
DRAFT STATUTORY INSTRUMENTS

2008 No.

The Criminal Justice (Northern Ireland) Order 2008

PART 5

MISCELLANEOUS AND SUPPLEMENTARY

Prisons

Removal of requirement to appoint medical officers

73. In section 2(2) of the Prison Act (Northern Ireland) 1953 (c. 18) (requirement to appoint governors, medical officers and other officers) the words “, medical officers” shall cease to have effect.

Abolition of right of justice of the peace to visit prisons

74. Section 19 of the Prison Act (Northern Ireland) 1953 (c. 18) (right of justice of the peace to visit prisons) shall cease to have effect.

Assisting a prisoner to escape

75. For sections 29 and 30 of the Prison Act (Northern Ireland) 1953 (c. 18) substitute—

“29 Assisting or permitting a person to escape from lawful custody

(1) A person who assists any person in escaping or attempting to escape from lawful custody, whether in prison or not, is guilty of an offence.

(2) A person who—

(a) is an officer of a prison in which a person is lawfully confined, or

(b) is a constable having a person in his lawful custody, whether in prison or not,

is guilty of an offence if he voluntarily and intentionally permits that person to escape.

(3) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 10 years.”.

Facilitating escape by conveying things into prison

76. For section 33 of the Prison Act (Northern Ireland) 1953 (c. 18) substitute—

“33 Facilitating escape by conveying things into prison

(1) Any person who with intent to facilitate the escape of a prisoner—

(a) brings, throws or otherwise conveys anything into a prison,

- (b) causes another person to bring, throw or otherwise convey anything into a prison, or
- (c) gives anything to a prisoner or leaves anything in any place (whether inside or outside a prison),

is guilty of an offence

(2) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 10 years.”.

Conveyance of prohibited articles into or out of prison

77. For sections 34 and 35 of the Prison Act (Northern Ireland) 1953 (c. 18) substitute—

“34 Sections 34A and 34B: classification of articles

(1) This section defines the categories of articles which are referred to in sections 34A and 34B.

(2) A List A article is any article or substance in the following list (“List A”)—

- (a) a controlled drug (as defined for the purposes of the Misuse of Drugs Act 1971 (c. 38));
- (b) an explosive;
- (c) any firearm or ammunition (as defined in Article 2(2) of the Firearms (Northern Ireland) Order 2004 (NI 3));
- (d) any other offensive weapon (as defined in Article 3(10) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)).

(3) A List B article is any article or substance in the following list (“List B”)—

- (a) intoxicating liquor (as defined for the purposes of the Licensing (Northern Ireland) Order 1996 (NI 22));
- (b) a mobile or satellite telephone;
- (c) a camera;
- (d) a sound-recording device.

(4) In List B—

“camera” includes any device by means of which a photograph (as defined in section 34C) can be produced;

“sound-recording device” includes any device by means of which a sound-recording (as defined in section 34C) can be made.

(5) The reference in paragraph (b), (c) or (d) of list B to a device of any description includes a reference to —

- (a) a component part of a device of that description;
- (b) an article designed or adapted for use with a device of that description (including any disk, film or other separate article on which images, sounds or information may be recorded).

(6) A List C article is any article or substance prescribed for the purposes of this subsection by prison rules.

(7) The Secretary of State may by order amend this section for the purpose of

- (a) adding an entry to List A or List B;

- (b) repealing or modifying any entry for the time being included in List A or List B;
- (c) adding, repealing or modifying any provision for the interpretation of any such entry.

(8) An order made under subsection (7) is subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

34A Conveyance etc. of List A articles into or out of prison

- (1) A person who, without authorisation—
 - (a) brings, throws or otherwise conveys a List A article into or out of a prison,
 - (b) causes another person to bring, throw or otherwise convey a List A article into or out of a prison,
 - (c) leaves a List A article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner, or
 - (d) knowing a person to be a prisoner, gives a List A article to him,

is guilty of an offence.

(2) In this section “authorisation” means authorisation given for the purposes of this section—

- (a) in relation to all prisons or prisons of a specified description, by prison rules or the Secretary of State; or
- (b) in relation to a particular prison, by the Secretary of State or by the governor of the prison.

(3) Authorisation may be given to specified persons or persons of a specified description—

- (a) in relation to specified articles or articles of a specified description;
- (b) in relation to specified acts or acts of a specified description; or
- (c) on such other terms as may be specified.

In this subsection “specified” means specified in the authorisation.

(4) Authorisation given by the Secretary of State otherwise than in writing shall be recorded in writing as soon as is reasonably practicable after being given.

(5) Authorisation given by the governor of a prison shall—

- (a) be given in writing; and
- (b) specify the purpose for which it is given.

