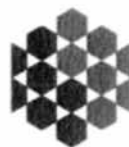


FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
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Our ref SUB/986/2015

Christine Darrah  
Clerk to the Justice Committee  
Northern Ireland Assembly  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

20 August 2015

Dear Christine

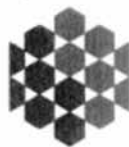
**JUSTICE (No. 2) BILL: DELEGATED POWERS MEMORANDUM**

Please find attached a copy of the Delegated Powers Memorandum as prepared by the Department to assist the Justice Committee in its considerations of the Justice (No.2) Bill.

This document identifies the provisions of the Bill (as introduced) which confer powers to make delegated legislation, explaining in each case why the power has been taken and the nature of, and reason for, the procedure selected.

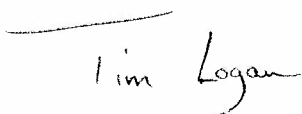
The Committee will recall that it is our intention to review clause 45 of the Bill in light of changes made to similar provisions at clause 86 of the Justice Act 2015.

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**  
[www.dojni.gov.uk](http://www.dojni.gov.uk)

The Minister of Justice trusts that the Committee finds this useful as it reviews and takes evidence on the proposed Justice (No. 2) Bill.

A handwritten signature in black ink that reads "Tim Logan". The signature is written in a cursive style with a horizontal line above the first name.

**TIM LOGAN**  
**DALO**

Enc: Delegated Powers Memorandum

**DELEGATED POWERS MEMORANDUM**  
**JUSTICE (No.2) BILL**

**INTRODUCTION**

1. The purposes of this Bill are to:
  - a) improve current arrangements for the collection and enforcement of financial penalties;
  - b) place the Prison Ombudsman for Northern Ireland on a statutory footing;
  - c) improve lay visiting arrangements in police stations;
  - d) expand the offence of possession of extreme pornographic images; and
  - e) provide for the early removal of prisoners from the United Kingdom.
  
2. The Bill has 4 Parts and 3 Schedules. Part 1 and Schedules 1 and 2 introduce a new approach to the collection of fines and other financial penalties with a view to increasing current payment rates; minimising the involvement of police in enforcement; and reducing the numbers of committals for default.
  
3. Provision is made for the courts to impose 'collection orders' specifying how the sums imposed are to be paid. If these orders are not complied with, 'collection officers' will be able to exercise a range of powers to secure their payment. It is intended that much of the detail to support these new arrangements will be set out in secondary legislation.

4. Part 2 and Schedule 3 contain provisions to place the Prison Ombudsman for Northern Ireland on a statutory footing. It sets out the Ombudsman's main functions and powers, and specifies the circumstances in which a complaint may be made, and the procedure for the Ombudsman's investigations.
5. Part 3 allows for lay visitors in all police stations, increases the ambit of the offence of possession of extreme pornographic images and allows for the removal from the United Kingdom of prisoners who are nearing their release date.
6. Part 4 deals with supplementary matters.
7. The Bill contains a number of delegated powers which are, in all but one instance, to be exercised by the Department of Justice (The power to make regulations in clause 11(1) is exercisable by the Department for Social Development).
8. This memorandum identifies the delegated powers in the Bill. It seeks to explain, in each case, the purpose of the power, the reason why the Department considers its subject matter to be suitable for delegated legislation, and the nature of and reason for the Assembly procedures that apply.

## SUMMARY OF DELEGATED PROVISIONS

<u>Clause</u>	<u>Purpose of delegated legislation</u>	<u>Type of delegated legislation</u>	<u>Assembly procedure</u>
2(3)	To make further provision about collection officers.	Regulations	Draft laid before and approved by resolution of the Assembly
6(12)	To specify the meaning of 'earnings' in clause 6(3).	Regulations	Negative resolution
10(7)	To add or remove a benefit to or from the list of relevant benefits in clause 10(3).	Order	Draft laid before and approved by resolution of the Assembly
11(1)	To make the provisions specified in relation to deduction from benefit payments	Regulations (made by the Department for Social Development)	Negative resolution
11(2)	To make the provisions specified in relation to deduction from benefit payments	Regulations	Negative resolution
13(4)	To make provision as specified in relation to the content of attachment of earnings orders	Regulations	Negative resolution
13(6)	To specify the meaning of 'earnings' for the purpose of clause 13	Regulations	Negative resolution
14(2) and (3)	To specify the period within which a statement of earnings must be provided, and the content thereof.	Regulations	Negative resolution
15(5)	To specify the form to be used by the debtor in making a request for the	Regulations	Negative resolution

