is bound;

and on that date the court may proceed in the absence of any surety if it is satisfied that he has been served with the summons.

(2B) If, in any other case falling within paragraph (2), the recognizance appears to the magistrates' court to be forfeited, the court may order the estreat of the recognizance on each person bound by it, whether as principal or surety, but, in a case falling within paragraph (2)(a), the court shall not order the estreat of the recognizance except on complaint.

(3) The power of the court under paragraph (2A) or (2B) to order the estreat of the recognizance includes power to order the estreat of the recognizance to such lesser amount as the court thinks fit and power to remit payment of the amount due under the recognizance.]

- (4) Upon ordering the estreat of a recognizance the court may issue a warrant—
  - (a) to levy the amount forfeited by distress and sale of the property of any person bound by the recognizance, and
  - (b) in default of distress to commit such person to prison as if for default in the payment of a sum adjudged to be paid by a conviction;

and accordingly the period for which such person may be committed shall not exceed that specified in Schedule 3.

(5) Nothing in this Article shall prejudice the power of a magistrates' court to issue a warrant for the arrest of a person who, in breach of his recognizance, has failed to appear before the court.

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### Disposal of deposits in lieu of sureties in certain cases

**139.**—(1) Where, under any enactment, any sum or security has been deposited with a magistrates' court, or with a member of the Royal Ulster Constabulary, in lieu of sureties for the due performance of the conditions of a recognizance and—

- (a) the conditions of the recognizance have been duly performed but it has not been possible to repay or return the deposit to the person who deposited it; or
- (b) a condition of the recognizance has been broken but it has not been possible to serve a notice of application to estreat the recognizance on the person who made the deposit or to ascertain his usual place of abode;

the clerk of petty sessions for the court or a member of the Royal Ulster Constabulary, as the case may require, shall, after the expiration of twelve months from the date when the deposit has become repayable or returnable or, as the case may be, the condition of the recognizance has been broken, or so soon thereafter as is practicable, apply to a court of summary jurisdiction under Part VII for an order for the disposal of the deposit; and that court may, if in all the circumstances of the case it considers it just to do so, by order, direct the deposit—

- (i) in the case of money, to be transferred to the [F2Consolidated Fund of Northern Ireland]; or

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(ii) in the case of any other security, to be sold and the proceeds of the sale transferred to the [F<sup>2</sup>Consolidated Fund of Northern Ireland].

(2) Notice of any such application, containing particulars of the deposit and of the party who deposited it, shall be exhibited at the police station nearest to the place where the deposit was made for a period of not less than one month before the hearing of the application by the court.

(3) Where a court which has made an order under paragraph (1) is satisfied, at any time after the making of the order, upon an application made in accordance with the said Part VII, that any person claiming to be entitled to the whole or part of any sum transferred to the [F<sup>3</sup>Consolidated Fund of Northern Ireland] in pursuance of that order is so entitled, that court may, by order, so declare; and the Treasury shall issue out of the [F<sup>3</sup>Consolidated Fund of Northern Ireland] such sums as may appear to it to be necessary to provide for payment of that person accordingly.

- F2** Words in art. 139(1) substituted (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 15(5), **Sch. 18 para. 137** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**
- F3** Words in art. 139(3) substituted (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 15(5), **Sch. 18 para. 137** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

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**Modifications etc. (not altering text)**

- C1** [Art. 139\(3\)](#): functions of Treasury or Minister for the Civil Service transferred to Department of Finance and Personnel (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), **15(4)(f)** (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

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### **Changes and effects yet to be applied to :**

- Instrument am (prosp) by [S.I. 1994/2795 \(N.I.\) arts.3\(4\)25](#)
- Instrument am (prosp) by [S.I. 1994/2795 \(N.I.\) art.3\(5\)Sch.1](#)
- Instrument am (prosp) by [S.I. 1994/2795 \(N.I.\) art.5\(2\)](#)
- Instrument mod (prosp) by [1994 c. 33 s. 91\(3\)](#)
- Instrument revoked by [1998 c. 41 s.74\(1\)\(3\)Sch.12 para.5Sch.14 Pt.I](#)

### **Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

- Act amended by [1996 c. 25 s.79Sch.4 para 30](#)
- Act amended by [1996 c. 25 s.79Sch.4 para 30](#)
- Order applied (with modifications) by [S.I. 2018/1125 reg. 8](#) (This amendment not applied to [legislation.gov.uk](#). [S.I. 2018/1125](#), reg. 8 omitted (31.12.2020) by virtue of Private International Law (Implementation of Agreements) Act 2020 (c. 24), s. 4(3), Sch. 5 para. 4(4))
- Order power to modify conferred by [2015 c. 9 \(N.I.\) s. 24\(5\)\(a\)](#) (see [s 24\(6\)](#))

### **Whole provisions yet to be inserted into this Order (including any effects on those provisions):**

- [Sch.6 Pt.I paras.1819](#) revoked by [1995 c. 21 s. 314\(1\)Sch.12](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch.6 Pt.I para.5](#) revoked by [S.I. 1995/756 art.15Sch.](#)
- [Sch. 6 para. 128-130](#) repealed by [2011 c. 15 \(N.I.\) Sch. 3 Pt. 2](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch. 6 para. 125](#) repealed by [2011 c. 16 \(N.I.\) Sch. 5](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch. 6 Pt. 3 para. 170](#) repealed by [S.I. 2007/916 \(N.I.\) Sch. 8 Pt. 1](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch. 6 para. 144](#) repealed by [2006 c. 48 Sch. 15 Pt. 4](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch. 6 para. 21](#) repealed by [2013 c. 22 Sch. 11 para. 210](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch. 6 para. 25](#) repealed by [2013 c. 22 Sch. 11 para. 210](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [art. 29A](#) excluded by [1975 c. 59, s. 4\(3\)](#) (as substituted) by [2015 c. 9 \(N.I.\) s. 7\(6\)](#)
- [art. 29A](#) inserted by [2015 c. 9 \(N.I.\) s. 7\(2\)](#)
- [art. 34\(1A\)-\(1E\)](#) inserted by [2015 c. 9 \(N.I.\) s. 8\(2\)](#)
- [art. 140\(2ZA\)](#) inserted by [2016 c. 18 \(N.I.\) Sch. 10 para. 16](#)