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## STATUTORY INSTRUMENTS

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# 2008 No. 1216

## The Criminal Justice (Northern Ireland) Order 2008

### PART 2

#### SENTENCING

##### CHAPTER 1

##### INTERPRETATION

#### Interpretation of this Part

3.—(1) In this Part—

“community sentence” has the meaning given by Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996 (NI 24);

“curfew requirement” has the meaning given by Article 37(1);

“electronic monitoring requirement” has the meaning given by Article 40(1);

“extended custodial sentence” has the meaning given by Article 14;

“HSS Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14);

“<sup>[F1]</sup>HSC trust” means a <sup>[F2]</sup>Health and Social Care trust established under Article 10(1) of the Health and Personal Social Services (Northern Ireland) Order 1991 (NI 1);

“indeterminate custodial sentence” has the meaning given by Article 13(4);

“the Parole Commissioners” means the Parole Commissioners for Northern Ireland;

“prison rules” means rules made under section 13 of the Prison Act (Northern Ireland) 1953 (c. 18);

“probation order” means an order under Article 10 of the Criminal Justice (Northern Ireland) Order 1996 (NI 24);

“sentence” does not include a committal for default, or the fixing of a term to be served in the event of default, or attachment for contempt of court; and for the purposes of this definition “default” means a failure to pay, or want of sufficient distress to satisfy, any fine or other sum of money or failure to do or abstain from doing anything required to be done or left undone;

“serious harm” means death or serious personal injury, whether physical or psychological;

“youth conference order” means an order under Article 36J of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9);

“young offenders centre” has the meaning given by section 2(a) of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29).

(2) For the purposes of this Part, an offence is associated with another if—

- (a) the offender is convicted of both offences in the same proceedings, or is sentenced for both offences at the same time; or

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(b) the offender admits the commission of it in the sentencing proceedings for the other offence and requests the court to take it into consideration in the sentence for that offence.

(3) For the purposes of this Part, where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it shall be taken to have been committed on the last of those days

(4) Where the age of any person at any time is material for the purposes of any provision of this Part, his age at the material 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.

#### Textual Amendments

**F1** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

**F2** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(c\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

## CHAPTER 2

### CUSTODIAL SENTENCES

#### Interpretation of this Chapter

4.—(1) In this Chapter—

“custodial sentence” means—

- (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);
- (d) a sentence of detention under Article 45(1) or (2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9);
- (e) an order under Article 39 of that Order sending the offender to a juvenile justice centre;
- (f) an order under Article 44A of that Order sending the offender to secure accommodation;

“pre-sentence report” means a report in writing which—

- (a) with a view to assisting the court in determining the most suitable method of dealing with an offender, is made or submitted by a probation officer or a social worker of an HSS Board or authorised [<sup>F3</sup>HSC trust] ; and
- (b) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State;

and for the purposes of this definition an “authorised [<sup>F3</sup>HSC trust]” is an [<sup>F3</sup>HSC trust] by which functions relating to such reports are exercisable by virtue of an authorisation for the time being in operation under Article 3(1) of the Health and Personal Social Services (Northern Ireland) Order 1994 (NI 2).

(2) For the purposes of this Chapter—

- (a) a sentence falls to be imposed under Article 13 if, because the court is of the opinion mentioned in paragraph (1)(b) of that Article and considers that the case falls within paragraph (2) or (3) of that Article, the court is obliged to pass a sentence complying with that Article;

- (b) a sentence falls to be imposed under Article 14 if, because the court is of the opinion mentioned in paragraph (1)(b)(i) and (ii) of that Article, the court is obliged to pass a sentence complying with that Article;
- (c) a sentence falls to be imposed under paragraph (2) of Article 70 of the Firearms (Northern Ireland) Order 2004 (NI 3) if it is required by that paragraph and the court is not of the opinion there mentioned; and
- (d) a sentence falls to be imposed under paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006 (c. 38) if it is required by that provision and the court is not of the opinion there mentioned.

#### Textual Amendments

- F3** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

#### Restrictions on imposing certain custodial sentences

5.—(1) This Article applies where a person is convicted of an offence punishable with a custodial sentence other than one—

- (a) fixed by law; or
- (b) falling to be imposed under—
  - (i) Article 13 or 14;
  - (ii) Article 70(2) of the Firearms (Northern Ireland) Order 2004 (NI 3); or
  - (iii) paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006 (c. 38).

(2) The court shall not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that only a custodial sentence can be justified for the offence.

(3) Nothing in paragraph (2) shall prevent the court from passing a custodial sentence if the offender fails to express a willingness to comply with—

- (a) a requirement which is proposed by the court to be included in a community sentence and which requires an expression of such willingness; or
- (b) a requirement which is proposed by the court to be included in—
  - (i) an order under Article 8(5) of the Criminal Justice (Northern Ireland) Order 1998 (NI 20); or
  - (ii) a youth conference order.

(4) Where a court passes a custodial sentence, it shall—

- (a) in a case not falling within paragraph (3), state in open court that it is of the opinion referred to in paragraph (2) and why it is of that opinion; and
- (b) in any case, explain to the offender in open court and in ordinary language why it is passing a custodial sentence.

(5) A magistrates' court shall cause a reason stated by it under paragraph (4) to be specified in the warrant of commitment and to be entered in the Order Book required to be kept under rule 19 of the Magistrates' Courts Rules (Northern Ireland) 1984 (No. 225).

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### Commencement Information

- I1** Art. 5 wholly in operation at 1.4.2009, see art. 1(4) and S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 1(1)(2)(a), 4)

### Restrictions on imposing custodial sentences on persons not legally represented

6.—(1) A magistrates' court on summary conviction or the Crown Court on conviction on indictment shall not pass a custodial sentence on a person if that person is not legally represented in that court.

(2) Paragraph (1) does not apply to a person if

- (a) a custodial sentence has previously been passed on that person or a corresponding sentence has previously been passed on that person by a court in any other part of the United Kingdom;
- (b) that person applied for legal aid and the application was refused on the ground that it did not appear the person's means were such that the person required assistance; or
- (c) having been informed of the right to apply for legal aid and had the opportunity to do so, that person refused or failed to apply.

(3) In paragraph (2) "legal aid" means legal aid for the purposes of proceedings in the court, whether the whole proceedings or the proceedings on or in relation to sentence.

(4) In the case of a person committed to the Crown Court for trial, it is immaterial whether that person applied for legal aid in the Crown Court to, or was informed of the right to apply by, that Court, or the court which committed that person.

(5) For the purposes of this Article—

- (a) a person is to be treated as legally represented in a court if, but only if, that person has the assistance of counsel or a solicitor to represent that person in the proceedings in that court at some time after that person is found guilty and before that person is sentenced;
- (b) a previous sentence of imprisonment or order for detention which has been suspended and which has not taken effect shall be disregarded.

### Commencement Information

- I2** Art. 6 wholly in operation at 1.4.2009, see art. 1(4) and S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 1(1)(2)(a), 4)

### Length of custodial sentences

7.—(1) This Article applies where a court passes a sentence—

- (a) of imprisonment for a determinate term;
- (b) of detention in a young offenders centre;
- (c) of detention under Article 14(5); or
- (d) of detention under Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9).

(2) Subject to Article 14 and the statutory provisions mentioned in paragraph (3), the sentence shall be for such term (not exceeding the permitted maximum) as in the opinion of the court is

commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

- (3) The statutory provisions referred to in paragraph (2) are—
- (a) Article 70(2) of the Firearms (Northern Ireland) Order 2004 (NI 3);
  - (b) paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006 (c. 38).

