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## STATUTORY INSTRUMENTS

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# 1996 No. 3160

## The Criminal Justice (Northern Ireland) Order 1996

### <sup>F1</sup>PART II

#### TREATMENT OF OFFENDERS

##### *Discharge*

##### **Absolute and conditional discharge**

4.—(1) Where a court by or before which a person is convicted of an offence<sup>F1</sup> (not being an offence for which the sentence is fixed by law or falls to be imposed under<sup>F2</sup> Article 70(2) of the Firearms (Northern Ireland) Order<sup>F2</sup> 2004 [<sup>F3</sup>or paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006]<sup>F4</sup> or Article 13 [<sup>F5</sup>, 13A]<sup>F6</sup>, 14 or 15A] of the Criminal Justice (Northern Ireland) Order 2008]<sup>F7</sup> or section 7(2) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015)] is of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment, the court may make an order either—

- (a) discharging him absolutely; or
- (b) if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding 3 years from the date of the order, as may be specified in the order.

(2) Before making an order for conditional discharge the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence.

(3) Where, under this Part, a person conditionally discharged under this Article is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.

(4) The Secretary of State may by order direct that paragraph (1) shall be amended by substituting for the maximum period for the time being specified in sub-paragraph (b) of that paragraph, such other period as may be specified in the order.

(5) Nothing in paragraph (1) shall be construed as preventing a court which discharges an offender absolutely or conditionally in respect of any offence from making an order for costs against the offender or from making an order under Article 11 or 14 of the Criminal Justice (Northern Ireland) Order 1994 (power to deprive offenders of property used, or intended for use, for purposes of crime and compensation orders) or under Article 8 of the Criminal Justice (Northern Ireland) Order 1980 (driving disqualification where vehicle used for purposes of crime) or under section 27 of the Theft Act (Northern Ireland) 1969 (restitution orders) [<sup>F8</sup>or a slavery and trafficking reparation order under Schedule 2 to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.]

**Changes to legislation:** *The Criminal Justice (Northern Ireland) Order 1996, Cross Heading: Discharge is up to date with all changes known to be in force on or before 10 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- F1** 2003 c. 44
- F2** 2004 NI 3
- F3** Words in art. 4(1) inserted (6.4.2007) by [Violent Crime Reduction Act 2006 \(c. 38\)](#), ss. 51, 66(2), [Sch. 2 para. 2\(11\)\(b\)\(i\)](#); S.I. 2007/858, [art. 2\(i\)\(j\)](#)
- F4** Words in art. 4(1) inserted (15.5.2008) by [Criminal Justice \(Northern Ireland\) Order 2008 \(S.I. 2008/1216 \(N.I. 1\)\)](#), arts. 1(4), 102(1), [Sch. 5 para. 7\(2\)](#); S.R. 2008/217, [art. 2](#), Sch. (subject to saving in art. 3(1)(2)(b)(ii))
- F5** Word in art. 4(1) inserted (29.6.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\)](#), s. 50(2)(v), [Sch. 13 para. 64\(3\)](#)
- F6** Words in art. 4(1) substituted (30.4.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\)](#), s. 50(1)(i), [Sch. 13 para. 69\(3\)](#)
- F7** Words in art. 4(1) inserted (14.1.2015) by [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c. 2\)](#), [ss. 7\(7\)\(b\)\(i\)](#), 28(2)
- F8** Words in art. 4(5) inserted (14.1.2015) by [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c. 2\)](#), s. 28(2), [Sch. 4 para. 11](#)

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

- C1** Art. 4 excluded (6.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 36\(5\)](#), 94(1); S.I. 2008/755, [art. 15\(1\)\(f\)](#)
- C2** Art. 4 excluded (6.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 36\(6\)](#), 94(1); S.I. 2008/755, [art. 15\(1\)\(f\)](#)
- C3** Art. 4 excluded (1.1.2012) by [Justice Act \(Northern Ireland\) 2011 \(c. 24\)](#), [ss. 41\(9\)](#), 111(3) (with Sch. 6 para. 3); S.R. 2011/370, art. 3(d)
- C4** Art. 4 excluded (26.5.2016) by [Psychoactive Substances Act 2016 \(c. 2\)](#), [ss. 32\(6\)\(c\)](#), 63(2); S.I. 2016/553, reg. 2

**Commission of further offence by person conditionally discharged**

**5.—(1)** If it appears to the Crown Court, where that Court has jurisdiction in accordance with paragraph (2), or to a justice of the peace having jurisdiction in accordance with that paragraph, that a person in whose case an order for conditional discharge has been made—

- (a) has been convicted by a court in any part of Northern Ireland of an offence committed during the period of conditional discharge; and
- (b) has been dealt with in respect of that offence,

the Court or justice may, subject to paragraph (3), issue a summons requiring that person to appear at the place and time specified therein or a warrant for his arrest.

