



Northern
Ireland
Office

**The Criminal Justice
(Northern Ireland)
Order 2008**

Guidance Notes

NORTHERN IRELAND OFFICE

ORDER IN COUNCIL UNDER SECTION 85 OF THE NORTHERN IRELAND ACT 1998

THE CRIMINAL JUSTICE (NORTHERN IRELAND) ORDER 2008

GUIDANCE NOTES

INTRODUCTION

These Guidance Notes relate to the Criminal Justice (Northern Ireland) Order 2008. They have been prepared by the Northern Ireland Office to assist the reader in understanding the Order.

The notes need to be read in conjunction with the Order. They are not, and are not meant to be, a comprehensive description of the Order. Where part of an Article does not seem to require any explanation or comment, none is given.

BACKGROUND

Background and sentencing framework review

The Criminal Justice Act 2003 made a number of significant changes to the sentencing framework for England and Wales. These stemmed from recommendations of the Halliday report, *Making Punishments Work*, published in July 2001 (<http://www.homeoffice.gov.uk/documents/halliday-report-sppu/>). Amongst other provisions, the Act created extended and indeterminate public protection sentences.

Extended or indeterminate public protection sentences were made available for offenders convicted of serious sexual or violent offences and assessed by the court as dangerous. The provisions meant that extended sentence prisoners could be kept in prison until the end of the custodial term if the Parole Board deemed them to represent a risk of serious harm. Indeterminate sentence prisoners can be detained indefinitely and are only released if the Parole Board consider that it is safe to do so.

The Report of the Review of the Criminal Justice System in Northern Ireland published in 2000 had set a strategic template for the local system and consequently the decision was taken not to extend the sentencing powers in the Criminal Justice Act 2003 at that time.

It was felt that Northern Ireland should have its own review and in March 2005 the NIO held a consultation on the Review of the Sentencing Framework in Northern Ireland. This consultation document did not make proposals, but asked questions and sought views on a number of specific issues related to sentences and sentencing; including the purposes of sentencing; post release supervision; discretionary release; dangerous offenders; intermittent custody; electronic monitoring; suspending and deferring sentencing; restorative interventions; and fine default.

The consultation document was sent to over 220 interested and representative organisations, stake-holders and individuals and was made available on the NIO website. The consultation period was due to end on 31 May 2005 however in response to requests to allow for late submission of responses; the closing date was extended to 11 July. A total of 19 responses were received.

A copy of the sentencing framework review, and a summary of responses to it, may be found at:

http://www.nio.gov.uk/review_of_the_sentencing_framework_in_northern_ireland_consultation_and_responses.pdf.

The Review identified a need for additional provisions in Northern Ireland for the management of dangerous, violent and sexual offenders who continue to pose a risk to the public at their automatic release date. It is only where offenders have been given a mandatory or discretionary life sentence that assessment of the risk they pose to the public enables their continued detention in custody. Consultation respondents considered this an important public protection issue which needed to be addressed. This support was mirrored, but in considerably greater volume, in the media campaign following the trial of Trevor Hamilton.

In December 2006 the Government announced that it would introduce new sentencing measures for Northern Ireland. The proposal was to introduce indeterminate and extended public protection sentences along with a number of additional measures to Northern Ireland. The Government proposals followed from the need for public protection sentences for dangerous offenders identified by the consultation on the sentencing framework review.

Proposed draft order and public consultation

A proposal for a draft Criminal Justice Order was prepared subsequent to the Government announcement of new sentencing proposals. The proposed draft Order was published for public consultation on 8 November 2007 and laid before Parliament in line with the statutory period of 60 sitting Parliamentary days. Under the Northern Ireland Act 1998 the Order was also referred specifically to the Northern Ireland Assembly.

Outcome of consultation

The consultation period formally ended on 31st January 2008, with a total of 54 responses received. The majority of respondents were supportive of the sentencing proposals and in particular the introduction of public protection sentences and removal of automatic 50% remission. An Ad-Hoc Committee of the Assembly was established to consider the draft Order and produced a formal Report, which was ratified by the Assembly on 28th January 2008. The Assembly Report welcomed the sentencing package and noted the need for such powers. Some submissions during the consultation raised concerns with certain provisions, with the Assembly Report containing specific recommendations on the miscellaneous provisions in Part 5 of the Order.

A number of changes to the Order were made to reflect areas of concern flagged up during the consultation period that the Government felt should be addressed in the legislation. A statement of such changes, along with a more detailed summary of representations made during consultation and the Government response to these recommendations, was laid alongside the draft Order and Explanatory Memorandum.

The Criminal Justice (Northern Ireland) Order 2008

The draft Order was debated in the House of Commons on Monday 27 April 2008, debated in the House of Lords on Tuesday 28 April 2008 and, following approval by affirmative resolution of each House, the Order received Royal Assent on 7 May 2008.

PART I: SUMMARY

1.1 The Criminal Justice (Northern Ireland) Order 2008 has six Parts, the main elements of which are new sentencing powers (Part 2); risk assessment and management of certain offenders in the community (Part 3); a series of road traffic offences and penalties (Part 4); and a range of miscellaneous matters to enhance the law in a number of areas (Part 5). These are supplemented by 6 Schedules.

1.2 Part 2 contains changes to the range of sentences available to the courts, particularly in relation to dangerous offenders. The Order creates indeterminate and extended sentences for serious sexual and violent offenders and establishes post-release supervision on release from prison. In parallel new powers are created to increase the management of low-risk offenders in the community by way of electronic tagging, the expansion of curfew orders, and the creation of a non-custodial alternative for fine default. The Order contains provisions designed to enforce these new licensing regimes and management of low risk prisoners through supporting recall mechanisms.

1.3 Part 3 contains powers to more effectively manage the risk posed by certain offenders in the community by a multi-agency risk management approach.

1.4 Part 4 contains powers to address three broad areas relating to road traffic. They are powers to deal with bad driving, drink driving and police powers.

1.5 Part 5 contains a range of provisions including powers around the purchase and consumption of alcohol and combating alcohol-related disorder; increased penalties for offences relating to knives; and a range of other matters including amendments to prison law, the availability of video links for giving evidence in court, legal aid, police powers and the proving of arrest warrants, "ASBO" and youth justice law.

1.6 Collectively the Order has a number of purposes. The powers are designed to increase public protection at a range of levels: through the courts by the introduction of new sentences for dangerous sexual and violent offenders and increased penalties for road traffic offences and knife crime; and at a community level through new powers governing drinking in public. By adjusting curfew powers, introducing electronic monitoring, and providing a community alternative to custody for fine default, the provisions are also aimed at ensuring that custody is only used for those offenders who merit it.

1.7 In other areas the provisions are designed to improve the operational efficiency of existing processes and to allow Northern Ireland to keep pace with developments in other jurisdictions. Across the range of provisions, the Order is aimed at the ongoing development of an effective body of criminal law for Northern Ireland.

1.8 An overview of the provisions is outlined in Part II with a more detailed description of individual Articles provided in Part III of these Guidance Notes.

PART II: OVERVIEW OF THE PROVISIONS OF THE ORDER

2.1 The Order is divided into six separate Parts. After an Introductory Part, the Order deals with, in turn, Sentencing powers; Risk Assessment and Management; Road Traffic offences; Miscellaneous and Supplementary provisions; and a Supplementary Part. The main part of the Order (Part 2, Sentencing) has 8 separate Chapters, dealing with: custodial sentences; sentences for dangerous offenders; release on licence; curfews and electronic monitoring; supervised activity orders; Parole Commissioners; and the enforcement of certain community and youth justice orders.

Part 1 - Introductory

2.2 This Part provides for the title, commencement and general interpretation provisions in the Order. In overall terms, it allows for different provisions to be commenced at different times and in different ways. Provisions will commence by order of the Secretary of State, with some commencing automatically within one month of the Order being approved by Parliament.

Part 2 – Sentencing

Custodial Sentences

2.3 Chapter 2 contains general provisions on custodial sentences. These include restrictions on imposing custodial sentences, appropriate lengths of custodial sentences, dividing custodial sentences into custody and licence parts, and procedural requirements for imposing discretionary custodial sentences. Provisions are also made for additional requirements in the case of mentally disordered offenders and for the disclosure of pre-sentence reports. For the purposes of legislative consolidation, Chapter 2 replicates a number of provisions from the Criminal Justice (NI) Order 1996.

2.4 The overall effect of this Chapter, along with the release on licence provisions in Chapter 4, is to create new forms of imprisonment for offenders. Whilst dangerous offenders, as explained below, will be subject to indeterminate and extended sentences, the automatic 50% remission regime will also be removed for non-dangerous prisoners. Instead of automatic release at the half-way point for such offenders, sentences will be served in full, with a custodial part followed by a period of supervision in the community.

Dangerous Offenders

2.5 Chapter 3 provides for the introduction of new measures for the sentencing and assessment of dangerous violent and sexual offenders. Sentences for 'public protection' are being created for dangerous sexual and violent offenders. These are the 'indeterminate custodial sentence' and the 'extended custodial sentence'.

2.6 An assessment of dangerousness by the court will be fundamental to the new sentences for public protection. The assessment will determine whether there is a significant risk of serious harm to members of the public by the commission of further such offences. Serious harm means death or serious personal injury whether physical or psychological. Assessments will be based on reports specifically prepared for that purpose by specialists including probation officers, psychiatrists or psychologists.

2.7 If an offender has been assessed as dangerous and has been convicted of a specified and serious sexual or violent offence that has a maximum penalty of 10 years or more, he will receive either a discretionary life sentence, an indeterminate custodial sentence (an "ICS"), or an extended custodial sentence (an "ECS"). Where the court considers that the seriousness of the offence justifies a discretionary life sentence it will be obliged to impose such a sentence. If the seriousness does not justify a discretionary life sentence, then the ICS and ECS are engaged.

2.8 The ICS is an indeterminate sentence, meaning the offender can potentially be imprisoned for life, whilst the ECS has a determinate custodial part followed by an extended licence period. The offender would only receive an ICS if the court considers that the ECS would not be adequate to protect the public from serious harm. In imposing an ICS, the court will specify a minimum term or “tariff” which the offender is required to serve in custody. The “tariff” must be at least two years.

2.9 A dangerous offender who has been convicted of a specified sexual or violent offence for which the maximum penalty is less than 10 years must be given an ECS. This sentence will be a determinate sentence of at least one year. Offenders will become eligible for release at the half way point of this custodial term. In addition to the custodial part, courts will set extended supervision periods of up to five years for violent offenders and eight years for sexual offenders.