#### Commencement Information

**I3** Art. 7 wholly in operation at 1.4.2009; art. 7 not in operation at date Order made see art. 1(4); art. 7 in operation for certain purposes at 15.5.2008 by S.R. 2008/217, art. 2, Sch. (with savings and transitory provision arts. 3, 4); art. 7 in operation at 1.4.2009 in so far as not already in operation by S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 1(1)(2)(a), 4)

#### Length of custodial period

- 8.—(1) This Article applies where a court passes—
- (a) a sentence of imprisonment for a determinate term, other than an extended custodial sentence, or
  - (b) a sentence of detention in a young offenders centre

in respect of an offence committed after the commencement of this Article.

(2) The court shall specify a period (in this Article referred to as “the custodial period”) at the end of which the offender is to be released on licence under Article 17.

(3) The custodial period shall not exceed one half of the term of the sentence.

(4) Subject to paragraph (3), the custodial period shall be the term of the sentence less the licence period.

(5) In paragraph (4) “the licence period” means such period as the court thinks appropriate to take account of the effect of the offender's supervision by a probation officer on release from custody—

- (a) in protecting the public from harm from the offender; and
- (b) in preventing the commission by the offender of further offences.

(6) Remission shall not be granted under prison rules to the offender in respect of the sentence.

#### Commencement Information

**I4** Art. 8 wholly in operation at 1.4.2009, see art. 1(4) and S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 2(1)(5), 4)

#### Procedural requirements for custodial sentences

9.—(1) In forming any such opinion as is mentioned in Article 5(2) or 7(2), a court shall take into account all such information as is available to it about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated with it (including any aggravating or mitigating factors).

(2) Subject to paragraph (3), a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in Article 5(2), 7(2), 13(1)(b) or 14(1)(b)(i).

(3) Paragraph (2) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report; and where the court does not obtain and consider a

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pre-sentence report, it shall state in open court that it is of that opinion and what the circumstances are.

(4) In the case of an offender under the age of 18, except where the offence or any other offence associated with it is punishable only on conviction on indictment, the court shall not form such an opinion as is mentioned in paragraph (3) or (6) unless—

- (a) there exists a previous pre-sentence report obtained in respect of the offender; and
- (b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.

(5) No custodial sentence shall be invalidated by the failure of a court to obtain and consider a pre-sentence report before forming an opinion referred to in paragraph (2) but any court on an appeal against such a sentence—

- (a) shall, subject to paragraph (6), obtain a pre-sentence report if none was obtained by the court below; and
- (b) shall consider any such report obtained by it or by that court.

(6) Paragraph (5)(a) does not apply if the court is of the opinion—

- (a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report; or
- (b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.

#### **Commencement Information**

**I5** [Art. 9](#) wholly in operation at 1.4.2009, see [art. 1\(4\)](#) and [S.R. 2009/120](#), [art. 2](#), [Sch. 1](#) (subject to [Sch. 2](#) paras. 1(1)(2)(a), 4)

#### **Additional requirements in the case of mentally disordered offenders**

**10.**—(1) Subject to paragraph (2), in any case where Article 9(2) applies and the offender is or appears to be mentally disordered, the court shall obtain and consider a medical report before passing a custodial sentence other than one fixed by law.

(2) Paragraph (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.

(3) Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court shall consider—

- (a) any information before it which relates to the offender's mental condition (whether given in a medical report, a pre-sentence report or otherwise); and
- (b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.

(4) No custodial sentence which is passed in a case to which paragraph (1) applies shall be invalidated by the failure of a court to comply with that paragraph, but any court on an appeal against such a sentence—

- (a) shall obtain a medical report if none was obtained by the court below; and
- (b) shall consider any such report obtained by it or by that court.

(5) In this Article—

“mentally disordered”, in relation to any person, means suffering from a mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986 (NI 4);

“medical report” means a report as to an offender's mental condition made or submitted orally or in writing by a registered medical practitioner appointed by the Mental Health Commission for Northern Ireland for the purposes of Part 2 of the Mental Health (Northern Ireland) Order 1986 (NI 4).

(6) Nothing in this Article shall be taken as prejudicing the generality of Article 9.

#### Commencement Information

**I6** Art. 10 wholly in operation at 1.4.2009, see art. 1(4) and S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 1(1)(2)(a), 4)

#### Disclosure of pre-sentence reports

**11.**—(1) This Article applies where a court obtains a pre-sentence report.

(2) Subject to paragraphs (3) and (4), the court shall give a copy of the report—

(a) to the offender or the offender's counsel or solicitor; and

(b) to the prosecutor, that is to say, the person having conduct of the proceedings in respect of the offence.

(3) If the offender is under the age of 18 and is not represented by counsel or a solicitor, a copy of the report need not be given to the offender but shall be given to the offender's parent or guardian if present in court

(4) If the prosecutor is not of a description prescribed by order made by the Secretary of State, a copy of the report need not be given to the prosecutor if the court considers that it would be inappropriate for the prosecutor to be given it.

(5) No information obtained by virtue of paragraph (2)(b) shall be used or disclosed otherwise than for the purpose of—

(a) determining whether representations as to matters contained in the report need to be made to the court; or

(b) making such representations to the court.

#### Commencement Information

**I7** Art. 11 wholly in operation at 1.4.2009, see art. 1(4) and S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 1(1)(2)(a), 4)

### CHAPTER 3

### DANGEROUS OFFENDERS

#### Meaning of “specified offence” etc.

**12.**—(1) An offence is a “specified offence” for the purposes of this Chapter if it is a specified violent offence or a specified sexual offence.

(2) A specified offence is a “serious offence” for the purposes of this Chapter if it is an offence specified in Schedule 1.

(3) In this Chapter—

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“life sentence” means—

- (a) a sentence of imprisonment for life; or
- (b) a sentence of detention under Article 45(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9);

“specified violent offence” means an offence specified in Part 1 of Schedule 2;

“specified sexual offence” means an offence specified in Part 2 of that Schedule.

(4) References in this Chapter to conviction on indictment include references to a finding of guilt under Article 17 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9).

(5) The Secretary of State may by order amend Schedules 1 and 2.

### **Life sentence or indeterminate custodial sentence for serious offences**

**13.**—(1) This Article applies where—

- (a) a person is convicted on indictment of a serious offence committed after the commencement of this Article; and
- (b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.

(2) If—

- (a) the offence is one in respect of which the offender would apart from this Article be liable to a life sentence, and
- (b) the court is of the opinion that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of such a sentence,

the court shall impose a life sentence.

(3) If, in a case not falling within paragraph (2), the court considers that an extended custodial sentence would not be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of further specified offences, the court shall—

- (a) impose an indeterminate custodial sentence; and
- (b) specify a period of at least 2 years as the minimum period for the purposes of Article 18, being such period as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it.

(4) An indeterminate custodial sentence is—

- (a) where the offender is aged 21 or over, a sentence of imprisonment for an indeterminate period,
- (b) where the offender is under the age of 21, a sentence of detention for an indeterminate period at such place and under such conditions as the Secretary of State may direct,

subject (in either case) to the provisions of this Part as to the release of prisoners and duration of licences.

(5) A person detained pursuant to the directions of the Secretary of State under paragraph (4)(b) shall while so detained be in legal custody.

(6) An offence the sentence for which is imposed under this Article is not to be regarded as an offence the sentence for which is fixed by law.

(7) Remission shall not be granted under prison rules to the offender in respect of a sentence imposed under this Article.