	release of funds.		
15(6)	To make further provision in relation to interim bank account orders.	Regulations	Negative resolution
16(3)	To make further provision in relation to hardship payment orders.	Regulations	Negative resolution
17(4)	To specify the minimum credit balance to be maintained when a bank account order is made.	Regulations	Negative resolution
17(7)	To make further provision in respect of bank account orders.	Regulations	Negative resolution
18(1)	To make provision in relation to the sale or disposal of vehicles; and in relation to the application of the proceeds of sale when a vehicle seizure order is made.	Regulations	Negative resolution
18(4)	To make additional provision as to vehicles in respect of which a vehicle seizure order may not be made.	Regulations	Negative resolution
18(6) and (7)	To make further provision in relation to vehicle seizure orders.	Regulations	Negative resolution
24, new Article 45(5)	To amend the amount of the penalty in respect of which a supervised activity order may be made, or the number of hours to be completed under an order.	Order	Draft laid before and approved by resolution of the Assembly
30(5)	To amend the conditions for an investigation into a complaint to the Prison Ombudsman.	Regulations	Draft laid before and approved by resolution of the Assembly

30(13)	To make provision for procedures to be followed in connection with making and investigating a complaint to the Prison Ombudsman.	Regulations	Negative resolution
31(7)	To make provision in relation to procedures to be followed in relation to the Prison Ombudsman's reports under clause 31.	Regulations	Negative resolution
33(7)	To make provision in relation to procedures to be followed in relation to the Prison Ombudsman's reports under clause 33.	Regulations	Negative resolution
35(3)	To make provision in relation to procedures to be followed in relation to the Prison Ombudsman's reports under clause 35.	Regulations	Negative resolution
43(4)	To amend the number of days before the completion of the custodial period within which a person may be removed from prison under clause 43.	Order	Draft laid before and approved by resolution of the Assembly
45(1)	To make supplementary, incidental, consequential, transitory, transitional or savings provision as considered appropriate.	Order	Draft laid before and approved by resolution of the Assembly if any Act of Parliament or Northern Ireland legislation is amended or repealed.  Negative resolution otherwise.

47(2) and (3)	To bring provisions of the Act into operation.	Order	No procedure
Sch 1, para 4	To permit an employer, in complying with an attachment of earnings order, to deduct specified clerical and administrative costs from the debtor's earnings.	Regulations	Negative resolution
Sch 1, para 6(3)	To specify changes in circumstances to be considered in a decision whether or not to vary an attachment of earnings order.	Regulations	Negative resolution
Sch 1, para 7(5)	To specify circumstances in which an attachment of earnings order fails.	Regulations	Negative resolution
Sch 1, para 7(6)	To specify the circumstances in which an attachment of earnings order may be discharged on the court's or collection officer's own motion.	Regulations	Negative resolution
Sch 1, para 10	To make further provision in relation to attachment of earnings orders.	Regulations	Negative resolution



## **PART 1, CHAPTER 1: COLLECTION OF FINES ETC.**

### **Clause 2(3): Collection officers**

#### **Purpose of delegated legislation**

9. Collection officers will be civil servants designated as such by the Department of Justice (clause 2(1)).
10. Under clause 2(2), collection officers' functions will be to provide information and advice and to ensure that "collection orders" are complied with.
11. In this regard, if the subject of a collection order fails to comply with it, a collection officer will be able to exercise his or her powers to collect the penalty. As detailed in clauses 5-7, these powers include gathering information from the debtor; allowing him extra time to pay; allowing payment by instalments; making an application for deductions from benefits; making an attachment of earnings order; making an interim bank account order; or referring the matter back to the court.
12. Clause 2(3) confers a regulation-making power on the Department of Justice to make further provision about collection officers and in particular to confer or impose functions on them.

#### **Reason for delegated legislation**

13. The creation of collection officers is seen as a significant change from current arrangements for dealing with default in the payment of financial penalties, which rely heavily on court and police enforcement. Collection officers will be central to the civilianised regime of collection introduced by the Bill.
14. The operation of the scheme, which will be monitored, has the potential to require development and improvement in light of operational experience. This delegated power will allow the Department the

flexibility to make adjustments in relation to collection officers, and in particular to their role and powers, as may be considered necessary or desirable.

### **Assembly control**

15. By virtue of clause 46(3), regulations under clause 2(3) may not be made unless a draft of them has been laid before, and approved by resolution of, the Northern Ireland Assembly.
16. Due to the subject matter of the clause, the Department considers any order made under the delegated power should be the subject of Assembly debate.