2.10 Release from the ‘public protection’ sentences will involve a new independent body of Parole Commissioners for Northern Ireland. On completion of the ICS tariff, the offender is risk assessed by the Parole Commissioners. The prisoner can be released or required to remain in prison until the risk has sufficiently diminished to allow release and supervision in the community. For an ECS, release would be possible during the second half of the sentence based on the Parole Commissioners risk assessment. If not released at that point, the prisoner must be released at the end of the custodial part.

2.11 Following release, all dangerous offenders will be on licence and under supervision. During their licence period, offenders may be recalled to custody by the Secretary of State. Any such recall decisions will be reviewed by the Parole Commissioners.

Release on Licence

2.12 Chapter 4 creates revised arrangements for prisoners' release on licence; the setting of licence conditions; recall to prison following breach of licence conditions; and further re-release. On release from prison, all offenders will be placed under supervision. For prison sentences of less than 12 months, the court will set licence conditions; for longer sentences (those of 12 months or more), the Secretary of State will set licence conditions taking into consideration the court's recommendations. For standard determinate sentences this new form of custody and supervision will replace unconditional release at the half-way point and remove automatic 50% remission.

2.13 The proposals also provide the Secretary of State with a power to release a non-dangerous prisoner early on licence. On release, the prisoner will be subject to a curfew requirement and can be electronically monitored up to the point when he would otherwise have been released. Any such release can only occur towards the end of the sentence. This release scheme is aimed at prisoner rehabilitation and provides an incentive to prisoners as they near the end of their sentences. For example, a prisoner who has worked well in the progressive regime and might benefit from a period in the community could be considered. Full assessments would be undertaken.

2.14 The release on licence provisions also create arrangements for the licensing of dangerous violent and sexual offenders. For offenders released on licence from an ICS, the licence will remain in force for life unless revoked by the Parole Commissioners after a 10 year period. For prisoners released on a 'sex-offender' licence, in place of a recall to prison for a maximum of 6 months, the court will now be able to recall the offender to prison for the remainder of the sentence originally imposed.

Curfews and Electronic Monitoring

2.15 New powers will allow increased use of curfews as a condition of bail; as a condition or requirement attached to certain non-custodial sentences; and as a condition of a licence on release from custody. The parallel creation of powers for electronic monitoring or 'tagging' will allow also the effective monitoring of curfews and, consequently, their wider use in preference to custodial sentences or remands in custody.

Supervised Activity Orders

2.16 Chapter 6 and Schedule 3 create a Supervised Activity Order available to the court as an alternative to committal to custody for fine default. Rather than being sent to prison for non-payment of a fine, courts will be able to impose a community-based alternative.

2.17 The "SAO" will be available for fines up to £500 and will have a minimum of 10 hours and maximum of 100 hours activity requirement. Activities will be set and supervised by a probation officer. Failure to comply with the requirements can result in a longer prison sentence than would otherwise have been the case had a custodial period been set in the first instance.

Parole Commissioners

2.18 Chapter 7 and Schedule 4 creates a body of independent Parole Commissioners for Northern Ireland to assess dangerous offenders' suitability for release into the community; to recommend the recall of an offender to the Secretary of State; to review decisions recalling licensed prisoners to custody; and to advise the Secretary of State on licence conditions for dangerous offenders. The current Life Sentence Review Commissioners are renamed and their role extended to include these functions. The Parole Commissioners provisions largely replicate and replace those already in law by way of the Life Sentences (NI) Order 2001.

Enforcement of certain orders made on conviction

2.19 Chapter 8 revises the court procedure involved in the breach of certain community and youth justice penalties. If a Crown Court made the original order, breach proceedings will be referred directly back to that original sentencing court. This will help to streamline court procedure by removing the initial listing stage in the magistrates' court.

Part 3 - Risk Assessment and Management

2.20 Part 3 creates a duty on a number of criminal justice agencies and other relevant bodies to more effectively assess and manage the risk posed by persons of a specified description in the community. The aim is ensure that risk can be effectively managed by agencies working together and sharing information.

2.21 The agencies that will be operating the guidance are specified and include the police, the prison service, probation service, the NSPCC, and relevant Government Departments or agencies.

2.22 The powers do not give any additional statutory powers to individual agencies but seek to maximise the effectiveness of their existing statutory functions through multi agency working. Guidance, prepared by the agencies and approved by the Secretary of State, will provide the detail of how the arrangements will operate in practice. An annual report must be prepared.

Part 4 – Road Traffic Offences

2.23 Part 4 of the Order contains new powers to address three areas of road traffic law which can be summarised as “Bad driving”, “Drink driving” and the anti-social use of vehicles.

2.24 The section encompassing “bad driving” creates new offences of “causing death, or grievous bodily injury by careless driving” and requirements governing the use of devices to detect or interfere with speed cameras. More severe penalties are created for unlicensed, disqualified or uninsured drivers who cause death by driving, those driving without insurance, and those driving whilst disqualified.

2.25 The “drink driving” powers include tighter laws on failing to allow specimens to be tested; police powers to require breath specimens; and the creation of ‘alcohol ignition interlock’ programmes.

2.26 A series of police powers are created to allow the seizure of vehicles causing alarm, distress or annoyance. The powers are intended to allow police to effectively combat instances of quad bikes and mini-scooters being raced around public streets.

Part 5 – Miscellaneous and Supplementary

Purchase and Consumption of alcohol

2.27 Part 5 makes provision for combating alcohol-related disorder and addresses the problem of the sale of alcohol to minors. A “test purchase” power is created to allow police officers to identify bars and off-licences selling alcohol to under 18s. The test purchase power can only be used under the direction of a police constable. The consent of both the young person involved and a parent is necessary before a test purchasing exercise can be undertaken. The Secretary of State must issue guidance on how to exercise these powers.

2.28 Powers are also created to deal with the consumption or possession of alcohol in designated public places where there is a problem of anti-social behaviour associated with drinking alcohol. An offence would be committed when a person failed to comply with a constable's request not to drink or surrender alcohol. Public places would be designated by District Councils and both open and sealed containers can be confiscated. Consuming and possessing alcohol will still be possible – it is problem or anti-social drinking that can engage the powers. The maximum penalty on conviction of the new offence would be a fine of up to £500. Fixed financial penalties of up to a quarter of that level would be available as an alternative to prosecution.

Prisons

2.29 A number of amendments are made to the Prison Act (Northern Ireland) 1953, including minor miscellaneous changes concerning medical officers and amendments to better control, regulate and modernise prison security. Amendments to modernise and update the laws on assisting a prisoner to escape and conveyance of prohibited articles into or out of prison including drugs, weapons, mobile phones, satellite phones and cameras are also provided, with increased penalties.

Live Links

2.30 The Order contains a number of provisions designed to consolidate the live links law and increase the use of live video links. Such facilities are already in use for prison remand purposes and have the benefit of providing a cost-effective and secure means for prisoners to participate in remand hearings without having to be transported to court. The new powers will expand the use of video links in Courts to include, in certain circumstances: preliminary hearings, sentencing hearings, evidence of vulnerable accused, and appeals under the Criminal Appeal Act.

Legal Aid

2.31 Two technical amendments are made in relation to legal aid provision. These amendments are to the Access to Justice (Northern Ireland) Order 2003 and relate to legal aid for proceedings relating to anti-social behaviour orders and to proceedings under the Proceeds of Crime Act 2002.

Police and Criminal Evidence

2.32 Amendments being made to the Police and Criminal Evidence (Northern Ireland) Order 1989 ("PACE") alter the police authorisation level required for certain procedures; introduce trigger powers for entry into premises in particular circumstances; and create new powers to allow police to attach conditions to bail before charge.

Penalties

2.33 New sentencing powers extend the maximum penalties available to the courts for certain offences relating to knives, though they also include crossbows and other offensive weapons. Broadly the new penalties will relate to offences of possession, manufacture and sale. The provisions introduce a standard set of maxima – 12 months' imprisonment and/or a £5000 fine where a person is convicted in a magistrates' court; 4 years and/or an unlimited fine for convictions in the Crown Court.

2.34 New powers are also created for courts to impose a driving disqualification for any offence. This is designed to allow courts to disqualify from driving individuals convicted of offences which might involve vehicles but are not 'motoring' offences *per se*.

Proving execution of arrest warrants

2.35 New powers are being taken to enable a wider range of magistrates' courts to hear the proving of the execution of arrest warrants.

2.36 In appropriate circumstances an arrest warrant issued in one County Court Division could be proven in the Division of arrest or in a County Court Division which adjoins the Division of arrest. The transport of defendants across court divisions would be reduced providing a more effective and efficient procedure.

Anti-Social Behaviour Orders

2.37 Two adjustments are made in relation to legislation relating to anti-social behaviour orders. To allow existing interim order powers to operate more effectively, applications will be possible without notice, and a technical amendment is also included to enable rules of court to be made for special measures for witnesses.

Youth Justice

2.38 A number of adjustments are made to youth justice legislation. Rehabilitation periods for youth conference orders, reparation orders and community responsibility orders are clarified. Powers are also created to allow children aged 17 who require custody to be accommodated in a juvenile justice centre if no suitable accommodation is available in a young offenders centre; clarifying the period a youth conference order remains in force; removing the requirement for a care order to be suspended whilst a child is serving a juvenile justice centre order; and the powers of the youth court to notify the appropriate authority where it has concerns regarding the welfare of a child are extended.

Part 6 - Supplementary

2.39 Part 6 provides for the statutory procedures for regulation, order or rule making powers by the Secretary of State; the making of incidental or consequential provisions and any transitory transitional or savings provisions; amendments and repeals.

PART III: DETAILED PROVISIONS OF THE ORDER

PART 1: INTRODUCTORY

Article 1: Title and commencement

3.1 This Article provides for the title and commencement of the provisions of the Criminal Justice (Northern Ireland) Order 2007. The Part 1 interpretation provisions and the powers to make orders and transitional provisions would come into operation 1 week after the making of the Order. The provisions listed in paragraph (1(2)) will come into force one month after the day on which the Order was made. The remaining provisions in the Order would be brought into force by order of the Secretary of State. Any provision in this Order which alters a penalty for an offence has effect only for offences committed after the commencement of the provision in paragraph 1(4)

Article 2: Interpretation

3.2 This Article applies the Interpretation Act (NI) 1954 to the Order.

PART 2: SENTENCING

Interpretation

Article 3: Interpretation

3.3 This Article provides an interpretative guide to a range of terms used in the sentencing powers in the Order. For many terms, links are provided to the relevant definitions in the Order or in previous legislation. In addition, a number of terms used within the sentencing provisions are defined in this Article.