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

- C1** Art. 13 excluded by S.I. 1986/595 (N.I. 4), art. 44(1A)(c) (as 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. 5(1)); S.R. 2008/217, art. 2, Sch. (with transitory provision in art. 4)

**Extended custodial sentence for certain violent or sexual offences**

- 14.—**(1) This Article applies where—
- (a) a person is convicted on indictment of a specified offence committed after the commencement of this Article; and
  - (b) the court is of the opinion—
    - (i) that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences; and
    - (ii) where the specified offence is a serious offence, that the case is not one in which the court is required by Article 13 to impose a life sentence or an indeterminate custodial sentence.
- (2) The court shall impose on the offender an extended custodial sentence.
- (3) Where the offender is aged 21 or over, an extended custodial sentence is a sentence of imprisonment the term of which is equal to the aggregate of
- (a) the appropriate custodial term; and
  - (b) a further period (“the extension period”) for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences.
- (4) In paragraph (3)(a) “the appropriate custodial term” means a term (not exceeding the maximum term) which—
- (a) is the term that would (apart from this Article) be imposed in compliance with Article 7 (length of custodial sentences); or
  - (b) where the term that would be so imposed is a term of less than 12 months, is a term of 12 months.
- (5) Where the offender is under the age of 21, an extended custodial sentence is a sentence of detention at such place and under such conditions as the Secretary of State may direct for a term which is equal to the aggregate of—
- (a) the appropriate custodial term; and
  - (b) a further period (“the extension period”) for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences.
- (6) In paragraph (5)(a) “the appropriate custodial term” means such term (not exceeding the maximum term) as the court considers appropriate, not being a term of less than 12 months.
- (7) A person detained pursuant to the directions of the Secretary of State under paragraph (5) shall while so detained be in legal custody.
- (8) The extension period under paragraph (3)(b) or (5)(b) shall not exceed—
- (a) five years in the case of a specified violent offence; and

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(b) eight years in the case of a specified sexual offence.

(9) The term of an extended custodial sentence in respect of an offence shall not exceed the maximum term.

(10) In this Article “maximum term” means the maximum term of imprisonment that is, apart from Article 13, permitted for the offence where the offender is aged 21 or over.

(11) A court which imposes an extended custodial sentence shall not make an order under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29) (suspended sentences) in relation to that sentence.

(12) Remission shall not be granted under prison rules to the offender in respect of a sentence imposed under this Article.

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

**C2** Art. 14 excluded by S.I. 1986/595 (N.I. 4), art. 44(1A)(c) (as 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. 5(1)); S.R. 2008/217, art. 2, Sch. (with transitory provision in art. 4)

**The assessment of dangerousness**

**15.—(1)** This Article applies where—

- (a) a person has been convicted on indictment of a specified offence; an
- (b) it falls to a court to assess under Article 13 or 14 whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further such offences.

(2) The court in making the assessment referred to in paragraph (1)(b)—

- (a) shall take into account all such information as is available to it about the nature and circumstances of the offence;
- (b) may take into account any information which is before it about any pattern of behaviour of which the offence forms part; and
- (c) may take into account any information about the offender which is before it.

CHAPTER 4

RELEASE ON LICENCE

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

**C3** Pt. 2 Ch. 4 applied (with modifications) by Repatriation of Prisoners Act 1984 (c. 47), Sch. para. 2A(4) (as 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. 4(2)); S.R. 2008/217, art. 2, Sch. (with transitory provision in art. 4)

*Preliminary*

**Interpretation of this Chapter**

**16.—(1)** In any provision of this Chapter “fixed-term prisoner” means a person serving a determinate custodial sentence for an offence committed after the commencement of that provision.

(2) In this Chapter—

“custodial sentence” means—

- (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);

“determinate custodial sentence” means a custodial sentence for a determinate term.

(3) In this Chapter—

“prison” includes any place where a person serving a sentence falling within paragraph (b) or (c) of the definition of “custodial sentence” is liable to be detained;

“prisoner” includes a person serving a sentence falling within either of those paragraphs.

### *Duty of Secretary of State to release on licence*

#### **Duty to release certain fixed-term prisoners**

**17.**—(1) As soon as a fixed-term prisoner, other than a prisoner serving an extended custodial sentence, has served the requisite custodial period, the Secretary of State shall release the prisoner on licence under this Article.

(2) In this Article “the requisite custodial period” means—

- (a) subject to sub-paragraph (b), the custodial period specified by the court under Article 8;
- (b) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under Article 32(2) or 33(2)

#### **Commencement Information**

**18** Art. 17 wholly in operation at 1.4.2009, see art. 1(4) and S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 2(2)(5), 4)

#### **Duty to release prisoners serving indeterminate or extended custodial sentences**

**18.**—(1) This Article applies to a prisoner who is serving—

- (a) an indeterminate custodial sentence; or
- (b) an extended custodial sentence.

(2) In this Article—

“P” means a prisoner to whom this Article applies;

“relevant part of the sentence” means—

- (a) in relation to a indeterminate custodial sentence, the period specified by the court under Article 13(3) as the minimum period for the purposes of this Article;
- (b) in relation to an extended custodial sentence, one-half of the period determined by the court as the appropriate custodial term under Article 14.

(3) As soon as—

- (a) P has served the relevant part of the sentence, and
- (b) the Parole Commissioners have directed P's release under this Article,

the Secretary of State shall release P on licence under this Article.

*Status: Point in time view as at 01/04/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: The Criminal Justice (Northern Ireland) Order 2008, PART 2 is up to date with all changes known to be in force on or before 19 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)*

(4) The Parole Commissioners shall not give a direction under paragraph (3) with respect to P unless—

- (a) the Secretary of State has referred P's case to them; and
- (b) they are satisfied that it is no longer necessary for the protection of the public from serious harm that P should be confined.

(5) P may require the Secretary of State to refer P's case to the Parole Commissioners at any time—

- (a) after P has served the relevant part of the sentence; and
- (b) where there has been a previous reference of P's case to the Parole Commissioners, after the expiration of the period of 2 years beginning with the disposal of that reference or such shorter period as the Parole Commissioners may on the disposal of that reference determine;

and in this paragraph “previous reference” means a reference under paragraph (4) or Article 28(4).

(6) Where the Parole Commissioners do not direct P's release under paragraph (3)(b), the Secretary of State shall refer the case to them again not later than the expiration of the period of 2 years beginning with the disposal of that reference.

(7) In determining for the purpose of this Article whether P has served the relevant part of a sentence, no account shall be taken of any time during which P was unlawfully at large, unless the Secretary of State otherwise directs.

(8) Where P is serving an extended custodial sentence, the Secretary of State shall release P on licence under this Article as soon as the period determined by the court as the appropriate custodial term under Article 14 ends unless P has previously been recalled under Article 28

(9) The Secretary of State may by order provide that the reference in paragraph (b) of the definition of “relevant part of the sentence” in paragraph (2) to a particular proportion of a prisoner's sentence is to be read as a reference to such other proportion of a prisoner's sentence as may be specified in the order.

VALID FROM 01/06/2015

*Power [F4...] to release on licence*

**Textual Amendments**

- F4** Words in [art. 19](#) cross-heading omitted (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 6(2), [Sch. 5 para. 12](#) (with arts. 28-31); [S.I. 2010/977](#), [art. 1\(2\)](#) (but this amendment cannot take effect until the commencement of [S.I. 2008/1216](#), [art. 19](#) cross-heading)

**Power to release prisoners on licence before required to do so**

**19.—(1)** The [F5Department of Justice] may release on licence under this Article a fixed-term prisoner at any time during the period of 135 days ending with the day on which the prisoner will have served the requisite custodial period.

