

# **JUSTICE (NO. 2) BILL**

## **EXPLANATORY AND FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This Explanatory and Financial Memorandum has been prepared by the Department of Justice to assist readers of the Bill and to help inform debate. It does not form part of the Bill and has not been endorsed by the Assembly.

2. The Memorandum must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. Where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. The Bill gives effect to the desire of the Justice Minister to enhance two key component aspects of the criminal justice system – fine collection and prison services – and takes the opportunity to improve two other aspects of the criminal law and procedure. Across four areas, the Bill is designed to:

- a) improve current arrangements for the collection and enforcement of financial penalties;
- b) improve the provision of prison services in Northern Ireland;
- c) improve upon current statutory provision in relation to certain sex offending; and
- d) improve lay visiting arrangements in police stations.

4. Taking each of these areas in turn, in terms of collection improvements, for many years there have been significant numbers of defaulters ending up in prison for non-payment of their fines and other financial penalties. New collection and enforcement provisions in the Bill will provide additional ways for offenders to pay their financial penalty and where possible avoid default in the first instance. For those that still find themselves in default, community-based alternatives will be considered before potential imprisonment for non-payment. A civilian-based collection service will largely replace the role currently played by police officers.

5. In terms of prison services, for the Northern Ireland Prison Service three important improvements will be made by the Bill in terms of Prison Ombudsman services, a reduction in numbers of fine default prisoners, and the creation of a prisoner removal scheme.

6. In terms of Prison Ombudsman services the Bill will create in law the office of Prison Ombudsman for Northern Ireland. It sets out the main functions of the Ombudsman which are to deal with complaints; death in custody investigations; and investigations requested by the Department. These functions are currently carried out by the Prisoner Ombudsman on a non-statutory basis.

7. In terms of fine default, the changes to fine collection and enforcement (as described above) are designed to significantly reduce the numbers of people going to prison for fine default. Until recently several thousand defaulters went to prison each year for short periods often for relatively minor offences.

8. And in terms of a prisoner removal scheme, the scheme will allow Foreign National Prisoners, already subject to compulsory removal from the United Kingdom (UK) and nearing the end of their sentence, to have their sentence reduced to facilitate removal from the UK. The scheme is designed to allow eligible prisoners to have their sentence reduced; to be returned to their country of origin; and at the same time provide important operational benefits to the Prison Service.

9. In terms of sex offender law, current legislation aimed at tackling sexual offending will be enhanced by extending the scope of the current offence of possession of extreme pornographic material. The scope of the offence will be extended to include the possession of extreme images depicting rape and certain other non-consensual acts. This follows similar developments made earlier this year in England and Wales, and brings Northern Ireland law into line with the rest of the United Kingdom.

10. Finally the remit of lay visiting arrangements in Northern Ireland will be widened to bring all police stations within the scope of the scheme.

## **CONSULTATION**

11. Three major components proposed for inclusion in the Bill – fine collection, Prison Ombudsman services and a prisoner removal scheme - have been the subject of consultation exercises and associated policy screening exercises. These concluded with the Justice Committee receiving presentations on summaries of responses and ways forward. Two other provisions were subject to more targeted consultation and again the Justice Committee was consulted.

12. Full consultation exercises were completed on proposals relating to fine collection and enforcement; the placing of the Northern Ireland Prison Ombudsman on a statutory footing; and a scheme for the early removal from prison of prisoners liable for removal from the United Kingdom. In addition to the individual policy consultation exercises that were carried out, consultations were also completed or included to seek views on the equality aspects and assessments carried out on the measures to be contained the Bill. (Web-links on the various consultations are provided below.)

13. The two matters that were the subject of targeted consultation were the extension of the current offence of possession of extreme pornographic images and the change in law regarding lay visitor visiting of police stations.

14. The amendment to the offence of the possession of extreme pornographic images follows developments made in England and Wales where a similar improvement was made to an already existing offence. Following consultation with key criminal justice partners and with the Justice Committee, both the Committee and the Department felt it important to strengthen the same offence in Northern Ireland by way of specific NI Assembly legislation. As an amendment to existing policy and legislation to maintain cross-jurisdictional consistency, full public consultation was not considered necessary.

15. The change of law in relation to lay visiting of police stations is an important development aimed at bringing non-designated police cells in Northern Ireland within the remit of the NI Policing Board independent custody visiting scheme. The change arose from a recommendation of the UK National Preventative Mechanism and has been agreed with the Policing Board for Northern Ireland. On the basis of an independent recommendation and Policing Board support, a full public consultation was not considered necessary.

16. In overall terms respondents have generally been positive about the proposals across all of the consultations and where adjustments were required, they have been made.