3.4 The definition of a 'sentence' is clarified to exclude a committal for fine default or attachment for contempt of court. 'Serious harm', a term used as part of the risk assessment test for dangerous offenders, is defined as death or serious personal injury, whether physical or psychological. A number of technical definitions are provided which clarify when an offence is associated with another; the determination of the date of an offence; and the power of the court to take into account any available evidence to determine the age of the offender.

Chapter 2 - Custodial Sentences

Article 4: Interpretation

3.5 Article 4 provides for the interpretation of terms used in the Custodial Sentences Chapter of the Order. It defines custodial sentences as imprisonment; detention at the Secretary of State's pleasure; detention at such place as the Secretary of State may determine; detention in a young offenders centre; and a juvenile justice centre or custody care order. A pre-sentence report is specified as being a written document submitted to the court by a probation officer or social worker.

Article 5: Restrictions on imposing certain custodial sentences

3.6 This Article establishes the basic criteria for the imposition of custodial sentences largely through the re-enactment of Article 19(2) of the Criminal Justice (Northern Ireland) Order 1996. A court must not pass a custodial sentence, unless it is the opinion that the offence or the combination of the offence and one or more offences associated with it, was so serious that only imprisonment can be justified.

3.7 Excluded from this are those offences where the punishment is an ICS or ECS and dangerousness is the core dimension; or certain firearms and other weapons offences where minimum sentences are set in law (i.e. those with a statutory minimum custodial term).

3.8 A court is not prevented from passing a custodial sentence on an offender who fails to consent to requirements imposed as part of a community sentence (where such consent is required) or if he refuses to comply with a Drug Treatment and Testing Order or with a Youth Conference Order. Where a court passes a custodial sentence, it will state in open court why it is of that opinion and in any case explain to the offender, in ordinary language, why it is passing a custodial sentence.

Article 6: Restrictions on imposing custodial sentences on persons not legally represented

3.9 Article 6 applies existing law on legal representation and sentencing to the new custodial sentences being created in the Order. A court cannot pass a custodial sentence on a person if they are not legally represented in court.

3.10 Exceptions to this requirement are if the person has previously been given a custodial sentence; if an application for legal aid was rejected on the grounds that were able to afford such representation; or if the person concerned refused or failed to apply for legal aid. Being legally represented in a court is defined as including having the assistance of counsel or a solicitor in court proceedings between being found guilty and being sentenced.

Article 7: Length of custodial sentences

3.11 This Article establishes the general principle for setting the length of a custodial sentence. That principle is that it must be commensurate with the seriousness of the offence or the combination of the offence and associated offences. This is achieved through the re-enactment of Article 20(a) of the Criminal Justice (Northern Ireland) Order 1996. The provision applies to determinate sentences of imprisonment; detention in a young offenders centre; detention under Article 14(5) (the Extended Custodial Sentence); and detention under Article 45(2) of the Criminal Justice (Children)(Northern Ireland) Order 1998.

3.12 Excluded from the requirements are sentences which have a statutory minimum custodial term (12(3)) under the Firearms (Northern Ireland) Order 2004 or the Violent Crime Reduction Act 2006. These are sentences for offences of possessing handguns and specified firearms without authorisation and have a minimum five year penalty for adults attached.

Article 8: Length of custodial period

3.13 This Article creates the new form of custody for non-dangerous prisoners and in doing so replaces the automatic 50% remission regime. The Article applies to determinate sentences of imprisonment other than an ECS, and sentences of detention in a young offenders centre.

3.14 This Article provides that, where a court is passing a sentence, it shall specify a period (the custodial period) at the end of which the offender is to be released on a licence (under Article 8(2)). The custodial period is not to exceed one half of the term of the sentence (Article 8(3)) and the licence period is the period the court thinks appropriate to take account of the offender's supervision by a probation officer (Article 8(5)).

Article 9: Procedural requirements for custodial sentences

3.15 This Article provides that when a court is considering whether to impose a custodial sentence and how long it should be, the court must take into account all the information available to it, including information about the offence(s). Before imposing such a sentence, the Court must obtain a pre-sentence report (Article 9(2)), though it need not do so if it considers it unnecessary to do so in any individual case (Article 9(3)). Article 9(4) concerns young offenders and provides that the court must not dispense with the requirement to obtain a pre-sentence report, unless there already is one that relates to the offender and the court has access to it.

3.16 Other provisions relate to validity in sentencing in the absence of pre-sentence reports (Article 9(5)) and appeals (Article 9(6)).

Article 10: Additional requirements in the case of mentally disordered offenders

3.17 This Article re-enacts Article 22 of the Criminal Justice (Northern Ireland) Order 1996 to provide that, unless the court thinks otherwise, in the case of a mentally disordered offender the court shall obtain and consider a medical report before passing a custodial sentence other than one fixed by law (Article 10(1) and (2)). A medical report must be made orally or in writing by a registered medical practitioner. The court should consider any information before it relating to the offender's mental condition and the likely effect of a custodial sentence on the offender and on any treatment which might be available to him.

3.18 If the court does not obtain a medical report this does not invalidate any sentence passed, but on appeal the court must obtain and consider a medical report (Article 10(4)). The definition of mentally disordered is the same as in the Mental Health (Northern Ireland) Order 1986 (meaning having a mental illness, mental handicap and any other disorder or disability of mind).

Article 11: Disclosure of pre-sentence reports

3.19 This Article applies where a court obtains a pre-sentence report and provides that the court shall give a copy of the report to the offender or the offender's counsel or solicitor and to the prosecutor (Article 11(1) and (2)).

3.20 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 (Article 11(3)). A prosecutor is only able to use the information in the pre-sentence report either for determining whether to make representations to the court or for making representations to the court about the content of the report (Article 11(5)).

Chapter 3 - Dangerous Offenders

Article 12: Meaning of “specified offence” etc.

3.21 This Article provides the definition of specified and serious offences for the purposes of the dangerous offenders provisions. This is the core definition that will direct whether or not the ICS/ECS sentences for dangerous offenders could be engaged in a conviction. The specific offences are provided by Schedules 1 and 2.

3.22 Serious offences are detailed in Schedule 1 and are those that can engage either the Indeterminate Custodial Sentence or the Extended Custodial Sentence. Specified offences are listed in Schedule 2 – those that are also serious offences (i.e. also listed in Schedule 1) can engage the ICS or ECS; those specified offences that are not also serious offences (i.e. are only listed in Schedule 2) can only attract an ECS. The Secretary of State has the power to amend the lists of serious and specified offences by an order subject to negative resolution (Article 12(5)).

3.23 A definition of life sentence is provided for the purpose of this Chapter as a sentence of imprisonment for life or a sentence of detention at the Secretary of State’s pleasure under Article 45(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (Article 12(3)).

3.24 References to conviction on indictment are clarified as including a finding of guilt by a court of summary jurisdiction under Article 17 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (12(4)).

Article 13: Life sentence or indeterminate custodial sentence for serious offences

3.25 This Article creates the indeterminate custodial sentence (“the ICS”). An ICS may only be passed by a court if the offender is convicted of a serious sexual or violent offence (as defined in Schedule 1) and the court considers that the offender poses a significant risk of serious harm by committing further specified offences (Article 13(1)(b)). The ICS provides for the indeterminate imprisonment of those dangerous offenders who pose a significant risk of serious harm to the public.

3.26 Where the offence is one in which an offender could be liable to a life sentence, the court must pass a discretionary life sentence if the seriousness of the offence requires it (Article 13(2)). The court cannot use the ICS in place of the life sentence. In all other cases Article 13(3) provides that the court must impose an ICS if it considers that an ECS (an Extended Custodial Sentence imposed under Article 14) would not be adequate to protect the public.

3.27 When imposing an ICS the court must specify a minimum period of at least 2 years that will be served in custody (13(3)). After the offender has served this minimum period, his release will be dependent on the direction of the Parole Commissioners. (Release provisions are set out in more detail in Chapter 4).

3.28 An indeterminate custodial sentence means a sentence of imprisonment for offenders aged 21 or over or a sentence of detention at such place and under such conditions as the Secretary of State may direct for those aged under 21. Remission does not apply to the ICS and the sentence must be served in full. An ICS cannot be suspended.

Article 14: Extended custodial sentence for certain violent or sexual offences:

3.29 This Article creates the extended custodial sentence for public protection (“the ECS”) for those convicted of specified violent and sexual offences and who, in the judgment of the court, pose a significant risk of serious harm to the public (14(1)(b)). Paragraph (2) provides that the extended sentence is made up of the ‘appropriate custodial term’ and an ‘extension period’.

3.30 The appropriate custodial term is the period that the court considers appropriate to reflect the seriousness of the offence or the combination of offences (as provided in Article 7). The minimum period for the ECS will be 12 months (Article 14(4)(b)).

3.31 The court must also specify an extended period of supervision on licence to be added to the sentence for the purpose of public protection. That can be an extension period of up to five years for violent offenders and eight years for sexual offenders (Article 14(8)(a) and (b)). The total term of the extended sentence must not be more than the maximum penalty available for the offence in question (Article 14(9)).

3.32 During the second half of the appropriate custodial term the offender may be released on the direction of the Parole Commissioners (see Article 18 for release provisions).

3.33 An extended custodial sentence means a sentence of imprisonment for offenders aged 21 or over or a sentence of detention at such place and under such conditions as the Secretary of State may direct for offenders aged under 21. Provisions allowing sentences to be suspended and granting remission will not apply to the Extended Custodial Sentence.

Article 15: The assessment of dangerousness

3.34 This Article provides for the assessment of dangerousness in ICS and ECS sentences. It specifies the requirements for the court to establish whether the offender poses a significant risk to members of the public of serious harm by committing further such offences and therefore whether the offender is eligible for an ECS or ICS.

3.35 The offender must first of all have been convicted on indictment of a specified offence. Unless the court is of the opinion that one is unnecessary, it must then obtain and consider a pre-sentence report; must take into account all the information available to it about the nature and circumstances of the offence and; may also take into account any information about the pattern of behaviour of which the offence forms a part and any information about the offender (Article 15(2)(a)-(c)). (The requirements for pre-sentence reports are provided under Article 9(2) of the Order).