### **Clause 6(12) – Meaning of “earnings”**

#### **Purpose of delegated legislation**

17. Clause 6 makes detailed provision as to the collection officer’s powers to deal with default on payment under a collection order, which include a range of new options.
18. One of these will be an attachment of earnings order, which could be made if it appears to the collection officer that the debtor is receiving or expecting to receive “earnings” (under clause 6(3)).
19. Clause 6(12) provides that “earnings”, in subsection (3), has such meaning as may be specified in regulations.

#### **Reason for delegated legislation**

20. The Bill makes further delegated provision in respect of attachment of earnings orders at clauses 13, 14 and Schedule 1. As the definition of “earnings” will be detailed and ancillary to this clause, it was considered appropriate to make provision for it also to be included in regulations.

### **Assembly control**

21. By virtue of clause 46(4), these regulations will be subject to the negative resolution procedure in the Assembly. This is considered appropriate due to the incidental nature of the regulations which are required.

### **Clause 10(7) – Deductions from benefits – relevant benefits**

#### **Purpose of delegated legislation**

22. Clause 10 makes provision in relation to applications for deductions from benefits for the purpose of discharging a financial penalty.
23. Clause 10(3) lists the welfare benefits from which it will be possible to make such deductions as being: income support; jobseeker's allowance; state pension credit; and employment and support allowance.
24. Clause 10(7) confers an order-making power on the Department of Justice to amend the list of relevant benefits found in clause 10(3).

#### **Reason for delegated legislation**

25. It is considered appropriate for the Department to have a limited and specific power to add to or remove from the list of relevant benefits and that this may be done by order. This will allow flexibility for appropriate amendments to be made if, for example, any of the relevant benefits listed in clause 10 become redundant, or new benefits which it is considered should be included are introduced.

### **Assembly control**

26. By virtue of clause 46(5), any order under clause 10(7) may not be made unless a draft of it has been laid before, and approved by a resolution of, the Assembly. Since this delegated power allows

amendments to be made to the primary provision, the Department considers it appropriate that any exercise of the power should be the subject of Assembly debate.

### **Clause 11 – Deduction from benefits: further provision in regulations**

#### **Purpose of delegated legislation**

27. Clause 11 provides for regulations to be made in respect of applications for deductions from benefits, and outlines what, in particular, the regulations may provide for.
28. Under clause 11(1), regulations made by the Department for Social Development (by virtue of clause 46(2)) may make provision as to:
  - the making of deductions from benefits;
  - the deduction amounts;
  - the priority between collection order deductions and other deduction orders;
  - the cessation of deductions; and
  - notifications to the debtor of deductions made.
29. Under clause 11(2) regulations made by the Department of Justice (clause 46(1)) may provide:
  - for the contents of an application; and
  - that the debtor and Department for Social Development must be notified where the full amount has been paid.

#### **Reason for delegated legislation**

30. Regulations under clause 11 will make detailed provision in relation to the procedures for, and associated with, deductions from benefits. It is considered appropriate that this level of detail should be dealt with in

regulations, the statutory framework allowing deductions to be made for the payment of financial penalties having been provided in the Bill. This will also retain consistency with existing Department for Social Development powers to make provision in regulations in relation to deductions from benefits.

### **Assembly control**

31. By virtue of clause 46(4), these regulations will be subject to the negative resolution procedure in the Assembly. This is considered appropriate due to the procedural and ancillary nature of the information to be included in the regulations.

### **Clause 13(4) and (6) – Attachment of earnings order**

#### **Purpose of delegated legislation**

32. Clause 13 makes provision in relation to attachment of earnings orders.
33. Clause 13(4) provides that an attachment of earnings order must –
  - contain particulars specified in regulations enabling the debtor to be identified by the employer;
  - contain particulars specified in regulations of the amount to be recovered by the order;
  - specify the rate calculated in accordance with regulations as the rate at which amounts are to be deducted from the debtor's earnings;
  - specify to whom payments are to be made;
  - contain information about how to contact the collection officer; and
  - contain such other information as may be specified in regulations.

34. Clause 13(6) provides for “earnings” to have such meaning as is specified in regulations.

#### **Reason for delegated legislation**

35. The power allowing attachment of earnings orders to be made, for the purpose of the collection of financial penalties, is provided for at clauses 4 and 6, while clause 13 and Schedule 1 set out the overarching framework for the orders. The items identified in clause 13(4) for inclusion in regulations will be of a detailed nature specific to the content of an attachment of earnings order. Similarly, the definition of “earnings”, which is to be specified in regulations by virtue of clause 13(6), will be detailed and specific to this clause. It is considered appropriate that these matters be included in regulations, the framework for the orders having been set out in the primary provision.