(2) Paragraph (1) shall not apply in relation to a prisoner unless—

- (a) the length of the requisite custodial period is at least 6 weeks; and

- (b) the prisoner has served—
  - (i) at least 4 weeks of the prisoner's sentence; and
  - (ii) at least one-half of the requisite custodial period.
- (3) Paragraph (1) shall not apply where—
  - (a) the sentence is an extended custodial sentence;
  - (b) the prisoner is subject to a hospital order or transfer direction within the meaning of the Mental Health (Northern Ireland) Order 1986 (NI 4);
  - (c) the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c. 42);
  - (d) the prisoner is liable to removal from the United Kingdom;
  - (e) the prisoner has been released on licence under this Article during the currency of the sentence, and has been recalled to prison under Article 30; or
  - (f) the prisoner has been released on licence under Article 20 during the currency of the sentence, and has been recalled to prison under Article 28.
- (4) The [<sup>F6</sup>Department of Justice] may by order—
  - (a) amend the number of days specified in paragraph (1);
  - (b) amend the number of weeks specified in paragraph (2)(a) or (b)(i);
  - (c) amend the fraction specified in paragraph (2)(b)(ii).
- (5) In this Article “the requisite custodial period” has the same meaning as in Article 17.
- (6) In this Article—
  - (a) “fixed-term prisoner” includes a person serving a determinate custodial sentence for an offence committed before the commencement of this Article; and
  - (b) in relation to such a prisoner, “the requisite custodial period” means one-half of the term of the sentence.
- (7) For the purposes of this Article a person is liable to removal from the United Kingdom if that person
  - (a) is liable to deportation under section 3(5) of the Immigration Act 1971 (c. 77) and has been notified of a decision to make a deportation order against that person;
  - (b) is liable to deportation under section 3(6) of that Act;
  - (c) has been notified of a decision to refuse that person leave to enter the United Kingdom;
  - (d) is an illegal entrant within the meaning of section 33(1) of that Act; or
  - (e) is liable to removal under section 10 of the Immigration and Asylum Act 1999 (c. 33).

#### Textual Amendments

- F5** Words in art. 19(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), 6(2), **Sch. 5 para. 15** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 19)
- F6** Words in art. 19(4) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 6(2), **Sch. 5 para. 15** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 19)

*Status: Point in time view as at 01/04/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: The Criminal Justice (Northern Ireland) Order 2008, PART 2 is up to date with all changes known to be in force on or before 19 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)*

### Power to release certain prisoners on compassionate grounds

**20.**—(1) The [F7Department of Justice] may, if satisfied that exceptional circumstances exist which justify the release of a prisoner to whom this Article applies on compassionate grounds, at any time release the prisoner on licence under this Article.

(2) This Article applies to—

- (a) a fixed-term prisoner; and
- (b) a prisoner serving an indeterminate custodial sentence.

(3) The [F8Department of Justice] shall, before releasing a prisoner serving—

- (a) an indeterminate custodial sentence; or
- (b) an extended custodial sentence,

consult the Parole Commissioners unless the circumstances are such as to render such consultation impracticable.

(4) In this Article “fixed-term prisoner” includes a person serving a determinate custodial sentence for an offence committed before the commencement of this Article.

[F9(5) The Secretary of State may notify the Department of Justice that a prisoner is not to be released under this Article without the Secretary of State's agreement; and, if the Secretary of State gives such a notification in relation to a prisoner, the Department of Justice may not release the prisoner under this Article without the Secretary of State's agreement.

(6) But the Secretary of State may—

- (a) give a notification, or
- (b) refuse his agreement to a release,

only if his decision to do so is arrived at (wholly or partly) on the basis of protected information.]

#### Textual Amendments

- F7** Words in art. 20(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), 6(2), **Sch. 5 para. 16(2)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 20)
- F8** Words in art. 20(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), 6(2), **Sch. 5 para. 16(2)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 20)
- F9** Art. 20(5)(6) inserted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 6(2), **Sch. 5 para. 16(3)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 20)

### *Duration of licences*

#### **Duration of licences: fixed-term prisoners**

**21.**—(1) Where a fixed-term prisoner is released on licence under this Chapter, the licence shall, subject to any revocation under Article 28 or 30, remain in force for the remainder of the sentence.

(2) Paragraph (1) has effect subject to Articles 32(2) and 33(3) and (4).

#### **Commencement Information**

- 19** Art. 21 wholly in operation at 1.4.2009; art. 21 not in operation at date Order made see art. 1(4); art. 21 in operation for certain purposes at 15.5.2008 by S.R. 2008/217, art. 2, Sch. (with transitory provision in art. 4); art. 21 in operation at 1.4.2009 in so far as not already in operation by S.R. 2009/120, art. 2, Sch. 1

#### **Duration of licences: prisoners serving indeterminate custodial sentences**

**22.**—(1) This Article applies where a person who is serving an indeterminate custodial sentence is released on licence under Article 18 or 20.

(2) The licence shall, subject to any revocation under Article 28 or order under this Article, remain in force for the remainder of the prisoner's life.

(3) In this Article “qualifying period” means the period of 10 years beginning with the date of the prisoner's release.

(4) Where

- (a) the qualifying period has expired, and
- (b) the Parole Commissioners direct the Secretary of State to do so,

the Secretary of State shall order that the licence is to cease to have effect.

(5) Where—

- (a) the qualifying period has expired; and
- (b) if the prisoner has made a previous application under this paragraph, a period of at least 2 years has expired since the disposal of that application, or such shorter period as the Parole Commissioners may have recommended on the disposal of the last previous such application,

the prisoner may make an application to the Parole Commissioners under this paragraph.

(6) Where an application is made under paragraph (5), the Parole Commissioners—

- (a) shall, if they are satisfied that it is no longer necessary for the protection of the public from serious harm that the licence should remain in force, direct the Secretary of State to make an order under paragraph (4) that the licence is to cease to have effect;
- (b) shall otherwise dismiss the application.

#### **Commencement Information**

- 110** Art. 22 partly in operation; art. 22 not in operation at date Order made see art. 1(4); art. 22 in operation for certain purposes at 15.5.2008 by S.R. 2008/217, art. 2, Sch. (with transitory provision in art. 4)

#### *Licence conditions*

#### **Power of court to recommend licence conditions for sentences of 12 months or more**

**23.**—(1) A court which sentences an offender to a determinate custodial sentence of 12 months or more in respect of any offence may, when passing sentence, recommend to the Secretary of State particular conditions which in its view should be included in any licence granted to the offender under Article 17 or 19 on release from prison.

*Status: Point in time view as at 01/04/2009. This version of this part contains provisions that are not valid for this point in time.*

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(2) In exercising the powers under Article 24 in respect of an offender, the Secretary of State shall have regard to any recommendation under paragraph (1).

(3) A recommendation under paragraph (1) is not to be treated for any purpose as part of the sentence passed on the offender.

#### Commencement Information

**III** Art. 23 wholly in operation at 1.4.2009, see art. 1(4) and S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 1(1)(2)(a), 4)

#### Licence conditions

**24.**—(1) In this Article—

- (a) “the standard conditions” means such conditions as may be prescribed for the purposes of this Article as standard conditions; and
- (b) “prescribed” means prescribed by the Secretary of State by rules.

(2) Any licence under Article 17 or 19 in respect of any prisoner serving one or more determinate custodial sentences of less than 12 months and no determinate custodial sentence of 12 months or more shall include—

- (a) such conditions as may be required by the court in passing sentence; and
- (b) so far as not inconsistent with them, the standard conditions.

(3) Any other licence under this Chapter

- (a) shall include the standard conditions; and
- (b) may include such other conditions of a kind prescribed for the purposes of this paragraph as the Secretary of State may for the time being specify in the licence.

(4) The Secretary of State may vary or cancel any conditions specified in a licence under this Chapter and may subsequently include additional conditions.

(5) Where a prisoner is released on licence under Article 18, the Secretary of State shall not—

- (a) include a condition under paragraph (3)(b) on release, or
- (b) subsequently insert, vary or cancel a condition under paragraph (4),

except after consultation with the Parole Commissioners.

(6) For the purposes of paragraph (5), the Secretary of State is to be treated as having consulted the Parole Commissioners about a proposal to include, insert, vary or cancel a condition in any case if they have been consulted about the implementation of proposals of that description generally or in that class of case.