Chapter 4 - Release on Licence

Article 16: Interpretation

3.36 This Article defines a fixed-term prisoner for the purposes of Chapter 4. They are those serving a determinate custodial sentence for an offence committed after the commencement of this Article (16(1)). Custodial sentence is defined as a sentence of imprisonment; a sentence of detention in a young offenders centre; and a sentence of ICS or ECS detention at such place and under such conditions as the Secretary of State may direct.

Article 17: Duty to release certain fixed-term prisoners

3.37 This Article directs that as soon as a fixed-term prisoner, other than one serving an ECS sentence, has served the requisite custodial period directed by the court, the Secretary of State must release the prisoner on licence (Article 17(1)). Concurrent and consecutive sentences provisions (Articles 32(2) and 33(2)) apply to the determination of the requisite custodial period (Article 17(2)(b)).

Article 18: Duty to release prisoners serving indeterminate or extended custodial sentences

3.38 This Article sets out the release provisions for those serving indeterminate and extended custodial sentences, including those who have been recalled from their licence. A prisoner must serve the relevant part of his sentence before he becomes eligible for release.

3.39 For an ICS, the relevant part is the minimum period or 'tariff' specified by the court (Article 18(2)(a)). For an ECS sentence, the relevant part is one half of the appropriate custodial term as directed by the court (Article 18(2)(b)).

3.40 Once a prisoner has served the relevant part and the Parole Commissioners have directed his release, the Secretary of State must release the prisoner on licence (Article 18(3)(a) and (b)). The Commissioners cannot direct the prisoner's release unless the Secretary of State has referred the case to them and the Commissioners are satisfied that it is no longer necessary for the prisoner to be confined to protect the public from serious harm (Article 18(4)(a) and (b)).

3.41 If the Commissioners do not direct the prisoner's release after a case is referred to them, the Secretary of State must refer the case to them again within two years (Article 18(6)). For an ECS, as soon as the prisoner has fully served the appropriate custodial term (that is, he has not been released by the Commissioners and has served the full custodial sentence), the Secretary of State shall release the prisoner on licence unless he has previously been recalled under Article 27 (Article 18(8)).

3.42 The Secretary of State is given a power to amend by order the period after which an ECS prisoner has served the relevant part of the sentence and is eligible to have the case referred to the Parole Commissioners (currently set at one half by Article 18(2)(b)).

Article 19 Power to release prisoners on licence before required to do so

3.43 This Article allows the Secretary of State to release a fixed-term prisoner on licence during a set period before the end of the custodial part of his sentence (Article 19 (1)). This will be known as the conditioned early release licence. Release can occur during the last 135 days of custody. A prisoner must be serving a sentence of at least six weeks in custody; must have served at least half of the custodial period; and at least four weeks of his sentence. Again, concurrent and consecutive sentence requirements apply.

3.44 Paragraph (3) details seven cases to which this Article does not apply (20(3)) including ECS prisoners (the scheme as a whole does not apply to ICS prisoners), those liable to sex offender licensing, those who have previously been recalled to prison, and foreign national prisoners liable to removal from the country (paragraph (7) provides a definition of when a person is liable to removal from the country). The Secretary of State may, by an order subject to negative resolution, amend the time frame requirements of the scheme (Article 19(4)).

3.45 Existing prisoners serving determinate custodial sentences will also be eligible for the scheme. The requisite custodial period in such cases is defined as one-half of the term of the custodial period (this proportion is to take account of 50% remission in such existing cases).

Article 20: Power to release prisoners on compassionate grounds

3.46 This Article allows the Secretary of State, if exceptional circumstances exist, to release a prisoner on licence on compassionate grounds (Article 21(1)). Before releasing an ICS or ECS prisoner on licence on compassionate grounds, the Secretary of State must, when practicable, consult the Parole Commissioners (Article 20(3)). The provision includes existing fixed-term prisoners (Article 20(4)).

Article 21: Duration of licences: fixed-term prisoners

3.47 This Article provides that when a fixed-term prisoner is released on licence, the licence shall (subject to any revocation under Articles 28 or 30) remain in force for the remainder of the sentence (Article 21(1)). Paragraph 1 has effect subject to the provisions on concurrent and consecutive terms (Article 22(2)).

Article 22: Duration of licences: prisoners serving indeterminate custodial sentences

3.48 This Article provides for the duration and termination of licences for those sentenced to ICS sentences. Unless revoked, ICS licences remain in force for the rest of the prisoner's life (Article 22(2)). After a qualifying period of 10 years since the date of release (Article 22(3)), the offender on licence can apply to the Parole Commissioners to have his licence revoked. The Commissioners must consider whether it is necessary for the protection of the public from serious harm that the licence should remain in force (Article 22(6)). On the direction of the Parole Commissioners, the Secretary of State must order that the licence ceases to have effect (Article 22(4)). If the Commissioners do not revoke the licence, the prisoner must wait 2 years before reapplying, or such shorter period as the Commissioners may specify (Article 22(5)(b)).

Article 23: Power of court to recommend licence conditions for sentences of 12 months or more

3.49 This Article gives the court the power to recommend, when passing a standard determinate sentence of 12 months or more, licence conditions that the offender should be subject to on release (Article 23(1)). Such recommendations are not to be regarded as part of the sentence passed on the offender (Article 23(3)).

3.50 When setting such licence conditions (which it falls to the Secretary of State to do under Article 24 of this Order) the Secretary of State must have regard to the court's recommendations (Article 23(2)).

Article 24: Licence conditions

3.51 This Article provides for the conditions which may be attached to a prisoner's licence following release. For sentences of less than 12 months the conditions must include those set by the court and, insofar as they are compatible with the conditions set by the court, the standard conditions prescribed by the Secretary of State.

3.52 For sentences of more than 12 months the standard conditions will apply together with any other conditions of a kind prescribed by the Secretary of State (Article 23(3)(a) and (b)). When setting licence conditions the Secretary of State must have regard to the court's recommendations (Article 23(2)) and may subsequently include, vary or cancel the licence conditions of an offender released from a standard determinate sentence (Article 24(4)).

3.53 The Secretary of State must consult the Parole Commissioners before including licence conditions on release or subsequently inserting, varying or cancelling licence conditions for an ECS or ICS offender. (Article 24(5)).

3.54 Paragraph 6 applies the subsequent licensing provisions and arrangements on concurrent and consecutive sentences to this article (Article 24(7)).

3.55 When establishing standard or other licence conditions (Article 24(8)) the Secretary of State must have regard to the protection of the public, the prevention of re-offending and the rehabilitation of offenders.

Article 25: Licence conditions on re-release of prisoner serving sentence of less than 12 months

3.56 This Article provides for the licence conditions on the re-release of a recalled prisoner who had been serving a sentence of less than 12 months. On re-release, the licence must include the standard conditions and may include other conditions of a kind prescribed by the Secretary of State (Article 25(2)(a) and (b)). In setting other conditions, the Secretary of State must have regard to the terms of the relevant (original) court order (Article (25)(3)).

Article 26: Curfew condition to be included in licence under Article 19

3.57 This Article provides that the licence of a prisoner released early under Article 19 must include a curfew requirement (Article 26(1)). The licence may also include an electronic monitoring requirement (Article 26(6)). Where the prisoner was serving a sentence of less than 12 months and the court originally set a curfew condition in the licence, such a curfew condition cannot exist in parallel with an early release curfew. The two must be separate.

3.58 The curfew condition must require the offender to remain for specified periods at a specified place (Article (26(3))). Such periods cannot amount to less than 9 hours in any one day, with the Secretary of State having the power to amend this minimum limit by order. The curfew condition remains in force until the offender would otherwise have been released had the early release power not been used.

Article 27: Duty to comply with licence conditions

3.59 This Article requires any person subject to a licence under this Part to comply with conditions attached to their licence.

Article 28: Recall of prisoners while on licence

3.60 This Article provides that the Secretary of State may revoke a released prisoner's licence and recall him to prison if recommended to do so by the Parole Commissioners. The Secretary of State may also recall a prisoner without such a recommendation if it appears expedient to do so in the public interest (Article 28(2)(b)). The prisoner must be informed of the reasons for his recall and can make written representations (Article (28)(3)). The Parole Commissioners then consider recalls on referral by the Secretary of State. If the Commissioners direct release, the Secretary of State must comply (Article (27)(5)).

3.61 The Parole Commissioners must not release a prisoner serving an ICS or ECS unless it is no longer recalled prisoner, the Parole Commissioners must not release the prisoner on licence unless satisfied that the imprisonment is no longer necessary for the protection of the public. If a released prisoner's licence has been revoked he will be treated as unlawfully at large until returned to prison (27(6)). These requirements do not apply to prisoners released as part of the early release scheme under Article 19.

Article 29: Further release after recall

3.62 This Article provides for the procedure if the Parole Commissioners consider the case of an offender recalled to prisoner and uphold the recall decision. The further release after recall provisions for dangerous offenders are dealt with under Article 18; this Article applies to standard determinate sentence prisoners.

3.63 If they have not directed the prisoner's immediate release on licence, the Parole Commissioners must either recommend a future date for the prisoner's release on licence or set a date for their next review of the case (Article 29(2)). There is a maximum two year limit for either a recommended date for release or a further review of the case, though if the prisoner would fall to be released from his sentence anyway within 2 years of recall the Commissioners need not recommend a future date for release or set a date for the next review of the case.

3.64 If the Parole Commissioners have recommended a future date for the prisoner's release on licence, the Secretary of State must comply with that recommendation unless he has referred the case back to the Commissioners before the release date (Article 29(5)). Paragraph (6) sets out the procedure to be followed on further reviews set by the Commissioners. The Commissioners must either: direct the prisoner's release on licence; recommend a future date for release on licence; or set a date for the next review of the case. The Commissioners can only direct the prisoner's immediate release on licence if satisfied that custody is no longer necessary for the protection of the public (Article 29(7)).

Article 30: Recall of prisoners released early under Article 20

3.65 Where a prisoner has failed to comply with a "conditioned early release" or where he can no longer be electronically monitored, the Secretary of State may, if the curfew condition is still in force, revoke the prisoner's licence (Article (28)(1)(a) and (b)) and recall him to prison. The offender must be informed of the reasons for the recall and his right to make representations on his return to prison (Article (28)(2)).

3.66 The Secretary of State can cancel a revocation and the person is treated as not having been recalled to prison ((28)(4)). A person whose licence is revoked under this article can be detained in pursuance of the sentence and, if at large, is to be treated as being unlawfully at large (28(5)).