#### **Assembly control**

36. By virtue of clause 46(4), these regulations will be subject to the negative resolution procedure in the Assembly. This is considered appropriate, due to the detailed and incidental nature of the information intended to be included in the regulations.

### **Clause 14(2) and (3) – Statement of earnings**

#### **Purpose of delegated legislation**

37. Clause 14(1) and (4) provide that where an attachment of earnings order is being proposed, or at any time after one has been made, the court or collection officer may give a direction under subsection (2) or (3) of this clause.
38. A direction under clause 14(2) requires the debtor to provide, within a period specified in regulations, a statement of-
- the name and address of his employer;

- particulars specified in regulations of his actual and expected earnings, resources and needs;
  - particulars specified in regulations of any matter which is or may be relevant to the determination of the rate of deduction from his earnings; and
  - particulars specified in regulations enabling the debtor to be identified by his employer
39. A direction under clause 14(3) requires the debtor's employer to provide, within a period specified in regulations, a statement of particulars specified in regulations of the debtor's actual or expected earnings.

#### **Reason for delegated legislation**

40. The purpose of the regulations made under this clause will be to detail the time within which a statement of earnings (required under clause 14) must be provided, and the exact information which is to be provided. It is considered appropriate to make detailed ancillary provision of this nature in regulations.

#### **Assembly control**

41. By virtue of clause 46(4), these regulations will be subject to the negative resolution procedure in the Assembly. This is considered appropriate due to the detailed and incidental nature of the information intended to be included in the regulations.

### **Clause 15(5) and (6) – Interim bank account order**

#### **Purpose of delegated legislation**

42. An interim bank account order may be made by a collection officer, together with a referral to the court, where he has been unable to

recover the penalty using any of his other powers, but believes that the debtor has funds in a bank account (or similar) (clause 6(5)).

43. Under clause 15(1) an interim bank account order requires a deposit-taker to freeze the sum specified in the order in the debtor's account. If the credit balance is already below the sum specified in the order, then it must not be reduced any further.
44. Clause 15(2) provides that, where the debtor instructs that the frozen amount be released in order to pay the sum due to the court, the deposit-taker must allow the release of those funds for that purpose, unless there are exceptional circumstances.
45. Under clause 15(3), when the court receives payment of the full amount, the collection officer must discharge the interim bank account order and inform the court and the deposit-taker. If the full sum owing is paid, no further action will be taken, but where the full sum is not paid, the matter will proceed to hearing where the court will have the options set out in clause 9 open to it to recoup the outstanding amount (clause 15(4)).
46. Clause 15(5) requires regulations to specify the form to be used under clause 15(2) for a request to release funds.
47. Clause 15(6) allows regulations to make further provision in relation to interim bank account orders, in particular-
  - enabling a collection officer to require specified information from a deposit-taker;
  - regarding the contents of the interim order,
  - as to the service of an interim bank account order, and arrangements for the hearing of the referral; and



- enabling the deposit-taker to impose administrative charges of a specified amount and description in relation to costs incurred in complying with the order.

### **Reason for delegated legislation**

48 Regulations under clause 15 will make detailed provision in relation to the procedures for, and associated with, making bank access orders. It is considered appropriate that this level of detail should be dealt with in regulations, the framework for the orders having been set out in the primary provision.

### **Assembly control**

49 By virtue of clause 46(4), these regulations will be subject to the negative resolution procedure in the Assembly. This is considered appropriate due to the procedural and incidental nature of the information to be included in the regulations.

### **Clause 16(3) – Hardship payments**

#### **Purpose of delegated legislation**

50 Clause 16(1) and (2) allow the debtor, when an interim bank account order is in place, to apply in writing to the collection officer for a payment out of the frozen amount if he or his family is suffering hardship as a result of the imposition of the order. If the collection officer approves such an application, the deposit-taker will be instructed to make such payments as the collection officer specifies.

51 Clause 16(3) provides for regulations to make further provision in relation to hardship orders, and in particular to make provision as to-

- the matters to be included in an application for a hardship order;
- the procedure to be followed when making the application;

- the matters which the collection officer must take into account when determining an application for a hardship order;
- the procedure to be followed when determining the application;
- the contents of a hardship payment order; and
- service of a hardship payment order.