(6) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine (or both)

34B Conveyance etc. of List B or C articles into or out of prison

- (1) A person who, without authorisation—
 - (a) brings, throws or otherwise conveys a List B article into or out of a prison,
 - (b) causes another person to bring, throw or otherwise convey a List B article into or out of a prison,
 - (c) leaves a List B article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner, or

(d) knowing a person to be a prisoner, gives a List B article to him, is guilty of an offence.

(2) A person who, without authorisation—

- (a) brings, throws or otherwise conveys a List C article into a prison intending it to come into the possession of a prisoner,
- (b) causes another person to bring, throw or otherwise convey a List C article into a prison intending it to come into the possession of a prisoner,
- (c) brings, throws or otherwise conveys a List C article out of a prison on behalf of a prisoner,
- (d) causes another person to bring, throw or otherwise convey a List C article out of a prison on behalf of a prisoner,
- (e) leaves a List C article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner, or
- (f) while inside a prison, gives a List C article to a prisoner,

is guilty of an offence.

(3) A person who attempts to commit an offence under subsection (2) is guilty of that offence.

(4) In proceedings for an offence under this section it is a defence for the accused to show that—

- (a) he reasonably believed that he had authorisation to do the act in respect of which the proceedings are brought, or
- (b) in all the circumstances there was an overriding public interest which justified the doing of that act.

(5) A person guilty of an offence under subsection (1) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both);
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum (or both).

(6) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) In this section “authorisation” means authorisation given for the purposes of this section; and subsections (6) to (8) of section 34C apply in relation to authorisations so given as they apply to authorisations given for the purposes of that section.”

Other offences relating to prison security

78. After section 34B of the Prison Act (Northern Ireland) 1953 (c. 18) (as inserted by Article 77) insert—

“Other offences relating to prison security

34C.—(1) A person who, without authorisation—

- (a) takes a photograph, or makes a sound-recording, inside a prison, or
- (b) transmits, or causes to be transmitted, any image or any sound from inside a prison by electronic communications for simultaneous reception outside the prison,

is guilty of an offence.

(2) It is immaterial for the purposes of subsection (1)(a) where the recording medium is located.

(3) A person who, without authorisation—

- (a) brings or otherwise conveys a restricted document out of a prison or causes such a document to be brought or conveyed out of a prison, or
- (b) transmits, or causes to be transmitted, a restricted document (or any information derived from a restricted document) from inside a prison by means of electronic communications,

is guilty of an offence.

(4) In proceedings for an offence under this section it is a defence for the accused to show that—

- (a) he reasonably believed that he had authorisation to do the act in respect of which the proceedings are brought, or
- (b) in all the circumstances there was an overriding public interest which justified the doing of that act.

(5) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both); or
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum (or both).

(6) In this section “authorisation” means authorisation given for the purposes of this section—

- (a) in relation to all prisons or prisons of a description specified in the authorisation, by prison rules or by the Secretary of State;
- (b) in relation to a particular prison—
 - (i) by the Secretary of State
 - (ii) by the governor of the prison;
 - (iii) by a person working at the prison who is authorised by the governor to grant authorisation on his behalf.

(7) Authorisation may be given—

- (a) to persons generally or to specified persons or persons of a specified description; and
- (b) on such terms as may be specified.

In this subsection “specified” means specified in the authorisation.

(8) Authorisation given by or on behalf of the governor of a prison must be in writing.

(9) In this section “restricted document” means the whole (or any part of)—

- (a) a photograph taken inside the prison;
- (b) a sound-recording made inside the prison;
- (c) a personal record (or a document containing information derived from a personal record);
- (d) any other document which contains—
 - (i) information relating to an identified or identifiable relevant individual, if the disclosure of that information would or might prejudicially affect the interests of that individual; or

(ii) information relating to any matter connected with the prison or its operation, if the disclosure of that information would or might prejudicially affect the security or operation of the prison.

(10) In subsection (9)—

“personal record” means any record which is required by prison rules to be prepared and maintained in relation to any prisoner (and it is immaterial whether or not the individual concerned is still a prisoner at the time of any alleged offence);

“relevant individual” means an individual who is or has at any time been—

- (a) a prisoner or a person working at the prison; or
- (b) a member of such a person’s family or household.

(11) In this section—

“document” means anything in which information is recorded (by whatever means);

“electronic communications” has the same meaning as in the Electronic Communications Act (Northern Ireland) 2001 (c. 9);

“photograph” means a recording on any medium on which an image is produced or from which an image (including a moving image) may by any means be produced; and

“sound-recording” means a recording of sounds on any medium from which the sounds may by any means be reproduced.”