Article 31: Conviction while licence remains in force

3.67 This Article provides for a situation where a court is sentencing an offender who has committed an offence whilst on licence and who has not been recalled to prison. In this situation the court shall inform the Secretary of State of the conviction.

Article 32: Concurrent Terms

3.68 This Article provides for the application of the provisions of this Part to an offender who is serving a number of sentences which are wholly or partly concurrent. The Article applies where the sentences were passed on the same occasion, or the later sentence was passed before the offender had been released from custody under the earlier sentence or sentences.

3.69 The broad affect of the Article is that if the sentences were imposed on the same occasion, the offender is not to be released until he has served the requisite period of the longest of the sentences. If the sentences were imposed on different occasions, the prisoner is not to be released until he has served the requisite period which will expire last. Where a person is sentenced to concurrent life sentences and custodial sentences, the prisoner must be eligible for release from the life sentence before he can be released from the custodial sentence (32(4)).

Article 33: Consecutive Terms

3.70 This Article provides for the application of this part to persons serving consecutive determinate sentences, whether the sentences had been passed on the same occasion, or the second sentence has been passed on a later occasion while the person is still in custody under the first sentence. The Article will not apply to a sentence passed after the offender has been released from the first of the sentences.

3.71 The broad principle of the Article in relation to custodial sentences is that the consecutive terms are treated as an aggregate term, and the offender does not become entitled to be released until he has served a period equal to the aggregate of the requisite custodial periods in relation to each of the terms of imprisonment. The licence imposed on the offender on his release will continue in effect until he would have served a term equal to the aggregate length of the terms of imprisonment.

3.72 In the case of an ECS, the period to be served before the offender becomes entitled to be released is the aggregate of the appropriate custodial terms. The custodial period in the case of a standard determinate sentence is the period specified under Article 8(2).

Article 34: Breach of licensing for sexual offenders

3.73 This Article amends the recall regime from a sex offender licence under the Criminal Justice (Northern Ireland) Order 1996. Its overall effect is to allow the court to revoke a sex offender licence and require that the offender be detained for the remainder of the sentence. Previously, a recalled sex offender could only be recalled to prison for a maximum of 6 months.

3.74 Paragraphs (1)-(3) provide for both the circumstances in which the licence of such an offender would be reviewed by a court, and the procedure to determine which court should hear the case. If a Crown Court considers the case and is satisfied that the offender has failed without reasonable excuse to comply with any licence conditions it may impose a fine of up to £1000, revoke the licence, or suspend the licence for a period. If a Magistrates' Court hears the case, it has the same powers save that it may only revoke the licence if the remaining period is less than 6 months and may only suspend the licence for a maximum of 6 months.

3.75 If the licence is suspended or revoked, the offender shall be returned to prison or a young offenders centre. Paragraphs (8) and (9) provide interpretation for certain terms in the Article, with the 'remaining licence period' defined as ending with the date on which the sentence ends and the 'appropriate court' being linked to the court which made the initial order. These provisions apply to existing sex offenders out on licence but not if the breach of licence conditions occurred before this Article is commenced.

Curfews and Electronic Monitoring

Article 35: Application of this Chapter

3.76 This Article defines the circumstances in which the curfew and electronic monitoring powers in the Chapter can apply. They can be applied by the court as a condition of bail ((a)). They can be part of a licence condition (set by the court or the Secretary of State as appropriate) for, a life sentence, a "grave offences" licence; or can be attached to the new licences for dangerous offenders and standard determinate sentences((b)). They can also be a requirement of a community disposal (a probation order, combination order; a youth conference order) ((c)).

Article 36: Power of court to impose curfew or electronic monitoring requirement on making juvenile justice centre order

3.77 This Article amends the juvenile justice centre order provisions in the Criminal Justice (Children)(Northern Ireland) Order 1998. It allows the court, at the point of sentencing, to impose a curfew or tag as a supervision requirement of a juvenile justice order.

Article 37: Curfew requirement

3.78 This Article defines the terms and conditions placed upon any curfew with regard to time and place. Periods cannot be less than two hours or more than twelve hours in any one day (Article 37(2)). The authority setting the curfew must obtain information about both the proposed place and any other persons affected by the enforced presence of the person subject to the requirement (Article 37(3)). The Secretary of State may by order amend the limits imposed on specified periods (Article 37(4)).

Article 38: Requirement to avoid conflict with religious beliefs, etc.

3.79 This Article places restrictions where practicable on the making of curfews to avoid any conflict with a person's religious belief and any interference with the person's work, training or education. The Secretary of State may add additional restrictions by order (Article 38(2)).

Article 39: Arrangements for establishing systems of electronic monitoring

3.80 This Article provides a power for the Secretary of State to make arrangements for establishing systems of electronic monitoring of persons whilst they are subject to curfew or other requirements.

Article 40: Electronic monitoring requirement

3.81 This Article defines an electronic monitoring requirement (Article 40(1)) and requires that, if the co-operation of a person (other than the person subject to the requirement) is necessary to secure the monitoring, their consent must be obtained before the requirement is imposed (Article 40(2)). If the consent is not obtained, the electronic requirement cannot be imposed. A person responsible for the monitoring must be identified (Article 40(3)). The responsible officer must notify the offender of the commencement of the electronic monitoring requirement and any person whose consent has been sought.

Article 41: Availability of electronic monitoring arrangements

3.82 This Article stipulates that a court cannot impose an electronic monitoring requirement unless suitable arrangements are in place in the area (as determined by the Secretary of State). The court must also be satisfied that the necessary provision can be made under these arrangements.

Article 42: Provision of copies of electronic monitoring requirement

3.83 This Article requires copies of the electronic monitoring requirement to be given to the person responsible for the electronic monitoring, any person whose consent is required for the requirement to be imposed.

Article 43: Release of child on bail: curfew and electronic monitoring requirements

3.84 This Article places restrictions on the use of curfew and electronic monitoring requirements in terms of release of a child on bail under Article 12 of the Criminal Justice (Children)(Northern Ireland) Order 1998 (43(1)). In such cases, curfews and electronic monitoring requirements can only be used as an alternative to the child being remanded in custody. Where the child would normally have been granted bail, the court cannot impose a curfew or electronic monitoring requirement.

Article 44: Rules

3.85 This Article provides for the Secretary of State to make rules for regulating electronic monitoring, the functions of persons responsible for the monitoring and the supervision of persons subject to curfew. These rules shall be made subject to negative resolution (Article 99(1)).

Supervised Activity Orders

Article 45: Supervised activity orders

3.86 This Article creates a supervised activity order that will be available to the court if an offender were to default on the payment of a fine. Supervised activity orders can be imposed by the court when: it has imposed a fine of £500 or less on an offender aged over 18; the court would normally imprison the person if the fine were defaulted on; and the court considers that a supervised activity order would be more appropriate than imprisonment in the event of default (Article 45(1)). The supervised activity order will require the offender to attend, be engaged in activities, and be supervised by a probation officer (Article 45(2)).

3.87 The place of supervision and the activities are both to be determined by the supervising officer and the period of supervision cannot be less than 10 hours or more than 100 hours. For those defaulting on fine of £200 or less, the period of supervision cannot be more than 50 hours (Article 45(3)). The Secretary of State may be order amend the amounts of fine used as specifications in the provisions and may amend the limits on the number of hours of supervision.

3.88 The supervised activity order is made by the court when imposing a fine but only comes into operation if the fine is defaulted on (Article 45(5)). If part of the fine is payed off before default, the number of hours specified in the order will be reduced proportionately, though not to less than 10 hours (Article 45(6)). Once the supervised activity order comes into force, the fine will be discharged (Article 45(7)).

Parole Commissioners

Article 46: Parole Commissioners

3.89 This Article provides that the Life Sentence Review Commissioners, established under the Life Sentences (Northern Ireland) Order 2001 (“the 2001 Order”), will be renamed the Parole Commissioners for Northern Ireland (Article 46(1)). In discharging their functions the Commissioners must have due regard to the need to protect the public from serious harm and have regard to the rehabilitation of prisoners and the prevention of re-offending by prisoners (Article 46(2)). Schedule 4 – described later in this document – is created by paragraph (4), re-enacting the provisions of the 2001 Order on the appointment of Commissioners.

3.90 In addition to their responsibilities under the 2001 Order, the Commissioners will be responsible for advising the Secretary of State on the release of ICS and ECS prisoners and on the release of any fixed term prisoner sentenced and recalled under this Order (Article 46(3)).

Enforcement of certain orders made on conviction

Article 47: Enforcement of certain community orders

3.91 This provision amends the Criminal Justice (Northern Ireland) Order 1996 to streamline court procedure to prevent unnecessary listing at a magistrates' court. Where a Crown Court makes certain community orders (probation orders, community service orders, combination orders and drug treatment and testing orders) any warrant or summons in the event of breach shall direct the offender to be brought before the Crown Court (Article 47(2)).

3.92 Where the Crown Court is unavailable, the warrant shall direct the offender to be brought before a magistrates' court with jurisdiction in the place of arrest. The magistrates' court shall then commit the offender in custody or on bail to the Crown Court.

Article 48: Enforcement of certain youth justice orders

3.93 Article 48 provides equivalent provision to Article 47 in the case of reparation orders, community responsibility orders, and youth conference orders under the Criminal Justice (Children)(Northern Ireland) Order 1998. The amendment streamlines court procedure in these cases by providing for referral directly to the Crown Court where the Crown Court made the initial order.

Part 3 - Risk Assessment and Management:

Article 49: Interpretation of this Part

3.94 This is an interpretative provision defining ten bodies as "agencies" (Article 49(1)). The Secretary of State may amend this definition of agencies by order (Article 49(2)). These are bodies that are involved in the management of sex offenders under current, non-statutory arrangements.

Article 50: Guidance to agencies on assessing and managing certain risks to the public

3.95 This Article aims to facilitate multi-agency co-operation in dealing with offenders of a description specified by the Secretary of State. The Secretary of State may, after consultation with the agencies, issue guidance to the agencies on the discharge of their functions in connection with the assessment and management of risk posed by persons of a specified description.

3.96 Such guidance may include provisions requiring the agencies to make arrangements to facilitate cooperation between each other and draw up a memorandum of cooperation. Guidance may also make provisions regarding the exchange of information between agencies. The Secretary of State must consult the agencies before issuing guidance and, once issued, the agencies must give effect to the guidance.