## **CONSULTATION DOCUMENTATION**

### **Fine Collection and Enforcement**

#### 2011/12 Consultation document:

[http://www.dojni.gov.uk/index/public-consultations/archive-consultations/fine\\_default\\_in\\_northern\\_ireland\\_-\\_a\\_department\\_of\\_justice\\_consultation\\_-\\_extended\\_period.pdf](http://www.dojni.gov.uk/index/public-consultations/archive-consultations/fine_default_in_northern_ireland_-_a_department_of_justice_consultation_-_extended_period.pdf)

#### 2011/12 Equality assessment

[http://www.dojni.gov.uk/index/public-consultations/archive-consultations/fine\\_default\\_consultation\\_-\\_equality\\_screening\\_document.pdf](http://www.dojni.gov.uk/index/public-consultations/archive-consultations/fine_default_consultation_-_equality_screening_document.pdf)

#### 2011/12 Summary of Responses:

<http://www.dojni.gov.uk/index/public-consultations/archive-consultations/fine-enforcement-consultation-summary-of-responses-and-way-forward.pdf>

#### 2014 Consultation document

<http://www.dojni.gov.uk/index/public-consultations/archive-consultations/fine-collection-and-enforcement-in-northern-ireland-a-department-of-justice-consultation-final.pdf>

#### 2014 Equality assessment

<http://www.dojni.gov.uk/index/public-consultations/archive-consultations/fe-bill-equality-screening-form-fine-collection-and-enforcement-in-northern-ireland.pdf>

#### 2014 Summary of Responses:

<http://www.dojni.gov.uk/index/public-consultations/archive-consultations/fine-default-consultation-2014-report-on-responses.pdf>

### **Prison Ombudsman for Northern Ireland**

#### Consultation document:

<http://www.dojni.gov.uk/index/public-consultations/archive-consultations/consultation-on-a-proposal-to-place-the-office-of-the-northern-ireland-prisoner-ombudsman-on-a-statutory-footing.pdf>

#### Equality assessment:

<http://www.dojni.gov.uk/index/public-consultations/archive-consultations/doj-section-75-equality-screening-form.pdf> - adobe acrobat.pdf

#### Summary of Responses

<http://www.dojni.gov.uk/index/public-consultations/archive-consultations/summary-report-prisoner-ombudsman-on-a-statutory-footing-12-june-2014.pdf>

### **Miscellaneous**

#### **Early removal of prisoners**

#### Consultation document:

[http://www.dojni.gov.uk/index/ni-prison-service/consultations-2/content-prison-service-archived-consultations/consultation on the introduction of a scheme to allow for the early removal of foreign national prisoners extended .pdf](http://www.dojni.gov.uk/index/ni-prison-service/consultations-2/content-prison-service-archived-consultations/consultation%20on%20the%20introduction%20of%20a%20scheme%20to%20allow%20for%20the%20early%20removal%20of%20foreign%20national%20prisoners%20extended.pdf)

Equality assessment:

<http://www.dojni.gov.uk/index/ni-prison-service/consultations-2/content-prison-service-archived-consultations/northern-ireland-prison-service-equality-human-rights-data-protection-screening-form.pdf>

Summary of Responses:

<http://www.dojni.gov.uk/index/ni-prison-service/consultations-2/content-prison-service-archived-consultations/summary-of-responses-to-consultation-on-the-introduction-of-an-early-removal-scheme-for-foreign-national-prisoners.pdf>

**Lay visitors**

17. No public consultation was required.

**Offence of Possession of Extreme Pornographic images**

18. No public consultation was required.

**OPTIONS CONSIDERED**

19. As detailed below, many of the provisions in the Bill were developed following comprehensive options appraisals.

**Fine Collection and Enforcement**

20. The Department conducted two policy consultations between 2011 and 2014 to seek public views on what improvements might be made to current fine collection arrangements. The aim of those consultations was to develop systems that would improve people's ability to pay or clear their fines and other sums imposed on conviction in the first instance; to increase community-based opportunities for clearance; and to reduce the levels of imprisonment for non-payment.

21. Alongside these policy aims was the objective of improving operational aspects of the justice system in terms of both of policing and prison services. In terms of policing the goal was to devise a system that would free up police officers for more important front line duties. For prisons the aim was to ensure the correct targeting and use of valuable prison resources.

22. In terms of policing, enforcement falls to police officers who have been experiencing significant numbers of fine warrants – until recently up to 30,000 per year - being issued for execution. (A court reminder system had been introduced previously to

reduce numbers but more needed to be done.) The Department wanted to explore the opportunity for a more fully civilianised approach that would free up police officers for more appropriate front-line duties.