### **Reason for delegated legislation**

52 Regulations under clause 16 will make detailed provision in relation to the procedures for making applications for hardship payment orders. It is considered appropriate that this level of detail should be dealt with in regulations, the framework for the orders having been set out in the primary provision.

### **Assembly control**

53 By virtue of clause 46(4), these regulations will be subject to the negative resolution procedure in the Assembly. This is considered appropriate due to the procedural and incidental nature of the information to be included in the regulations.

### **Clause 17(4) and (7) – Bank account order**

#### **Purpose of delegated legislation**

54 Under clause 9, a court may make a bank account order, whether the collection officer has made an interim bank account order or not.

55 Clause 17 makes further provision in respect of bank account orders. Under clause 17(1), the deposit-taker to whom the order is directed must pay the amount specified out of the debtor's account to the court.

56 Under clause 17(2), where the order has been preceded by an interim bank account order, only the sum specified on the interim order is to be

paid to the court, but where the court makes a bank account order of its own motion, the court will determine the amount to be paid.

- 57 Clause 17(3) provides that the release of funds under a bank account order discharges the deposit-taker's liability to the debtor for that amount.
- 58 Clause 17(4) provides for a minimum account balance, to be specified in regulations, below which an account cannot be reduced.
- 59 Under clause 17(5), if the outstanding amount is paid, the order must be discharged, and the court and deposit-taker notified accordingly.
- 60 Clause 17(7) allows regulations to make further provision in respect of bank account orders, and in particular to-
- make provision requiring the deposit-taker to provide information of a specified description to the court;
  - make provision as to the content of a bank account order;
  - make provision as to the service of a bank account order;
  - make provision enabling a deposit-taker to impose administrative charges of a specified amount or description in relation to costs it incurs in complying with a bank account order

### **Reason for delegated legislation**

- 61 Regulations under clause 17 will make detailed provision in relation to bank account orders. It is considered appropriate that this level of detail should be dealt with in regulations, the framework for the orders having been set out in the primary provision.

### **Assembly control**

- 62 By virtue of clause 46(4), these regulations will be subject to the negative resolution procedure in the Assembly. This is considered

appropriate due to the incidental nature of the information to be included in the regulations.

### **Clause 18(1), (4), (6) and (7) – Vehicle seizure order**

#### **Purpose of delegated legislation**

- 63 A court may make a vehicle seizure order under clause 9.
- 64 Clause 18 sets out the key features of vehicle seizure orders: Clause 18(1) provides that a vehicle seizure order allows a debtor's vehicle to be sold, or otherwise disposed of in accordance with regulations, and that any proceeds of sale are to be applied in accordance with regulations to secure payment of the outstanding financial penalty.
- 65 Clause 18(2) provides that only police officers or a person authorised by the Department of Justice may seize, remove, secure and store the vehicle.
- 66 Under clause 18(3), when the collection officer makes a referral to the court under clause 6(6) requesting a vehicle seizure order, he must attend at the hearing in order to give any evidence that the court may require.
- 67 Clause 18(4) specifies the classes of vehicle in respect of which an order may not be made. These are those vehicles which-
- have a disabled person's badge on display;
  - are used for the carriage of a disabled person;
  - are used by the police, ambulance, fire and rescue services;
  - are used by medical practitioners on call; and
  - are of any other description as may be specified in regulations.
- 68 Regulations may be made under clause 18(6) to make further provision in relation to vehicle seizure orders, and these may, in particular-

- specify the matters which a collection officer must take into account before making a request for this order;
- specify the matters which the court must take into account before making an order;
- specify the matters to be included in the order;
- provide that the vehicle may not be sold before the end of a specified period from the making of the order;
- make provision in relation to the removal, securing and storage of the vehicle;
- make provision enabling the release of a vehicle stored in reliance on a vehicle seizure order; and
- make provision to protect the interests of any innocent third parties in the vehicle.

69 Clause 18(7) makes provision for further detail to be included in regulations made under clause 18(6)(f) relating to the release of the vehicle and, in particular, to include a condition requiring the payment of charges of a specified amount or description.

#### **Reason for delegated legislation**

70 Regulations under clause 18 will make detailed provision in relation to vehicle seizure orders. It is considered appropriate that this level of detail should be dealt with in regulations, the framework for the orders having been set out in the primary provision.

#### **Assembly control**

71 By virtue of clause 46(4), these regulations will be subject to the negative resolution procedure in the Assembly. This is considered appropriate due to the detailed and incidental nature of the information to be included in the regulations.