3.97 The Secretary of State must not specify a description of persons in guidance under this Article unless there is reason to believe they may cause serious harm to the public (Article 50(6)). Serious harm is defined as death or serious personal injury, whether physical or psychological (Article (3)(1)).

Article 51: Review of arrangements and report on functions

3.98 This Article provides that the agencies must keep any arrangements under review in consultation with two lay advisers appointed by the Secretary of State. After the end of each period of twelve months beginning with the 1st April, the agencies shall publish a report on the arrangements put in place to assess and manage the risks posed by those who require multi agency risk management and their obligation to keep the arrangements under review (Article 51(3)).

3.99 The report must include details of any arrangements and any information of a description as may be determined by the Secretary of State (Article 51(4)).

Part 4 – Road Traffic Offences

Article 52: Causing death, or grievous bodily injury, by careless or inconsiderate driving

3.100 This Article creates a new offence of causing death or grievous bodily injury by careless or inconsiderate driving (Article 52(1)) and relevant penalties (six months imprisonment and/or a fine of up to £5000 for a summary offence; 5 years, a fine or both on indictment). It also creates a number of additional alternative verdicts to road traffic offences.

3.101 The new offence can be an alternative verdict to an offence of causing death or grievous bodily injury by dangerous driving or by careless driving when under the influence of drink or drugs; and can have its own alternative verdict of careless and inconsiderate driving.

Article 53: Causing death of grievous bodily injury by driving: unlicensed, disqualified or uninsured drivers

3.102 This Article makes it an offence to cause death or grievous bodily injury when driving without a licence (12B (a)), whilst uninsured (12B(b)), or whilst disqualified (12B(c)). As with Article 52, the penalties are six months imprisonment and or fine of up to £5000 for a summary offence; 5 years, a fine, or both on indictment (3(3)).

Article 54 Speed assessment equipment detection devices

3.103 This article allows regulations to be made to ban the use of “speed assessment equipment detection devices” – devices which can detect or interfere with police speed detection facilities (54(1)). Breach of any requirement in the regulations can attract a penalty of either a level 3 fine (up to £1000) for a standard road or level 4 (up to £2500) on a special road (54(4)).

Article 55: Driving without insurance

3.104 This Article increases the maximum penalty available to courts when sentencing in cases of driving without insurance. A custodial sentence of up to 6 months will now be available on summary conviction, along with a fine up to Level 5 or both.

Article 56: Driving while disqualified

3.105 This Article increases the penalty for driving while disqualified. Previously, driving while disqualified was only triable summarily, with a maximum penalties of 6 months, the statutory maximum fine, or both. This Article allows driving while disqualified to also be tried on indictment with maximum penalties of 2 years imprisonment, a fine, or both.

Article 57: Failure to stop a vehicle

3.106 This Article increases the penalty for failing to stop when required by a police constable from a level 3 to a level 5 fine (up to £5000).

Article 58: Furious driving

3.107 This Article allows for disqualification and licence endorsement in offences of “furious driving” - where bad driving occurs on private property. Disqualification would be discretionary and endorsement obligatory.

Article 59: Power to require specimens of breath at roadside or at hospital

3.108 This Article provides a series of powers around the taking of breath samples in drink driving cases. Police will have powers to arrest without warrant where the constable reasonably believes that the breath device has not produced a reliable indication (Article 59(2)); to detain at or near the place instead of going to a police station (Article 59(3)); and provides for specimens to be taken in hospitals (Article 59(4)). It also makes a series of provisions under which a constable may impose a breath test requirement.

3.109 Article 59(5) allows for blood or urine to be taken at a police station where a breath specimen has not been provided elsewhere; paragraph (7) provides that a test on a hospital patient requires medical practitioner notification and approval where appropriate. Paragraph (8) provides police with powers around cases where specimens have been provided other than at a police station and requirements where the person is in hospital (Article 59(9)).

Article 60: Alcohol ignition interlocks

3.110 These articles create a series of powers under proposed Articles 38A, 38B, 38C, 38D, 38E and 46A of the Road Traffic Offenders (Northern Ireland) Order 1996. These powers would give offenders the opportunity to participate in an “alcohol ignition interlock programme”. Where an offender agrees, the period of disqualification may be reduced. The reduced period must be at least 12 months but not more than one-half of the total disqualification period (Article 38A(4)).

3.111 The scheme applies where an offender has been convicted of a drink drive offence; has previous drink driving convictions; and will be disqualified for at least 2 years (Article 38A(1)). Failure to comply with the programme will result in the original full disqualification.

3.112 The programme can include elements of education and counselling. Programmes must be approved by the Department of Environment. The central feature of the scheme is that the offender may only drive a vehicle fitted with an interlock device that prevents the vehicle being driven until a specimen that does not exceed the specified amount has been given.

Article 61: Experimental period for Article 60

3.113 This Article provides for an experimental period for the alcohol ignition interlock proposals. The provisions will lapse at the end of 2012, unless the Department of Environment decides, by order, to extend their operation or make their operation permanent. Such an order can only be made after a draft of it has been laid before the Northern Ireland Assembly and approved by a resolution (Article 61(9)).

Article 62: Meaning of driving without due care and attention

3.114 This Article defines driving without due care and attention as driving in a way that falls below what would be expected of a competent and careful driver and applies it to three relevant road traffic offences (Article 12A(1)-(3)). It also defines 'without reasonable consideration' as being in a way that inconveniences other people (Article 12A(4)).

Article 63: Extension of offence under Article 14 of the 1995 Order

3.115 This Article allows prosecution for causing death or grievous bodily injury by careless driving whilst under the influence of drink or drugs where, without reasonable excuse, the person consent to a laboratory blood test. Failure to give permission can be an alternative verdict.

Article 64: Alternative verdict on unsuccessful manslaughter prosecution

3.116 This Article allows an alternative verdict to a charge of manslaughter in four offences: causing death or GBH by dangerous driving; dangerous driving; causing death or GBH by careless driving whilst under the influence of drink or drugs; and furious driving.

Article 65: Seizure of vehicles used in manner causing alarm, distress or annoyance

3.117 This Article gives police powers to deal with anti-social use of motor vehicles on or off public roads. Motor vehicle includes any mechanically propelled vehicle, such as quad bikes or mini-scooters. These include powers to stop, seize and remove vehicles when they are being driven off-road or on a public road without due care and attention (Article 65(3)). Police may enter premises (for example garages or driveways, but not private houses) to exercise these powers. Police must warn the person (Article 65(4)) and it is an offence to fail to stop when required (Article 65(6)).

Article 66: Retention etc. of vehicles seized under Article 65

3.118 This Article allows the Secretary of State to make regulations around the seizure of vehicles under Article 65.

Part 5 – Miscellaneous and Supplementary

Purchase and consumption of alcohol

Article 67: Test purchases of alcohol

3.119 This Article provides police with a power to test for sales of alcohol to minors by allowing them to undertake test purchase operations. The provision adjusts the Licensing (NI) Order 1996 to allow a person under 18 years of age, under the direction of a police constable acting in the course of his duty, to enter licensed premises (Article 60A(1)) and to seek to purchase alcohol (through the adjustment of Article 60(2)(a) and (4) of the Licensing (NI) Order).

3.120 The police officer must take all reasonable steps to avoid risk to the person undertaking the test purchase exercise (60A(2)(a)). The consent, in writing, of both the young person concerned and a parent must be obtained before the young person attempts to purchase alcohol (60A(2)(b)). The Secretary of State must issue guidance as to the exercise of these powers.

Article 68: Alcohol consumption in designated public places

3.121 This Article gives police constables a power to require individuals not to consume intoxicating liquor or to surrender any such liquor in their possession. Failure without reasonable excuse to comply with such a request would be a criminal offence, with a maximum penalty on summary conviction of a level 2 fine (currently £500). The offence applies only in a public place designated by a district council after consultation with the police.

Article 69: Fixed penalty notice for offence under Article 68

3.122 This Article details the fixed penalty notice regime that is to be available to constables as an alternative to prosecution. A person who pays the fixed penalty issued to him within a stated period (not less than 21 days) would not be prosecuted for the offence. Fixed penalties would not be issued to anyone under the age of 16. However, this Article allows for that age to be reduced by order of the Secretary of State, making suitable provision for notification to, and payment by, parents or guardians.

3.123 It also places an upper limit on the penalty; and it sets out how payment is to be made – usually to clerks of petty sessions – and how payment or non-payment is to be treated by the courts and others.

Article 70: Designated public places

3.124 This Article stipulates the arrangements that would apply to the designation of public places by district councils. They must be public places in the district of the council, excluding licensed premises or registered clubs. Councils must first be satisfied that such places are associated with alcohol-related nuisance, annoyance or disorder. The Secretary of State is to make regulations governing the procedure to be followed by councils.

Article 71: Effect of Articles 68 and 70 on byelaws

3.125 This Article makes transitional provision for the corresponding bye-laws made by district councils to cease to have effect as places are designated under Article 69. 3 years after the commencement of this Article, any remaining drinking-in-public bye-laws would cease to have effect.

Article 72: Interpretation of Articles 68 to 71

3.126 This Article specifies how certain expressions used in Articles 68 to 71 are to be interpreted. Links are given to the relevant legislative references for a number of terms, with ‘council’ defined here as meaning district council, and ‘public place’ defined as meaning a place to which the public has access by right or by virtue of express or implied permission.

Prisons

Articles 73 and 74: Removal of requirement to appoint medical officers and Abolition of right of justice of the peace to visit prisons

3.127 These Articles remove two outdated provisions from the Prison Act (NI) 1953. The statutory requirement for medical officers to be appointed for prisons is removed. Medical cover is now provided by General Practitioners supported by health care staff - as is the right of a justice of the peace to visit a prison at any time. Visits and inspections are regularly carried out by Independent Monitoring Boards, HM Inspector of Prisons, and Criminal Justice Inspectorate in Northern Ireland.

Article 75: Assisting a prisoner to escape

3.128 This Article creates a new, single offence of assisting or permitting a person to escape from lawful custody. It applies to a person, including a prison officer or a police constable, who assists a prisoner to escape or attempt to escape from legal custody. Triable on indictment, it can attract a maximum penalty of 10 years imprisonment (Article 75(3)).

Article 76: Facilitating escape by conveying things into prison

3.129 This Article modernises the current offence of assisting escape by conveying things into prison. Again a penalty of up to 10 years imprisonment can be attached to the offence.