(7) Paragraphs (2) and (3) have effect subject to—

- (a) Articles 25 and 26;
- (b) Articles 32(2) and 33(3) and (4).

(8) In exercising the powers to prescribe standard conditions or other conditions referred to in paragraph (3), the Secretary of State shall have regard to the following purposes of the supervision of offenders while on licence under this Chapter—

- (a) the protection of the public;
- (b) the prevention of re-offending;
- (c) the rehabilitation of the offender.



### Commencement Information

- I12** Art. 24 partly in operation; art. 24 not in operation at date Order made see art. 1(4); art. 24(1)(3)-(6)(7)(b)(8) in operation at 15.5.2008 by S.R. 2008/217, art. 2, Sch. (with transitory provision in art. 4)

PROSPECTIVE

### Licence conditions on re-release of prisoners serving sentence of less than 12 months

**25.—**(1) In relation to any licence under Article 17 or 19 which is granted to a prisoner serving one or more determinate custodial sentences of less than 12 months and no determinate custodial sentence of 12 months or more on release in pursuance of a direction or recommendation of the Parole Commissioners under Article 28 or 29, paragraphs (2) and (3) apply instead of Article 24(2).

(2) The licence—

- (a) shall include the standard conditions; and
- (b) may include such other conditions of a kind prescribed for the purposes of Article 24(3)(b) as the [<sup>F10</sup>Department of Justice] may for the time being specify in the licence.

(3) In exercising the powers to include other conditions conferred by paragraph (2)(b), the [<sup>F11</sup>Department of Justice] shall have regard to any such conditions as are mentioned in Article 24(2)(a).

(4) In this Article “the standard conditions” and “prescribed” have the same meaning as in Article 24

### Textual Amendments

**F10** Words in art. 25(2)(b) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 6(2), Sch. 5 para. 20 (with arts. 28-31); S.I. 2010/977, art. 1(2) (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 25)

**F11** Words in art. 25(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), 6(2), Sch. 5 para. 20 (with arts. 28-31); S.I. 2010/977, art. 1(2) (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 25)

VALID FROM 01/06/2015

### Curfew condition to be included in licence under Article 19

**26.—**(1) A licence under Article 19 shall include a curfew condition complying with this Article.

(2) Where—

- (a) a licence under Article 19 is granted to a prisoner serving one or more determinate custodial sentences of less than 12 months and no determinate custodial sentence of 12 months or more, and
- (b) the court in passing sentence requires the licence to be granted subject to a condition requiring compliance with a curfew requirement,

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that condition shall not be included in the licence at any time while a curfew condition required by paragraph (1) is in force.

(3) For the purposes of this Chapter a curfew condition is a condition which requires the released person to remain for specified periods at a specified place; and in this Article “specified” means specified in the condition.

(4) Specified periods shall not amount to less than 9 hours in any one day (excluding for this purpose the first and last days of the period for which the condition is in force).

(5) The curfew condition is to remain in force until the date when the released person would (but for being released) fall to be released on licence under Article 17.

(6) A curfew condition may (but need not) include an electronic monitoring requirement.

(7) The [<sup>F12</sup>Department of Justice] may by order amend paragraph (4) by substituting for a number of hours specified there such other number of hours as may be specified in the order.

#### Textual Amendments

**F12** Words in art. 26(7) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 6(2), **Sch. 5 para. 21** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 26)

#### Duty to comply with licence conditions

**27.** A person subject to a licence under this Chapter shall comply with such conditions as may for the time being be included in the licence.

VALID FROM 12/04/2010

#### [<sup>F13</sup>Licence conditions: national security

**27A.**—(1) The Secretary of State may exercise any power of the Department of Justice to include, insert, vary or cancel conditions in a licence but only if his decision to exercise the power is arrived at (wholly or partly) on the basis of protected information; and, in relation to the exercise of any such power by the Secretary of State, in this Chapter references to the Department of Justice are to be read as references to the Secretary of State.

(2) The Department of Justice must exercise its powers subject to anything done by the Secretary of State by virtue of paragraph (1).]

#### Textual Amendments

**F13** Art. 27A inserted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 6(2), **Sch. 5 para. 22** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

### *Recall after release*

#### **Recall of prisoners while on licence**

**28.**—(1) In this Article “P” means a prisoner who has been released on licence under Article 17, 18 or 20.

(2) The Secretary of State may revoke P's licence and recall P to prison—

- (a) if recommended to do so by the Parole Commissioners; or
- (b) without such a recommendation if it appears to the Secretary of State that it is expedient in the public interest to recall P before such a recommendation is practicable.

(3) P—

- (a) shall, on returning to prison, be informed of the reasons for the recall and of the right conferred by sub-paragraph (b); an
- (b) may make representations in writing with respect to the recall.

(4) The Secretary of State shall refer P's recall under paragraph (2) to the Parole Commissioners.

(5) Where on a reference under paragraph (4) the Parole Commissioners direct P's immediate release on licence under this Chapter, the Secretary of State shall give effect to the direction.

(6) The Parole Commissioners shall not give a direction under paragraph (5) with respect to P unless they are satisfied that—

- (a) where P is serving an indeterminate custodial sentence or an extended custodial sentence, it is no longer necessary for the protection of the public from serious harm that P should be confined;
- (b) in any other case, it is no longer necessary for the protection of the public that P should be confined.

(7) On the revocation of P's licence, P shall be—

- (a) liable to be detained in pursuance of P's sentence; and
- (b) if at large, treated as being unlawfully at large.

#### **Commencement Information**

**I13** [Art. 28](#) partly in operation; [art. 28](#) not in operation at date Order made see [art. 1\(4\)](#); [art. 28](#) in operation for certain purposes at 15.5.2008 by [S.R. 2008/217](#), [art. 2](#), [Sch.](#) (with transitory provision in [art. 4](#)); [art. 28](#) in operation for further certain purposes at 1.4.2009 by [S.R. 2009/120](#), [art. 2](#), [Sch. 1](#)

#### **Further release after recall for certain fixed-term prisoners**

**29.**—(1) This Article applies where—

- (a) a fixed-term prisoner, other than a prisoner serving an extended custodial sentence, (“P”) is released on licence under Article 17 or 20; and
- (b) on a reference under Article 28(4) the Parole Commissioners do not direct P's immediate release on licence under this Chapter.

(2) Subject to paragraphs (3) and (4), the Parole Commissioners shall either—

- (a) recommend a date for P's release on licence; or
- (b) fix a date as the date for the next review of P's case by them.

(3) Any date recommended under paragraph (2)(a) or fixed under paragraph (2) (b) must not be later than the second anniversary of the date on which the decision is taken.

*Status: Point in time view as at 01/04/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: The Criminal Justice (Northern Ireland) Order 2008, PART 2 is up to date with all changes known to be in force on or before 19 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)*

(4) The Parole Commissioners need not make a recommendation under paragraph (2)(a) or fix a date under paragraph (2)(b) if P will fall to be released unconditionally at any time within the next 24 months.

(5) Where the Parole Commissioners have recommended a date for P's release under paragraph (2)(a), the Secretary of State shall release P on licence on that date unless the Secretary of State has, before that date, referred P's case to the Parole Commissioners.

(6) On a review required by paragraph (2)(b) or a reference under paragraph (5), the Parole Commissioners shall—

- (a) direct P's immediate release on licence;
- (b) make a recommendation under paragraph (2)(a); or
- (c) fix a date under paragraph (2)(b).

(7) The Parole Commissioners shall not give a direction under paragraph (6)(a) with respect to P unless they are satisfied that it is no longer necessary for the protection of the public that P should be confined

(8) The Secretary of State shall give effect to any direction under paragraph (6)(a).