## **Clause 24 – Supervised activity orders**

### **Purpose of delegated legislation**

- 72 Clause 24(1) substitutes a new Article 45 into the Criminal Justice (Northern Ireland) Order 2008 (Supervised activity orders).
- 73 Under the 2008 Order, supervised activity orders (a community-based alternative to prison in default of payment) were only available in respect of unpaid fines up to a maximum value of £500. New Article 45(1) increases the scope of the supervised activity order by allowing it to be imposed in respect of “sums adjudged to be paid by or imposed on conviction”, up to a maximum amount of £1,000.
- 74 New Article 45(4) sets the minimum number of hours’ activity which may be ordered (10 hours) and the maximum number of hours according to the outstanding amount of the penalty (ranging from 50-150 hours).
- 75 New Article 45(5) allows the Department of Justice to amend, by order, the maximum amount in respect of which a SAO may be made as well as any of the maximum numbers of hours specified in the preceding paragraph.

### **Reason for delegated legislation**

- 76 This order making power will allow the Department of Justice the flexibility to amend the maximum amount in respect of which a supervised activity order may be made, and the maximum numbers of hours’ activity which may be ordered. This would allow for further expansion in the use of supervised activity orders for higher value penalties, if this was thought to be appropriate, without the need to await primary legislation to amend the relevant values. It is considered suitable that this could be done by Departmental order due to the limited and specific nature of the power.

## **Assembly control**

- 77 As this order-making power is contained within the new Article 45 which will be substituted into the Criminal Justice (Northern Ireland) Order 2008, the Assembly control for any exercise of the power will be that required under the 2008 Order, which, at present, under Article 100 of that Order, is the negative resolution procedure.
- 78 The Department now takes the view that, since this delegated power allows amendments to be made to the primary provision, it is appropriate that any exercise of the power should be the subject of Assembly debate. Accordingly clause 24(10) amends Article 100 of the 2008 Order so that no order made under Article 45(5) shall be made unless a draft has been laid before and approved by a resolution of the Assembly.

## **PART 2: THE PRISON OMBUDSMAN FOR NORTHERN IRELAND**

### **Clause 30(5) and (13) – Complaints**

#### **Purpose of delegated legislation**

- 79 Clause 30 makes provision requiring the Prison Ombudsman to investigate complaints (sub-section (1)).

Subsection (2) provides that the section will apply to complaints, where internal complaints mechanisms have been exhausted, made by a person entitled to complain, about:

- the way in which a prisoner was treated by a prison officer;
- the way in which a visitor was treated by a prison officer;
- the facilities available at a prison;
- the cleanliness and adequacy of a prison.

- 80 Sub-section (3) provides that a prisoner or a visitor or, where that person has died or is unable to act, an appropriate person may bring a complaint.
- 81 Sub-section (5) allows for regulations to amend what complaints may be made about, who may make them or to make any other amendments to Part 2 which may flow from these.
- 82 Clause 30(6) provides for circumstances where the Ombudsman may decide not to conduct an investigation, while subsection (7) allows for the deferral of investigations in certain scenarios. Subsection (8) allows the Ombudsman to reopen a deferred investigation at any time, while subsection (9) allows him to decide the extent of that investigation.
- 83 Where the Ombudsman decides not to investigate a complaint, defers the investigation or reopens a deferred investigation then he must notify the complainant (or the appropriate person acting on their behalf) with reasons as to his decision (subsection (10)). Under subsection (11), such notifications may be given orally.
- 84 Subsection (13) provides that regulations may make provision for the procedures to be followed when making and investigating a complaint to which this section applies.

#### **Reason for delegated legislation**

- 85 The ability to make regulations under clause 30(5) will provide the Department with flexibility to update the circumstances in which complaints can be made in the light of experience in operating the complaints system.
- 86 The regulations which can be made under clause 30(13) will provide detail as to the procedure to be followed in making and investigating a complaint. It is considered appropriate that this level of detail should be dealt with in regulations, the framework for the complaints and investigations having been set out in the primary provision.



### **Assembly control**

- 87 By virtue of clause 46(3), regulations under clause 30(5) may not be made unless a draft of them has been laid and approved by resolution of, the Assembly.
- 88 Since this delegated power allows amendments to be made to the primary provision, the Department considers it appropriate that any exercise of the power should be the subject of Assembly debate.
- 89 By virtue of clause 46(4), regulations under clause 30(13) are subject to negative resolution. This is considered appropriate due to the procedural and incidental nature of the matters to be dealt with.