Article 77: Conveyance of prohibited articles into or out of prison

3.130 This Article updates and replaces current laws on the smuggling of items into prison. Current law deals only with the smuggling of intoxicating spirits or tobacco. The new powers will include mobile phones, sound recording devices and cameras. New section 34 creates List A, B and C which list prohibited items. "A" lists dangerous articles and controlled drugs; "B" includes alcohol, mobile phones, cameras and sound devices; "C" is anything prescribed in prison rules. Lists A and B can be modified by the Secretary of State (Article 77(7)). 34A and 34B create offences around conveying articles without authorisation and defences to such charges.

Article 78: Other offences relating to prison security

3.131 This article creates new offences of taking photographs/images or making sound recordings in prison (Article 78(1)) or transmitting them without authorisation. It is also an offence to take restricted documents from a prison (Article 78(3)). Authorisation procedures by the Secretary of State, the prison governor, or others with a governor's approval are provided for.

Live Links

Article 79: Live links: Introductory

3.132 This Article provides the introductory text and definitions for Articles 80 and 81; live link provisions in preliminary and sentencing hearings respectively. They allow the accused to be treated as being present in court when attending through a live link (Article 79(2)); and make definitions including what a preliminary hearing or sentencing hearing is (3(c) and (d)). The core definition of a live link is that the person in custody can see and hear and be seen and heard by the court (3(b)).

Article 80: Use of live link at preliminary hearings

3.133 This Article permits live links in preliminary hearings in magistrates' or Crown Courts subject to a series of requirements. Preliminary hearings generally deal with the initial decision to remand the accused in custody or release him on bail.

3.134 Requirements include the ability of the parties to the hearing to make representations (Article 80(5)); the giving of reasons (Article 80(6)); powers of adjournment (Article 80(7) and (8)) if a link fails; and an 8 day maximum period of remand where such an event occurs (Article 80(9)).

Article 81: Use of live links at sentencing hearings

3.135 This Article permits live links to be used in sentencing hearings in the magistrates' or Crown Courts where the convicted person is likely to be held in custody during a sentencing hearing.

3.136 A court can act of its own motion or on application by one of the parties (81(4)). The offender's consent is required for the live link (5)(a) and for his giving of oral evidence when attending a hearing by way of live link (6(a)). In addition, the court must only give a live link direction and must only permit the giving of oral evidence by the offender by way of live link if satisfied that the arrangement is not contrary to the interests of justice (81(5)(b) and (7)(b)).

Article 82: Evidence of vulnerable accused

3.137 This Article permits the giving of evidence by live link by an accused person where a number of conditions are met. In essence the live link is available where the accused is vulnerable: if under 18 this is based on intellectual ability or social functioning (4(a)); if 18 or over this is based on mental disorder or significant impairment of intelligence and social function (5(a)).

3.138 The powers are to enable those persons to participate more effectively in the proceedings. For a live link to be directed the judge and jury (where there is one), each of the accused (if more than one), legal representatives, and interpreters (where involved) must be able to be seen and heard by the accused.

Article 83: Live links in appeals under Criminal Appeal Act

3.139 This Article allows appeals in the Court of Appeal Criminal Division to be heard by live link. They can apply where the appellant is expected to be in custody but is entitled to be present (Article 82(1)) (2A). The Court of Appeal can only give the live link direction if the appellant has consented and any other party to the appeal has had an opportunity to make representations about the use of live link.

3.140 There are requirements for the appellant to be able to see and hear proceedings (2B)(b) and the opportunity to make representations (2C)(a). The Secretary of State must notify courts that live link facilities are available (2D). Evidence cannot routinely be given by live link - only where specifically included in the direction (Article 82(2)).

Legal Aid

Articles 84 and 85 Civil legal services for anti-social behaviour orders and Civil legal services and legal aid for proceedings under Proceeds of Crime Act 2002

3.141 These Articles amend legal aid legislation in the Access to Justice (Northern Ireland) Order 2003. The provisions clarify and correct the existing law to take account of amendments and commencement. Article 83 allows legal aid to be made available for full and interim anti-social behaviour orders on conviction (Article 3 of the Anti-social Behaviour (NI) Order 2004); and Article 84 makes a numbering amendment.

Police and Criminal Evidence

Article 86: Entry for purposes of arrest

3.142 This Article provides for a police power of entry to effect arrest for four additional offences. The offences are common assault (c)(i); riotous behaviour in a public place (c)(ii); harassment (c)(iii); and contravention of a non-molestation order (c)(iv). The new offences cover gaps in existing provisions and bring parity with legislation in England and Wales.

Article 87: Pre-charge Bail

3.143 This Article amends the Police and Criminal Evidence (Northern Ireland) Order 1989 ("PACE") to allow the police to attach conditions to bail granted after arrest but before charge. Paragraph (2) specifies that the police can now attach conditions to those released on bail under Article 38(2) or (7)(b) of the 1989 Order. Paragraph (3) inserts new text into the 1989 Order to provide that an individual may make an application to a magistrate's court to seek a variance of conditions of bail, that they may be arrested for breach of police bail conditions and that anyone so arrested, must be brought to a police station as soon as possible after arrest.

Article 88: Authorisation of X-Rays and Ultrasound Scans

3.144 This Article has the effect of lowering the police authorisation level for the taking of an x-ray or the carrying out of an ultrasound scan for the purposes of ascertaining whether an arrested person has swallowed a Class A drug. The rank is lowered from superintendent or above to inspector or above.

Article 89: Police Officers performing duties of higher rank

3.145 This Article makes changes to the police authorisation levels for officers to exercise the powers of the next rank in connection with the investigation of offences or treatment of persons in police custody. In effect a chief inspector can act for a superintendent where he has been authorised by an officer higher than superintendent level (89(1)(a)) and a sergeant can exercise the powers of an inspector if he has been authorised by someone of at least the rank of superintendent (Article 89(2)).

Penalties

Article 90: Increase in maximum sentences for offences relating to knives, weapons etc.

3.146 This Article extends the maximum penalties for certain offences which include possession, manufacturing or selling of knives or offensive weapons. The provisions introduce a standard set of maxima – 12 months' imprisonment and/or a £5000 fine where a person is convicted in a magistrates' court; or 4 years and/or an unlimited fine for convictions in the Crown Court.

3.147 These include offences relating to crossbows; having a knife etc in a public place or on school premises ; possessing an offensive weapon; a number of offences around the manufacture, sale or unlawful marketing of knives; and selling a knife to a person under-18.

Article 91: Driving Disqualification for any offence

3.148 This Article provides courts with the power to disqualify an offender from driving on conviction of any offence – not only a motoring offence. Disqualification can be in addition to or instead of any disposal which the court might choose to impose (Article 91(1)).

3.149 Requirements upon the offender to produce his licence within 7 days are provided (Article 91(4)); procedures around the removal of disqualifications (Article 91(5)); and definitions (Article 91(7)) are also included.

Proving execution of arrest warrants

Article 92 Jurisdiction of magistrates' court in relation to proving execution of arrest warrant

3.150 This Article provides new powers in respect of three specific types of arrest warrant to enable a wider range of magistrates' courts to hear the proving of the execution of those warrants. The three types of warrant are those provided by Articles 20 and 25 of the Magistrates' Courts (NI) Order 1981 and Article 6 of Criminal Justice (NI) Order 2003.

3.151 The powers enable the execution of those warrants issued by a lay magistrate or resident magistrate or a magistrates' court in one County Court Division to be proven in a magistrates' court in the County Court Division of arrest or in a magistrates' court in a Division adjoining the County Court Division of arrest. The court will have no jurisdiction to deal with the case other than as follows: it will be able to hear the proving of the execution of the arrest warrant; it may hear a legal aid application in connection with same; and it may remand the arrested person either on bail or in custody to appear again at a court sitting in the County Court Division which issued the arrest warrant.

Anti-Social Behaviour Orders

Articles 93 and 94: Applications for interim order and Special measures for witnesses in proceedings for anti-social behaviour orders

3.152 These articles provide additional powers around anti-social behaviour laws. Article 93 allows for an interim “ASBO” to be applied for without notice being given to the defendant. Such interim orders are preliminary to a full order where the defendant will be present and have the case heard.

3.153 Article 94 makes a minor technical amendment to the rule making powers under the Anti-social Behaviour (Northern Ireland) Order 2004 to allow rules relating to special measures in criminal proceedings to be modified and applied to ASBO proceedings.

Youth Justice

Article 95: Rehabilitation of Offenders

3.154 This Article amends the Rehabilitation of Offenders (Northern Ireland) Order 1978 to specify rehabilitation periods for youth conference orders, reparation orders, and community responsibility orders (all introduced under the Justice (Northern Ireland) Act 2002). The rehabilitation period specified for each sentence begins with the date of conviction and ends one year after the date on which the order ceases or ceased to have effect. The power will apply to both current and future periods of rehabilitation.

Article 96: Custody of children over the age of 17

3.155 This article provides for children under the age of 18 who require custody – either sentenced or on remand – to be accommodated in appropriate circumstances at a juvenile justice centre rather than a young offenders centre.

3.156 Two articles of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9), which set out the circumstances in which a child can be either remanded to custody (Article 13) or sentenced to serve a juvenile justice centre order (Article 39) are amended. The overall effect is to allow the court to send vulnerable 17 year olds to a Juvenile Justice Centre which is more suited to their needs than a young offenders centre.

Article 97: Remands by Youth Court

3.157 This article is a re-enactment of existing powers in relation to youth court remands. The existing power resides in Article 4 of the Criminal Justice (Northern Ireland) Order 1998 being repealed to allow consolidation of “live links” legislation in Articles 78 and 79. The existing youth court remand powers are consequently now being re-enacted.

Article 98: Youth Conference Orders

3.158 This article clarifies the duration for which a Youth Conference Order will remain in force. It amends Article 36J of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9), by the insertion of new paragraph (2A) which confirms that the youth conference order will remain in force until the offender has complied with all the requirements as outlined in the agreed youth conference plan, or those amended by the order. This will provide a clear legislative definition as to when the youth conference order remains in force, which is not currently the case.

Article 99: Welfare of Children

3.159 The Article amends two articles of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9). First, the revised wording in Article 33 of the 1998 Order extends the powers of a court to notify the appropriate authority regarding the welfare of any child brought before that court, and at any time. Previously, it could only do so under specified conditions.

3.160 The second amendment sees the repeal of Article 43 of the 1998 Order, which had the effect of suspending any care order whilst a child was serving a juvenile justice centre order. Withdrawing this article allows for a continuum of care and joint planning to best meet children’s needs.