#### Commencement Information

**I14** [Art. 29](#) partly in operation; [art. 29](#) not in operation at date Order made see [art. 1\(4\)](#); [art. 29](#) in operation for certain purposes at 1.4.2009 by [S.R. 2009/120](#), [art. 2](#), [Sch. 1](#)

VALID FROM 01/06/2015

#### Recall of prisoners released early under Article 19

**30.**—(1) If it appears to the [<sup>F14</sup>Department of Justice], as regards a person released on licence under Article 19 (“P”)—

- (a) that P has failed to comply with any condition included in the licence, or
- (b) that P's whereabouts can no longer be electronically monitored at the place for the time being specified in the curfew condition included in the licence,

the [<sup>F14</sup>Department of Justice] may, if the curfew condition is still in force, revoke the licence and recall P to prison under this Article.

(2) P—

- (a) shall, on returning to prison, be informed of the reasons for the revocation and of the right conferred by sub-paragraph (b); and
- (b) may make representations in writing with respect to the revocation.

(3) The [<sup>F15</sup>Department of Justice], after considering any representations under paragraph (2) (b) or any other matters, may cancel the revocation of P's licence under this Article.

(4) Where the revocation of P's licence is cancelled under paragraph (3), P is to be treated for the purposes of Article 19 as not having been recalled to prison under this Article.

(5) On the revocation of P's licence, P shall be—

- (a) liable to be detained in pursuance of P's sentence; and
- (b) if at large, treated as being unlawfully at large.

### Textual Amendments

- F14** Words in art. 30(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), 6(2), **Sch. 5 para. 25** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 30)
- F15** Words in art. 30(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), 6(2), **Sch. 5 para. 25** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 30)

### Conviction while licence remains in force

- 31.** Where it appears to the court by or before which a person is convicted of an offence—
- (a) that the offence was committed while the person was on licence under this Chapter, and
  - (b) that the person has not been recalled to prison,

the court shall inform the Secretary of State of the conviction.

#### *Concurrent or consecutive terms*

### Concurrent terms

- 32.—**(1) This Article applies where—
- (a) a person (“the offender”) has been sentenced by any court to two or more custodial sentences the terms of which are wholly or partly concurrent; and
  - (b) the sentences were passed on the same occasion or, where they were passed on different occasions, the person has not been released under this Chapter at any time during the period beginning with the first and ending with the last of those occasions
- (2) Where this Article applies—
- (a) nothing in this Chapter requires the Secretary of State to release the offender in respect of any of the terms unless and until the Secretary of State is required to release the offender in respect of each of the others;
  - (b) Article 17 does not authorise the Secretary of State to release the offender on licence under that Article in respect of any of the terms unless and until that Article authorises the Secretary of State to do so in respect of each of the others;
  - (c) on and after release under this Chapter the offender is to be on licence for so long, and subject to such conditions, as is required by this Chapter in respect of any of the sentences.
- (3) Where the sentences include one or more sentences of 12 months or more and one or more sentences of less than 12 months, the terms of the licence may be determined by the Secretary of State in accordance with Article 24(3)(b).
- (4) Where a person has been sentenced to one or more custodial sentences and to one or more life sentences, nothing in this Chapter requires the Secretary of State to release the person in respect of any of the custodial sentences unless and until the Secretary of State is required to release him in respect of each of the life sentences.

*Status: Point in time view as at 01/04/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: The Criminal Justice (Northern Ireland) Order 2008, PART 2 is up to date with all changes known to be in force on or before 19 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)*

### Commencement Information

**I15** Art. 32 partly in operation; art. 32 not in operation at date Order made see art. 1(4); art. 32(1)(2)(a)(c)(4) in operation for certain purposes at 15.5.2008 by S.R. 2008/217, art. 2, Sch. (with transitory provision in art. 4); art. 32(1)(2)(4) in operation at 1.4.2009 in so far as not already in operation by S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 3, 4)

### Consecutive terms

**33.—(1)** This Article applies where—

- (a) a person (“the offender”) has been sentenced to two or more determinate custodial sentences the terms of which are to be served consecutively on each other; and
- (b) the sentences were passed on the same occasion or, where they were passed on different occasions, the person has not been released under this Chapter at any time during the period beginning with the first and ending with the last of those occasions.

(2) Nothing in this Chapter requires the Secretary of State to release the offender on licence until the offender has served a period equal in length to the aggregate of the length of the custodial periods in relation to each of the sentences.

(3) Where any of the sentences is a sentence of 12 months or more, the offender is, on and after release under this Chapter, to be on licence—

- (a) until the offender would, but for having been released, have served a sentence equal in length to the aggregate length of the sentences; and
- (b) subject to such conditions as are required by this Chapter in respect of each of those sentences.

(4) Where each of the sentences is a sentence of less than 12 months, the offender is, on and after release under this Chapter, to be on licence until the relevant time, and subject to such conditions as are required by this Chapter in respect of any of the sentences, and none of the sentences is to be regarded for any purpose as continuing after the relevant time

(5) In paragraph (4) “the relevant time” means the time when the offender would, but for having been released, have served a sentence equal in length to the aggregate of—

- (a) all the custodial periods in relation to the sentences; and
- (b) the longest of the licence periods in relation to those sentences.

(6) In this Article—

- (a) “custodial period”—
  - (i) in relation to an extended sentence, means the appropriate custodial term determined under Article 14;
  - (ii) in relation to any other custodial sentence, means the custodial period specified under Article 8(2);
- (b) “licence period” has the meaning given by Article 8(5).

### Commencement Information

**I16** Art. 33 partly in operation; art. 33 not in operation at date Order made see art. 1(4); art. 33(1)-(3)(6)(a)(i) in operation for certain purposes at 15.5.2008 by S.R. 2008/217, art. 2, Sch. (with transitory provision in art. 4); art. 33(1)-(3)(6) in operation at 1.4.2009 in so far as not already in operation by S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 3, 4)

## *Licences for sexual offenders*

### **Breach of licensing for sexual offenders**

**34.**—(1) In the Criminal Justice (Northern Ireland) Order 1996 (NI 24) for Article 27 substitute—

#### **“Breach of licence conditions**

**27.**—(1) If at any time while an offender is released on licence under Article 26 it appears, on complaint to a lay magistrate, that the offender has failed to comply with any of the conditions specified in the licence, the lay magistrate may—

- (a) issue a summons requiring the offender to appear before the appropriate court at a time specified in the summons; or
- (b) if the complaint is in writing and on oath, issue a warrant for the offender to be arrested and brought before the appropriate court.

(2) If—

- (a) a warrant is issued under sub-paragraph (1) requiring an offender to be brought before the Crown Court, and
- (b) the offender cannot forthwith be brought before the Crown Court because it is not being held,

the warrant shall have effect as if it directed the offender to be brought before a magistrates' court acting for the petty sessions district in which he resides.

(3) Where an offender is brought before a magistrates' court in pursuance of paragraph (2), that court shall commit the offender in custody or on bail to the Crown Court.

(4) Where the appropriate court before which an offender appears or is brought under this Article is the Crown Court and that Court is satisfied that the offender has failed without reasonable excuse to comply with any of the conditions specified in the licence, the Court may

- (a) impose on him a fine not exceeding £1000;
- (b) revoke the licence; or
- (c) suspend the licence for a specified period which is shorter than the remaining licence period.

(5) Where the appropriate court before which an offender appears or is brought under this Article is a court of summary jurisdiction and that court is satisfied that the offender has failed without reasonable excuse to comply with any of the conditions specified in the licence, that court may—

- (a) impose on him a fine not exceeding £1000;
- (b) if the remaining licence period is less than 6 months, revoke the licence; or
- (c) suspend the licence for a specified period which—
  - (i) is shorter than the remaining licence period; and
  - (ii) does not exceed 6 months.