### **Clause 31(7) – Report of investigation of complaint**

#### **Purpose of delegated legislation**

- 90 Clause 31 provides that the Ombudsman must report in writing on the outcome of an investigation into a complaint to the Department and the complainant (subsection (1)), and may report to any other person as he sees fit (subsection (2)).
- 91 Under clause 31(3), he may make recommendations arising out of the investigation, to which the Department should respond (clause 31(4)).
- 92 Clause 31(6) provides that the Ombudsman can report on the Department's response to such person as he thinks fit.
- 93 Subsection (7) provides that regulations may make provision as to the procedures to be followed in relation to reports including:
- who may see a draft or any part of it;
  - who may be identified within the report, and

- what is to happen where the complainant has died or is unable to act.

### **Reason for delegated legislation**

94 Clause 31 makes provision as regards the Ombudsman's duty to report on investigations into complaints. The regulations which can be made under clause 31(7) will provide detail as to the procedure to be followed in relation to such reports. It is considered appropriate that this level of detail should be dealt with in regulations, the framework for the reports having been set out in the primary provision.

### **Assembly control**

95 By virtue of clause 46(4), these regulations will be subject to the negative resolution procedure in the Assembly. This is considered appropriate due to the procedural and incidental nature of the information to be included.

## **Clause 33(7) – Report on investigation into death**

### **Purpose of delegated legislation**

96 Clause 33 provides for the Prison Ombudsman to report on the outcome of an investigation into a death which occurred in prison, or in a prison officer's custody, or which appears to be linked to events which occurred during such custody.

97 Under clause 33(7), regulations may provide for procedures regarding the report, and in particular may make provision:

- enabling the Ombudsman to show any person a draft of the whole or any part of the report;
- enabling its publication in whole or in part,

- for individuals identified in the report to remain anonymous, and restricting or prohibiting the inclusion of information of a prescribed description.

### **Reason for delegated legislation**

98 Clause 33 makes provision as regards the Ombudsman's duty to report on investigations into death. The regulations which can be made under clause 33(7) will provide detail as to the procedure to be followed in relation to such reports. It is considered appropriate that this level of detail should be dealt with in regulations, the framework for the reports having been set out in the primary provision.

### **Assembly control**

99 By virtue of clause 46(4), these regulations will be subject to the negative resolution procedure in the Assembly. This is considered appropriate due to the procedural and incidental nature of the information to be included.

## **Clause 35(3) – Report on investigation under section 34**

### **Purpose of delegated legislation**

100 Clause 35 makes provision in relation to reports on investigations requested by the Department. Subsection (1) requires the Ombudsman to provide a report on the outcome of the investigation to the Department and any other person the Department may request.

101 Subsection (2) provides that a report may make recommendations about any matter arising from the investigation.

102 Clause 35(3) provides that regulations may make provision as to the procedures to be followed in relation to the report, and in particular, may make provision:

- enabling the Ombudsman to show any person a draft of the whole or any part of the report;
- enabling its publication in whole or in part,
- for individuals identified in the report to remain anonymous, and restricting or prohibiting the inclusion of information of a prescribed description.

### **Reason for delegated legislation**

103 Clause 35 makes provision as regards the Ombudsman's duty to report on investigations requested by the Department. The regulations which can be made under clause 35(3) will provide detail as to the procedure to be followed in relation to such reports. It is considered appropriate that this level of detail should be dealt with in regulations, the framework for the reports having been set out in the primary provision.

### **Assembly control**

104 By virtue of clause 46(4), these regulations will be subject to the negative resolution procedure in the Assembly. This is considered appropriate due to the procedural and incidental nature of the information to be included.

## **PART 3: MISCELLANEOUS**

### **Clause 43(4) – Early removal from prison of prisoners liable to removal from United Kingdom**

#### **Purpose of delegated legislation**

105 Clause 43(1) makes provision for the removal from a Northern Ireland prison of a prisoner who is liable for removal from the United Kingdom and who has served at least one-half of the requisite custodial period. It also provides that the removal from prison must be with the prisoner's

agreement and that the period of removal may be at any time during the period of 135 days before the day on which the prisoner will have served the requisite custodial period.

- 106 Clause 43(4) provides the Department with a power to amend the number of days specified in clause 43(1) by order.

#### **Reason for delegated legislation**

- 107 The operation of this scheme will be monitored and may require some adjustment in light of operational experience. This delegated power will enable the Department to amend the period during which a prisoner may be removed, should that be considered appropriate. It is considered suitable that this could be done by Departmental order due to the limited and specific nature of the power.