23. In terms of prisons, at its height over the three year period between 2010-12 between six and seven thousand people went to prison for non-payment of a fine. Most were for relatively minor offences – mostly motoring convictions – resulting in very short periods in prison of, on average, only four days. A better system was required to ensure that valuable prison resources were, if possible, reserved for more serious offence types.

24. In 2011/12 the Department sought views on how better to target the fine as a disposal; how better to encourage payment; how to deal with default; and what type of service might be established. Following that, in 2014 the Department published further proposals which suggested an expanded use of community supervision along with more deterrent options where more wilful non-payment might arise including directly accessing bank accounts; the seizure of personal vehicles; and the removal of prison remission for those who might nevertheless end up in custody.

25. As a result of those consultations, the Department developed proposals for a model in which collection would become a civilian-based system largely removing the police from their current enforcement role. The model would create collection officers who will have a number of powers under the authority of courts to recover money. The model would also provide courts with more community based options instead of committal to prison.

26. The Department also decided that it would be appropriate to make the proposed collection and enforcement options available to financial penalties beyond the fine. The provisions in the Bill will also apply to compensation orders, the offender levy, costs imposed by courts, fixed penalties and penalty notices that are subsequently registered as court fines.

### **Prison Ombudsman for Northern Ireland**

27. The Department conducted a policy consultation in 2014 to seek views on the proposal to create an independent statutory basis for the appointment of the Northern Ireland Prisoner Ombudsman and the discharge of functions of the Ombudsman's office. A number of delivery options were considered which included aligning the office with the Assembly Ombudsman, creating a Justice Ombudsman, establishing the Ombudsman as a Non Departmental Public Body, and establishing an individual statutory framework.

28. There was broad support for the proposal to place the Prisoner Ombudsman on a statutory footing. Some suggestions were made in relation to widening the scope of the Prisoner Ombudsman's remit for complaints, moving the appointment process away from the Department of Justice, changing its name to "Prison Ombudsman" and splitting out responsibilities for "Complaints" and "Death in Custody" functions to existing statutory bodies.

29. Following the consultation, the Department decided to create a new statutory office of “Prison Ombudsman”; the office-holder will be a “corporation sole” and will be appointed by the Department for a single seven year fixed term. The main functions of the Ombudsman will be to deal with eligible complaints from prisoners, ex-prisoners and visitors; to investigate deaths in prison custody; and to investigate any other custody-related matter referred to him by the Department. The Ombudsman will have right of entry to prison premises and the Juvenile Justice Centre, and powers of access to documents needed for his investigation. There will be a duty on all parties to an investigation to cooperate with the Prison Ombudsman’s investigation. His office will be staffed by seconded civil servants with flexibility to second staff from other organisations, and will be funded through the Department of Justice

## **Miscellaneous**

### **Early removal of prisoners**

30. Early removal schemes for Foreign National Prisoners (FNPs) have been in place in England & Wales since 2004 and Scotland since 2011. In conjunction with the Home Office and the Immigration Service, the Department explored options by which it might provide for the early removal of some categories of Foreign National Prisoners held in Northern Ireland Prisons. The Department considered options based on a mandatory or voluntary scheme; eligibility categories - based on offence type or sentence length; and the period of time that needed to be served before becoming eligible for the scheme.

31. In terms of a voluntary or mandatory scheme the Department had provisionally proposed a mandatory scheme where removals from Northern Ireland would be compulsory. The Department decided upon a voluntary arrangement reflecting the position in Scotland.

32. On qualifying categories, the Department considered both the type of offence and the length of sentence involved. In terms of offence types, the Department concluded that it should follow the model adopted in England and Wales which sees all prisoners liable for early removal, except those presenting a serious risk to the public: that is those convicted of murder or serving public protection sentences – that is the extended custodial sentences (ECS) and indeterminate custodial sentences (ICS). This differs from the situation in Scotland where sentence length is the determining factor. The Department decided that the England and Wales arrangements would maximise the number of prisoners subject to the early removal while providing an assurance to the public that dangerous offenders would be exempt and would still need to serve the whole of the time the court has deemed they should serve before removal takes place.

33. The Department also considered the minimum period of sentence that prisoners should have served before qualifying for early removal. In England and Wales and in Scotland, a prisoner must have served a minimum of one quarter of the custodial part of their sentence before early removal can take place. However, in Scotland, there is the

added caveat that a prisoner must be serving a sentence of at least three months before early removal can be considered. England and Wales have no such qualifier.