Part 6 – Supplementary

Article 100: Regulations, orders and rules

3.161 This article provides that any regulations, order or rules made by the Secretary of State under the Order shall be subject to negative resolution procedure (annulment by resolution of either House of Parliament). They will be laid in Parliament before coming into force. Regulations, orders and rules made by the Secretary of State under the Order may contain such incidental, supplementary, consequential, transitory, transitional or savings provisions which the Secretary of State considers necessary or expedient.

Article 101: Supplementary and Consequential Provision, etc.

3.162 This article provides that the Secretary of State may by Order make any supplementary, incidental or consequential provisions and any transitory transitional or savings provisions which the Secretary of State considers necessary or expedient. Orders made under this provision will allow the implementation, phasing in and transitional application of the draft Order's powers

Article 102: Amendment and Repeals

3.163 This article sets out in Schedule 5 the effect of minor and consequential amendments occasioned by the Order. Schedule 6 sets out those provisions which are repealed as a consequence of the Order

Schedules

Schedule 1: Serious Offences

3.164 This Schedule defines 'serious offence' for the purposes of the dangerous offenders chapter (Chapter 3). The serious offences listed are those offences that have a maximum penalty of 10 years or more and can engage the Indeterminate Custodial Sentence or Extended Custodial Sentence for the purposes of conviction. Offences under 22 pieces of primary legislation are listed in the Schedule along with 8 other serious offences under common law.

3.165 Offences that are listed as serious offences in Schedule 1 include attempted murder, rape, manslaughter, kidnapping, offences against the person and offences under the Sexual Offences Act 2003. Paragraph 33 provides for offences of aiding, abetting, counselling, procuring or inciting the commission of any offence under the Schedule or conspiring or attempting to commit such an offence.

Schedule 2: Specified Offences

3.166 This Schedule defines specified violent offences and specified sexual offences for the purposes of the dangerous offenders chapter (Chapter 2). Where the specified offence is also a serious offence, the offence can engage the ICS or ECS. Where the specified offence is not also a serious offence (i.e. it is listed only in Schedule 2) the offence can only engage the ECS.

3.167 This Schedule is split into Part 1 dealing with specified violent offences and Part 2 dealing with specified sexual offences. Offences under 22 pieces of primary legislation are detailed in Part 1 along with 6 other offences under common law. Offences classified as specified violent offences include the serious violent offences listed in Schedule 1 along with additional offences.

3.168 Part 2 lists specified sexual offences under 12 pieces of primary legislation, along with the additional offences of rape and indecent assault upon a female. Offences listed as specified sexual offences include the serious sexual offences listed in Schedule 1 along with additional offences. For both specified violent offences and specified sexual offences it is an offence to aid, abet, counsel, procure or incite the commission of any offence under their respective Parts or to conspire or attempt to commit such an offence.

Schedule 3 Supervised Activity Orders: further provisions

3.169 Schedule 3 sets out in more detail the operation and procedures for the Supervised Activity Orders. The court can only make a supervised activity order if it is satisfied that the necessary arrangements exist (1).

3.170 When an offender is given more than one supervised activity order the court can direct that the requirements run concurrently or consecutively but they cannot exceed the maximum limits for the number of hours – 50 hours for a fine £200 or less, 100 hours in any other case (2). The court must provide copies of the order to the probation officer assigned to the court whose responsibility it is to then provide copies to the offender and the supervising officer in the offender's petty session district. If necessary, the court must also send copies to that court (3(4))

3.171 The supervising officer must explain to the offender the purpose, effect and obligations of the order (3(5)); the consequences of failure to comply with the requirements of the order (3(5)(b)); and the power of the court to review the order on application by the offender or the probation officer (3(5)(c)).

3.172 An offender serving a supervised activity order must report to the supervising officer and notify the officer of any change in address or hours or times of work ((4)(1); the order must be carried out within twelve months; but shall remain in force until the specified number of hours have been completed ((4)(2)). Any instructions given by the supervising officer should if possible avoid conflict with the offender's religious beliefs, hours of work or education ((4)(3)).

3.173 Paragraph 5 provides arrangements to deal with non-compliance of the order. If a lay magistrate concludes that the offender has failed to comply with the order or with the instructions of the supervising officer he may issue a summons or a warrant for the offender's arrest ((5)(1)). The court may revoke the order and impose a sentence of 30 days imprisonment in the case of the Crown Court and 20 days in the case of a magistrates' court. This represents a heavier penalty than if the offender had originally been given a sentence of imprisonment on default.

3.174 Paragraph 6(1) gives the court powers to amend the supervised activity order on the application of the offender or the supervising officer. The court can: extend the 12 month period in which the order is to be completed; vary the number of hours specified in the order subject to the limits set out in Article 45; revoke the order or revoke it and impose specified terms of imprisonment ((6)(1)(d)). In appropriate circumstances the court may also change the petty sessions district specified in the order ((6)(2)). When exercising any of these powers, with the exception of the ability to revoke the order, when the offender has not made the application the court must summon the offender before the court and issue a warrant if the offender does not appear ((6)(3)).

3.175 Paragraph 7 allows the Secretary of State to make rules regulating the requirements of supervised activity orders ((6)(1)). Such rules may: limit the numbers of hours per day during which requirements must be met; provide for the calculation of time; make provision for types of activity to be available; make provision for travelling and other expenses to be covered; provide for records to be kept ((7)(2)). Paragraph 8 defines the appropriate court by linking the term to the court that makes the original order.

Schedule 4: Parole Commissioners

3.176 Schedule 4 sets out the arrangements for the appointment of Commissioners. It describes their appointment, tenure, remuneration and allowances, rules for the allocation of proceedings and annual reports. It gives the Secretary of State power to appoint a Chief Commissioner and a Deputy Chief Commissioner from among the Commissioners as well as providing the Commissioners with staff, premises and facilities.

3.177 The Secretary of State must also ensure as far as practicable that the body of Commissioners includes: at least one person who holds or has held judicial office in the United Kingdom, or has appropriate legal qualification; at least one psychiatrist; at least one chartered psychologist; at least one person with experience of post-release supervision or care; one who has knowledge or experience of working with victims of crime and at least one person who has made a study of the causes of delinquency or the treatment of offenders.

3.178 A Commissioner may only be dismissed by the Secretary of State in specified circumstances and after consultation with the Lord Chief Justice. The Chief Commissioner is required to prepare an annual report at the end of each financial year and lay it before the Houses of Parliament.

3.179 The Secretary of State may make rules governing the proceedings of the Commissioners. The rules may provide for the allocation of proceedings to panels of Commissioners and for the taking of specified decisions by a single Commissioner. The rules may also make provision about evidence and information; may provide for proceedings to be held in private except where the Commissioners direct otherwise; and may permit commissioners to exclude the prisoner and his representatives from proceedings in certain circumstances. When the prisoner and his representative are excluded, the Attorney General may appoint a person, who will not be responsible to the prisoner, to independently represent the prisoner's interests.

Schedule 5: Amendments

3.180 This Schedule provides for amendments to 11 pieces of primary legislation for the purposes of this Order.

3.181 A technical amendment is made to The Treatment of Offenders Act (Northern Ireland) Act 1968 to ensure that consecutive terms are not treated as a single term if the offender has been released on licence under the Order and then sentenced to another offence.

3.182 For the purposes of rehabilitation of offenders legislation, the ICS and ECS are to be treated as never being spent and must be declared as required. Nor can they be combined with absolute or conditional discharge proposals.

3.183 A number of amendments are made to reflect the Parole Commissioners provisions. The Parole Commissioners are included in the list of people disqualified from holding office in the Northern Ireland Assembly. The Justice (Northern Ireland) Act 2002, the Life Sentences (Northern Ireland) Order 2001, the Mental Health (Northern Ireland) Order 1986 and the Access to Justice (Northern Ireland) Order are all amended to change the definition of 'the Commissioners' in the legislative provisions from the Life Sentence Review Commissioners to the Parole Commissioners for Northern Ireland.

3.184 A number of technical amendments are made to the Repatriation of Prisoners Act 1984 to incorporate non-dangerous offenders released on licence under the Order. The provisions allow the Secretary of State to set licence conditions in the case of a repatriated offender serving a sentence of less than 12 months under the sentencing powers in the Order.

3.185 The Mental Health (Northern Ireland) Order 1986 is amended to allow the court to order an admission to hospital or guardianship where it would otherwise have imposed an ICS or ECS.

3.186 The Criminal Justice Act 1988 is amended to bring ICS and ECS sentences into the review powers given to the Attorney General. If the Attorney General considers that an ICS or ECS has been unduly lenient, he may refer the case to the Court of Appeal.

3.187 A number of amendments are made to the Criminal Justice (Northern Ireland) Order 1996 to reflect the new sentencing powers. The sentences for public protection are disapplied from the provisions relating to absolute and conditional discharge and those relating to community sentences. For the purposes of legislative consolidation, juvenile justice orders and custody care orders are brought into the custodial sentences provisions, as the equivalent provisions in the 1996 Order are being repealed.

3.188 The Sexual Offences Act 2003 is amended to include those sentenced to an ICS for sexual offences in the category of offenders required to notify the police about certain matters for an indefinite period.

Schedule 6 Repeals

3.189 Part 1 deals with repeals arising from the sentencing provisions. The main features are around repeals from the Criminal Justice (NI) Order 1996, the Life Sentences (NI) Order 2001 and the Treatment of Offenders (Northern Ireland) Order 1976. Repeals from the 1996 Order arise through the adjustment, re-enactment and consolidation of certain sentencing principles and procedural arrangements around custodial sentences into the current proposed draft Order. They also provide for the existing custody probation order and sex offender licence disposal to be replaced with the new form of imprisonment and release on licence without remission. Both the custody probation order and sex offender licence will continue to exist for previous offences. Part 2 of the 2001 Order, which creates Life Sentence Review Commissioners, is repealed to allow them to be replaced by Parole Commissioners. The 1976 Order, which related to arrangements around remission, is repealed due to the creation of the new sentencing powers.

3.190 Part 2 covers repeals to allow a number of provisions to come into force within one month of the draft proposed Order being made. These include repeals to allow adjusted PACE powers, youth justice provisions, ASBO and legal aid provision to be effected. Part 3 repeals allow the new prisons powers to be effected. Part 4 deals with repeals concerning live links including allowing the consolidation of existing live link legislation within the draft Order.