#### **Assembly control**

- 108 By virtue of clause 46(5), an order made under clause 43(4) may not be made unless a draft of it has been laid before, and approved by resolution of, the Assembly. Since this delegated power allows amendments to be made to the primary provision, the Department considers it appropriate that any exercise of the power should be the subject of Assembly debate.

### **PART 4: GENERAL**

#### **Clause 45: Ancillary provision**

##### **Purpose of Delegated Legislation**

- 109 Clause 45 confers power on the Department of Justice to make such supplementary, incidental, consequential, transitory, transitional, or saving provision as it considers appropriate for the purposes of the Bill. The power includes the power to amend, repeal, revoke or otherwise modify any statutory provision.

### **Reason for Delegated Legislation**

110 The Justice Bill makes significant changes to the law on the collection of financial penalties, as well as a number of other modifications relating to prisons and the criminal law. While every effort has been made to identify consequential amendments and transitional provisions, it is possible that not all of these have been identified.

111 This provision is intended to enable any such consequential and other provisions to be made, to ensure that the provisions of the Bill operate as the Assembly intended.

### **Assembly Control**

112 To the extent that an order under this clause amends or repeals primary legislation, it will be laid before, and approved by resolution of, the Assembly (clause 46(5)(c)). Otherwise an order under clause 45 will be subject to negative resolution.

### **Clause 47: Commencement and short title**

#### **Purpose of Delegated Legislation**

113 The power in clause 47(2) has been provided to enable certain provisions of the Bill to be brought into operation by commencement order made by the Department.

114 Clause 47(3) allows transitional or transitory modifications to be made to the Justice Act as are considered necessary in connection with the commencement of any provision brought into operation by an order.

#### **Reason for Delegated Legislation**

115 The delegated power has been provided to enable provisions of the Bill to be brought into force on a date determined by the Department, when

appropriate administrative and other arrangements have been made, and to allow any necessary transitional arrangements to be made.

### **Assembly Control**

116 By virtue of clause 46(6), as is usual with commencement orders, these are not subject to any Assembly procedure.

## **Schedule 1, paragraphs 4, 7(5) and (6) and 10 – Attachment of earnings**

### **Purpose of delegated legislation**

- 102 Schedule 1 makes detailed provision in relation to attachment of earnings orders.
- 103 Paragraphs 1 and 2 deal with service of the order and create offences around employers' failures to comply with the requirement to notify of the cessation of a debtor's employment; and failure to comply with the order.
- 104 Paragraph 3 provides for an employer or an employee to apply to the court for a determination of what may constitute "earnings", and requires the employer to give effect to such a determination whilst it remains in force.
- 105 Paragraph 4 allows for regulations to specify what costs an employer may charge for administering an attachment of earnings order and for the employer to inform the debtor in writing of the total amount of charges.
- 106 Paragraph 5 outlines the process for notifying the collection officer of a change in the debtor's circumstances, and creates an offence of failing to comply with the notification requirements.
- 107 Paragraph 6 makes provision for the variation of attachment of earnings orders, while paragraph 7 provides for the discharge of an order, and creates an offence of failing to comply with a notice of discharge.
- 108 Paragraphs 7(5) and (6) allow for regulations to specify when an attachment of earnings order fails, and to specify the circumstances in which an order may be discharged on the collection officer or the court's own motion.



- 109 Paragraph 8 makes provision to ensure that attachment of earnings orders made under this Bill will be taken into account for the purpose of deciding the priority for payment where maintenance orders or other attachment of earnings orders are in place or are made against the same debtor.
- 110 Paragraph 9 makes provision in relation to attachment of earnings orders made against an employee of the Crown.
- 111 Paragraph 10 allows regulations to be made which make further provision as to attachment of earnings orders.

### **Reason for delegated legislation**

- 112 The provisions of paragraphs 4, 7(5) and (6), and 10 all allow for further detail in relation to attachment of earnings orders to be made in regulations. It is considered appropriate that this level of detail should be dealt with in regulations, the framework for the orders having been set out in the primary provision. It is further considered appropriate to have the specific regulation making powers provided for in paragraphs 4 and 7, as well as the more general power provided in paragraph 10 due to the complexity of the attachment of earnings regime.

### **Assembly control**

- 113 By virtue of clause 46(4), these regulations will be subject to the negative resolution procedure in the Assembly. This is considered appropriate due to the detailed and incidental nature of the information to be included in the regulations.