(6) Where a court revokes the licence of an offender under paragraph (4) or (5)—

- (a) the court shall order the offender to be returned to prison or, as the case may be, a young offenders centre; and
- (b) the offender—

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(i) shall be liable to be detained there in pursuance of his sentence until the date on which he would (but for his release) have served the whole of his sentence or order for detention; and

(ii) if at large shall be treated as being unlawfully at large.

(7) Where a court suspends the licence of an offender for a specified period under paragraph (4) or (5)—

(a) the court shall order the offender to be returned to prison or, as the case may be, a young offenders centre; and

(b) the offender—

(i) shall be liable to be detained there for that period in pursuance of his sentence or order for detention; and

(ii) if at large shall be treated as being unlawfully at large.

(8) In this Article “the remaining licence period”, in relation to an offender released on licence under Article 26, means the period beginning with the date of the making of an order under this Article and ending with the date on which the offender would (but for his release) have served the whole of his sentence or order for detention.

(9) In this Article “the appropriate court”, in relation to an offender released on licence in pursuance of an order under Article 26(1)(b), means—

(a) if the Crown Court made the order, the Crown Court; and

(b) if a court of summary jurisdiction made the order, a court of summary jurisdiction acting for the petty sessions district in which the offender resides

and if the order has been made on appeal, it shall be treated for the purposes of this paragraph as if it had been made by the court from which the appeal was brought.”.

(2) Paragraph (1) does not apply in relation to a failure to comply with any of the conditions specified in a licence under Article 26 of the Criminal Justice (Northern Ireland) Order 1996 (NI 24) if that failure occurred before the coming into operation of this Article.

## CHAPTER 5

### CURFEWS AND ELECTRONIC MONITORING

#### *Powers to impose curfew or electronic monitoring requirements*

#### **Powers to impose curfew or electronic monitoring requirements**

**35.**—(1) Subject to the following provisions of this Chapter, a curfew requirement or an electronic monitoring requirement may be made—

(a) a condition of bail granted by a court;

(b) a condition of a licence under—

(i) this Part;

(ii) the Life Sentences (Northern Ireland) Order 2001 (NI 2);

(iii) Article 46 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9) (discharge on licence of person sentenced to be detained under Article 45(2) of that Order);

(iv) [F16Article 26 of the Criminal Justice (Northern Ireland) Order 1996 (NI 24);]

(c) a requirement of—



- (i) a probation order;
- (ii) the youth conference plan to which a youth conference order relates.

(2) Article 15(5) of the Criminal Justice (Northern Ireland) Order 1996 (NI 24) (combination order treated as probation order) applies for the purposes of this Article as it applies for the purposes of Part 2 of that Order.

(3) <sup>F17</sup>Article 25(2)(b) of that Order (custody probation order treated as probation order) applies for the purposes of this Article as it applies for the purposes of Part 2 of that Order.]

#### Textual Amendments

- F16** Art. 35(1)(b)(iv) repealed (prosp.) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), 102(2), **Sch. 6 Pt. 1**
- F17** Art. 35(3) repealed (prosp.) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), 102(2), **Sch. 6 Pt. 1**

### Power of court to impose curfew or electronic monitoring requirement on making juvenile justice centre order

**36.**—(1) The Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9) is amended as follows.

(2) In Article 39 (juvenile justice centre orders) at the end add—

“(8) Where a court makes a juvenile justice centre order in respect of a child, it may, subject to Chapter 5 of Part 2 of the Criminal Justice (Northern Ireland) Order 2008, impose a curfew requirement or an electronic monitoring requirement (within the meaning of that Chapter) during all or part of the period of supervision to which the child is subject under the order.”

(3) In Article 40 (supervision under a juvenile justice order) in paragraph (2) for sub-paragraph (b) substitute—

“(b) the person under whose supervision he will be shall give him a notice specifying—  
(i) any requirements imposed by the court under Article 39(8); and  
(ii) any other requirements with which he must comply.”.

(4) In Article 40(3) for “or (b)” substitute “ or (b)(ii) ”.

(5) In Article 40(4) at the end add “ , but such rules may not regulate any matter which may be regulated by rules under Article 44 of the Criminal Justice (Northern Ireland) Order 2008 ”.

(6) In Article 41(1) and (2) (breach of supervision requirements) after “requirements under” insert “ Article 39(8) or ”.

### Curfews

#### Curfew requirement

**37.**—(1) In this Part “curfew requirement” means a requirement that a person remain, for specified periods at a specified place; and in this Article “specified” means specified in the requirement.

(2) Specified periods shall not amount to—

- (a) less than 2 hours, or

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(b) more than 12 hours,  
in any one day.

(3) A curfew requirement shall not be imposed without obtaining and considering information about the place proposed to be specified in the requirement (including information as to the attitude of persons likely to be affected by the enforced presence there of the person subject to the requirement).

(4) The Secretary of State may by order amend paragraph (2) by substituting for a number of hours specified there such other number of hours as may be specified in the order.

#### **Requirement to avoid conflict with religious beliefs, etc.**

**38.**—(1) A curfew requirement shall, as far as practicable, be such as to avoid—

- (a) any conflict with a person's religious beliefs or with any other condition or requirement to which that person may be subject; and
- (b) any interference with the times, if any, at which the person normally works (or carries out voluntary work) or attends a school or other educational establishment.

(2) The Secretary of State may by order provide that paragraph (1) is to have effect with such additional restrictions as may be specified in the order

#### *Electronic monitoring*

#### **Arrangements for establishing systems of electronic monitoring**

**39.** The Secretary of State may make arrangements for establishing systems of electronic monitoring of persons subject to—

- (a) curfew requirements; or
- (b) other requirements relating to a person's whereabouts.

#### **Electronic monitoring requirement**

**40.**—(1) In this Part “electronic monitoring requirement” means a requirement for securing the electronic monitoring of a person's compliance with other conditions or requirements during a period of 14 days or more specified in the requirement or determined in accordance with the requirement by the person responsible for the monitoring.

(2) Where—

- (a) it is proposed to impose an electronic monitoring requirement, but
- (b) there is a person (other than the person who is to be subject to the requirement) without whose co-operation it will not be practicable to secure the monitoring,

the requirement shall not be imposed without that person's consent.

(3) An electronic monitoring requirement shall include provision for making a person responsible for the monitoring; and a person who is made so responsible shall be of a description specified in an order made by the Secretary of State.

(4) Where an electronic monitoring requirement is required to take effect during a period determined by the person responsible for the monitoring, that person shall, before the beginning of the period, notify—

- (a) the person subject to the requirement, and
  - (b) any person falling within paragraph (2)(b),
- of the time when the period is to begin.

### Availability of electronic monitoring arrangements

41. A court shall not impose an electronic monitoring requirement unless the court—
- (a) has been notified by the Secretary of State that electronic monitoring arrangements are available in the area in which the place proposed to be specified in the requirement is situated; and
  - (b) is satisfied that the necessary provision can be made under those arrangements.

### Provision of copies of electronic monitoring requirement

42. Where a court or the Secretary of State imposes an electronic monitoring requirement, the court or (as the case may be) the Secretary of State shall forthwith provide copies of the requirement—

- (a) to the person who by virtue of Article 40(3) will be responsible for the electronic monitoring; and
- (b) to any person to whom Article 40(2)(b) applies.

### *Release of children on bail*

### Release of child on bail: curfew and electronic monitoring requirements

43.—(1) This Article applies where a court proposes to release a child on bail under Article 12 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9).

- (2) The court shall not impose—
- (a) a curfew requirement, or
  - (b) an electronic monitoring requirement,

as a condition of bail unless the court considers that, if it did not do so, it would be necessary to remand the child in custody to protect the public.