(2) Jurisdiction for the purposes of paragraph (1) may be exercised—

- (a) if the order for conditional discharge was made by the Crown Court, by that Court;
- (b) if the order was made by a magistrates' court, by a justice of the peace.

(3) A justice of the peace shall not issue a summons under this Article except on complaint and shall not issue a warrant under this Article except on complaint in writing and on oath.

(4) A summons or warrant issued under this Article shall direct the person to whom it relates to appear or to be brought before the court by which the order for conditional discharge was made.

(5) If a person in whose case an order for conditional discharge has been made by the Crown Court is convicted by a magistrates' court of an offence committed during the period of conditional discharge, the magistrates' court—

- (a) may commit him to custody or release him on bail until he can be brought or appear before the Crown Court; and

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(b) if it does so, shall send to the Crown Court a copy of the entry of the conviction made in the Order Book, signed by the clerk of petty sessions by whom the Order Book is kept.

(6) Where it is proved to the satisfaction of the court by which an order for conditional discharge was made that the person in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may deal with him, for the offence for which the order was made, in any manner in which it could deal with him if he had just been convicted by or before that court of that offence.

(7) If a person in whose case an order for conditional discharge has been made by a magistrates' court is convicted before the Crown Court of an offence committed during the period of conditional discharge, the Crown Court may deal with him, for the offence for which the order was made, in any manner in which the magistrates' court could deal with him if it had just convicted him of that offence.

(8) If a person in whose case an order for conditional discharge has been made by a magistrates' court is convicted by another magistrates' court of any offence committed during the period of conditional discharge, that other court may deal with him, for the offence for which the order was made, in any manner in which the court could deal with him if it had just convicted him of that offence.

(9) Where an order for conditional discharge has been made by a court of summary jurisdiction in the case of an offender under the age of<sup>F9</sup> 18] in respect of an offence not being a summary offence or an offence which, in the case of an adult, could have been tried summarily with his consent under Article 45 of the Magistrates' Courts (Northern Ireland) Order 1981, any powers exercisable under paragraph (6), (7) or (8) by that or any other court in respect of the offender after he has attained the age of<sup>F9</sup> 18] shall be those which would be exercisable if that offence were an offence which could have been tried summarily under the said Article 45 with the offender's consent, and had been so tried.

(10) For the purposes of this Article the age of an offender at a particular time shall be deemed to be or to have been that which appears to the court after considering any available evidence to be or to have been his age at that time.

**F9** 2002 c. 26

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

**C5** Art. 5 excluded (1.1.2012) by [Justice Act \(Northern Ireland\) 2011 \(c. 24\)](#), **ss. 41(9)**, 111(3) (with [Sch. 6 para. 3](#)); [S.R. 2011/370](#), art. 3(d)

**Effect of discharge**

**6.—**(1) Subject to paragraph (2) and to section 30(4) of the Criminal Appeal (Northern Ireland) Act 1980 and Article 140(1A) of the Magistrates' Courts (Northern Ireland) Order 1981, a conviction of an offence for which an order is made under this Part discharging the offender absolutely or conditionally shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under Article 5.

(2) Where the offender being not less than<sup>F10</sup> 18] years of age at the time of his conviction of the offence in question, is subsequently sentenced under this Part for that offence, paragraph (1) shall cease to apply to the conviction.

(3) Without prejudice to paragraphs (1) and (2), the conviction of an offender who is discharged absolutely or conditionally under this Part shall in any event be disregarded for the purposes of any statutory provision which—

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- (a) imposes any disqualification or disability upon convicted persons; or
  - (b) authorises or requires the imposition of any such disqualification or disability.
- (4) Paragraphs (1) to (3) shall not affect—
- (a) any right of any offender discharged absolutely or conditionally under this Part to rely on his conviction in bar of any subsequent proceedings for the same offence; or
  - (b) the restoration of any property in consequence of the conviction of any such offender; or
  - (c) the operation, in relation to any such offender, of any statutory provision in force at the commencement of this Part which is expressed to extend to persons dealt with under section 1(1) of the Probation of Offenders Act 1907 as well as to convicted persons.