### *Rules*

### Rules

44. The Secretary of State may make rules for regulating—
- (a) electronic monitoring in pursuance of an electronic monitoring requirement;
  - (b) without prejudice to paragraph (a), the functions of persons made responsible for securing electronic monitoring in pursuance of such a requirement; and
  - (c) the supervision of persons who are subject to curfew requirements.

VALID FROM 01/01/2012

## CHAPTER 6

### SUPERVISED ACTIVITY ORDERS

#### Supervised activity order for default in payment of certain fines

45.—(1) Where—

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- (a) an individual over the age of 18 (“the offender”) has been convicted of an offence in respect of which the court has imposed a fine not exceeding £500 on the offender,
- (b) the court would, but for this Article, make an order or issue a warrant for the committal of that person for default in paying that fine or any instalment of that fine by the due date, and
- (c) the court considers a supervised activity order more appropriate than such committal, the court may, instead of making that order or issuing that warrant, make a supervised activity order in respect of that person
- (2) A supervised activity order is an order requiring an offender to—
- (a) attend at a place of supervision for a period specified in the order, and
- (b) engage, during that period, in activities in accordance with instructions given by the supervising officer.
- (3) The period specified under paragraph (2)(a) shall not be—
- (a) less than 10 hours; or
- (b) more than—
- (i) 50 hours if the amount of the fine does not exceed £200; or
- (ii) 100 hours in any other case.
- (4) The Secretary of State may by order—
- (a) amend paragraphs (1)(a) and (3)(b)(i) by substituting for a sum of money specified there such other sum of money as is specified in the order;
- (b) amend paragraph (3)(b)(i) and (ii) by substituting for a number of hours specified there such other number of hours as may be specified in the order.
- (5) A supervised activity order in respect of a person comes into force if (and only if) that person fails to pay the fine or any instalment of it before the due date; and in that event the order comes into operation on the day after the due date.
- (6) If the person pays part of the fine before the supervised activity order comes into force, the period specified in the order shall be reduced by the proportion which the part of the fine paid bears to the whole fine, the resulting figure being rounded up or down to the nearest 10 hours; but this paragraph shall not operate to reduce the period to less than 10 hours.
- (7) The coming into force of a supervised activity order shall have the effect of discharging the fine mentioned in paragraph (1)(a).
- (8) Schedule 3 shall have effect in relation to supervised activity orders.
- (9) In this Article and Schedule 3—
- “place of supervision” means such place as may be determined for the purposes of a supervised activity order by the supervising officer;
- “supervising officer”, in relation to a supervised activity order, means a probation officer assigned in accordance with rules made by the Secretary of State under paragraph 7 of Schedule 3.

## CHAPTER 7

### PAROLE COMMISSIONERS

#### **The Parole Commissioners**

**46.**—(1) The Life Sentence Review Commissioners shall be renamed the Parole Commissioners for Northern Ireland.

(2) In discharging their functions the Parole Commissioners shall—

- (a) have due regard to the need to protect the public from serious harm; and
- (b) have regard to the desirability of
  - (i) securing the rehabilitation of prisoners; and
  - (ii) preventing the commission of further offences by prisoners.

(3) The Parole Commissioners shall advise the Secretary of State with respect to any matter connected with the release or recall of prisoners referred to them under this Part or the Life Sentences (Northern Ireland) Order 2001 (NI 2).

(4) Schedule 4 shall have effect in relation to the Parole Commissioners.

## CHAPTER 8

### ENFORCEMENT OF CERTAIN ORDERS MADE ON CONVICTION

#### **Enforcement of certain community orders**

**47.**—(1) Schedule 2 to the Criminal Justice (Northern Ireland) Order 1996 (NI 24) (enforcement of certain community orders) is amended as follows.

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

“(2) Any summons or warrant issued under this paragraph shall direct the offender to appear or be brought—

- (a) in the case of a drug treatment and testing order, before the court responsible for the order;
- (b) in the case of any other order—
  - (i) if the order was made by the Crown Court, before that court;
  - (ii) if the order was made by a magistrates' court, before a court of summary jurisdiction acting for the petty sessions district concerned.

(3) If—

- (a) a warrant is issued under this paragraph requiring an offender to be brought before the Crown Court, and
- (b) the offender cannot forthwith be brought before the Crown Court because it is not being held,

the warrant shall have effect as if it directed the offender to be brought before a magistrates' court having jurisdiction in the place where he is arrested.

(4) Where an offender is brought before a magistrates' court in pursuance of sub-paragraph (3), that court shall commit the offender in custody or on bail to the Crown Court.”.

(3) In paragraph 3(1) for the words from the beginning to “paragraph 2” substitute “ Where under paragraph 2 an offender is brought or appears before a court of summary jurisdiction and it is proved to the satisfaction of the court ”

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- (4) In paragraph 3 omit—
- (a) in sub-paragraph (1)(d) the words “where the relevant order was made by a magistrates' court”; and
  - (b) sub-paragraphs (3) and (4).
- (5) In paragraph 4(1) omit “or by virtue of paragraph 3(3)”
- (6) In paragraph 7(1) after “relevant order” insert “ made by a magistrates' court ”.
- (7) In paragraph 7 for sub-paragraph (2) substitute—
- “(2) The court may—
- (a) revoke the order; or
  - (b) revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by the court of the offence.”.

(8) In paragraph 7(3) for “sub-paragraph (2)(a)(i)” substitute “ sub-paragraph (2)(a) ”.

(9) In paragraph 7(4) for “sub-paragraph (2)(a)(ii)” substitute “ sub-paragraph (2)(b) ”.

(10) Omit paragraph 7(5).

(11) In paragraph 8 for sub-paragraphs (1) and (1A) substitute—

“(1) This paragraph applies where —

    - (a) a relevant order made by the Crown Court is in force in respect of an offender and the offender or the responsible officer applies to the Crown Court for the order to be revoked or for the offender to be dealt with in some other way for the offences in respect of which the order was made; or
    - (b) an offender in respect of whom a relevant order is in force is convicted of an offence before the Crown Court.”.

(12) In paragraph 8 at the end add—

“(5) Where this paragraph applies by virtue of sub-paragraph (1)(a) and the Crown Court proposes to exercise its powers under this paragraph otherwise than on the application of the offender, it shall summon him to appear before the court and, if he does not appear in answer to the summons, may issue a warrant for his arrest.

(6) No application may be made by the offender under sub-paragraph (1)(a) while an appeal against the relevant order is pending.”.

### **Enforcement of certain youth justice orders**

**48.**—(1) Schedule 1A to the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9) (enforcement of reparation orders, community responsibility orders and youth conference orders) is amended as follows.

- (2) In paragraph 1 after sub-paragraph (2) insert—
- “(2A) In this Schedule “the relevant court”, in relation to a relevant order, means—
- (a) the appropriate court, if the relevant order was made by a magistrates' court; and
  - (b) the Crown Court, if the relevant order was made by the Crown Court.”

(3) In paragraph 2(1) and (2) for “appropriate court” substitute “ relevant court ”.

(4) In paragraph 3(1) and (2) for “court” substitute “ relevant court ”.

(5) In paragraph 3(3) and (4)(a) and (b) for “appropriate court” substitute “ relevant court ”.

(6) In paragraph 4 for sub-paragraphs (1) to (4) substitute—

“(1) The relevant court may (instead of making an order under paragraph 3)—

(a) revoke the order (if it is still in force); and

(b) deal with the offender, for the offence in respect of which it was made, in any way in which it could deal with him if he had just been found guilty of the offence by or before the court.”

(7) In paragraph 4(5) for “sub-paragraph (4)” substitute “ this paragraph ”.

(8) In paragraph 4(6) for “the court may” substitute “ the relevant court may ”.

(9) Omit paragraph 5(2).

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