**F10** 2002 c. 26

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

- C6** Art. 6 excluded (6.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 36\(5\)](#), 94(1); S.I. 2008/755, [art. 15\(1\)\(f\)](#)
- C7** Art. 6 excluded (6.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 36\(6\)](#), 94(1); S.I. 2008/755, [art. 15\(1\)\(f\)](#)
- C8** Art. 6 excluded (26.5.2016) by [Psychoactive Substances Act 2016 \(c. 2\)](#), [ss. 32\(6\)\(c\)](#), 63(2); S.I. 2016/553, [reg. 2](#)
- C9** Art. 6 excluded by 2012 c. 9, s. 101J(2) (as inserted (31.1.2017 for specified purposes, 28.6.2018) by [Policing and Crime Act 2017 \(c. 3\)](#), [ss. 168\(1\)](#), 183(4), (5)(e); S.R. 2018/128, [art. 2\(a\)](#))
- C10** Art. 6 excluded (31.12.2020) by [European Union \(Future Relationship\) Act 2020 \(c. 29\)](#), [ss. 6\(2\)\(b\)](#), 40(7); S.I. 2020/1662, [reg. 2\(f\)](#)
- C11** Art. 6(1) excluded (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), [ss. 158\(3\)\(b\)](#), 182(5) (with s. 180); S.I. 2010/816, [art. 2](#), [Sch. para. 11](#)
- C12** Art. 6(1) excluded (31.7.2015) by [Modern Slavery Act 2015 \(c. 30\)](#), [ss. 34\(3\)\(b\)](#), 61(1) (with s. 34(4)); S.I. 2015/1476, [reg. 2\(b\)](#)
- C13** Art. 6(1) excluded (27.11.2015 for specified purposes, 1.4.2016 for all other purposes with application in accordance with Sch. 3 para. 23(4) of the amending Act) by [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c. 2\)](#), s. 28(3), [Sch. 3 para. 23\(3\)\(a\)](#); S.R. 2015/376, [art. 2](#); S.R. 2016/61, [art. 2](#)

**Supplementary provisions as to discharge**

7.—<sup>F11</sup>(1) Without prejudice to Article 36(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (which enables a court to order the parent or guardian of a child found guilty of an offence to give security for his good behaviour), a court may, on the making of an order for conditional discharge or a probation order, if it thinks it expedient for the purpose of the reformation of the offender, require the offender, or—

- (a) if the offender is under the age of 16 years, his parent or guardian; or
- (b) if the offender has attained the age of 14 years but is under the age of<sup>F12</sup> 18] years, the offender or his parent or guardian,

to give security for the good behaviour of the offender.]

(2) Any security given under paragraph (1) shall be by way of recognizance.

(3) In proceedings before the Crown Court under Articles 4 to 6, any question whether any person in whose case an order for conditional discharge has been made has been convicted of an offence during the period of conditional discharge shall be determined by the Court and not by the verdict of a jury.

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**F11** [1998 NI 9](#)

**F12** [2002 c. 26](#)

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

- [Instrument rev. in pt. by 1998 c. 40 s.9\(1\)\(2\)Sch.1 Pt.II para.10Sch.2 Pt.II](#)

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

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

- [Sch. 2 para. 9\(1\)\(a\)\(i\) words repealed by 2015 c. 9 \(N.I.\) Sch. 1 para. 112\(5\)\(e\)Sch. 9 Pt. 1](#)
- [art. 44A\(4\) words substituted by S.I. 2008/1216 \(N.I.\) Sch. 5 para. 7\(9\) \(This amendment not applied to \[legislation.gov.uk\]\(#\). It is thought that the correct affected document should be S.I. 1998/1504 \(N.I. 9\), art. 44A\(4\). The correction will be made as soon as we get the approved amended document from the relevant office\)](#)
- [art. 53\(1\) art. 53 renumbered as art. 53\(1\) by 2019 c. 17 s. 44\(6\)](#)
- [art. 53\(1\)\(a\) substituted by 2019 c. 17 s. 43\(2\)](#)
- [art. 53\(2\)-\(9\) inserted by 2019 c. 17 s. 44\(7\)](#)
- [art. 54A inserted by 2019 c. 17 s. 37\(3\)](#)