34. The Department settled on the Scottish arrangement for two reasons: first, it will provide the public with an assurance that even low-level offenders are spending a reasonable amount of time in custody before removal; and secondly, the removal process can take some time to arrange. The inclusion of a three-month qualifier will mean that we will not have to process those serving very short sentences who may, in all likelihood, be time-served before arrangements for early removal have been put in place.

35. In overall terms therefore the Department has based its prospective scheme on a hybrid of the schemes already in existence in Great Britain.

### **Lay visiting**

36. As indicated above, the change arose from a recommendation of the UK National Preventative Mechanism and has been agreed with the Policing Board for Northern Ireland.

### **Possession of extreme pornographic material**

37. The offence of the possession of extreme pornographic material was at the request of and in consultation with the Justice Committee. The same offence was created in England/Wales and the purpose therefore is to maintain cross-jurisdictional consistency in sex offending law.

## **OVERVIEW OF THE BILL**

38. The Bill has 47 clauses and 3 Schedules and is divided into four Parts. The policy description takes each Part in turn, following the sequence of the Bill. The descriptions below provide an overview of each of the four Parts in turn followed by the detailed Commentary on Clauses section that follows.

### **The Collection and Enforcement of Financial Penalties**

39. Part 1 of the Bill will create an entirely new regime for the collection and enforcement of financial penalties. It will create collection officers whose function it will be to operate and enforce collection orders as imposed by courts. Collection officers will be designated in law by the Department with a series of powers, provided by way of the collection order, which will be designed to, by and large, replace the current police role in collection and enforcement.

40. Collection officers will be able to allow the defaulter extra time to pay or to make payment by instalments. If that were to prove difficult or unsuccessful, collection officers



would be able to consider a deductions order whereby payments to clear the outstanding penalty could be deducted from the debtor's earnings or, in appropriate circumstances, from certain welfare benefits. The debtor will be able to agree to this approach in the first instance though a compulsory approach could also be followed if appropriate.

41. Where payment continues to be difficult or there is more wilful refusal the collection officer will be able to refer the case back to court. Along with its various options for dealing with default, the Court may impose a bank account order whereby payment can be directed from a bank account or a vehicle seizure order whereby a vehicle may be seized pending payment.

42. Underpinning the package therefore is court retention of the core independent role in the sentencing process - it will be the Court that sets the collection order for collection officers to apply. Courts will at the same time retain their sentencing and default powers with any default following a collection order process leading to a further court hearing where the defaulter can have his/her case reviewed.

43. Other enforcement principles and procedures will be created in the Bill. Adjustments will be made to the community-based supervised activity order to increase the level of penalty to which it can apply and to allow it to apply to other financial penalties beyond the fine (as it is currently limited). Changes are made to prevent any child going into custody solely for non-payment of a penalty. For adults who nevertheless end up in prison for default – and there will have been a wide range of options and procedures applied before imprisonment can occur – remission of their prison sentence will be removed requiring them to serve the default period in full.

44. Full details are provided in the Commentary on Clauses section below.

### **The Prison Ombudsman for Northern Ireland**

44. Part 2 of the Bill creates the office of Prison Ombudsman for Northern Ireland and sets out his main functions which are to deal with complaints, death in custody investigations and investigations requested by the Department. These functions are currently carried out by the Prisoner Ombudsman on a non-statutory basis. Detailed in the Bill are conditions for the eligibility of complaints, the circumstances in which an investigation may be initiated or deferred, reporting arrangements and provision for regulations to be made in relation to these matters.

45. The Ombudsman will have the power to enter any prison premises or Juvenile Justice Centre and have powers of access to documents needed for his investigation. It will be an offence to obstruct the Ombudsman in his investigations. Information provided to the Ombudsman in the course of his investigations will be protected information and the Bill details arrangements for disclosure and sharing of information.

46. Schedule 3 sets out that the Ombudsman will be appointed by the Department for a fixed term of seven years, and sets out arrangements for remuneration and allowances. It

allows for the appointment of an acting Ombudsman in the case of a vacancy arising in the office, and for the Ombudsman to appoint officers to perform any function of the office. The Ombudsman may use advisers in the discharge of his functions. The Department of Justice will fund the Ombudsman's office. The Ombudsman will be required to prepare a report each year on how he has carried out his functions which will be laid in the Assembly.

47. Full details are provided in the Commentary on Clauses section below.

### **Miscellaneous**

48. Part 3 of the Bill creates additional provisions in terms of lay visiting arrangements for police station, an offence of possession of extreme pornographic images, and a scheme for the early removal of prisoners

### **Lay visiting**

49. Statutory provision for lay visiting arrangements at Northern Ireland's police stations is being extended to include non-designated police stations. This will have the effect that all police stations will be subject to the statutory scheme.

### **Possession of extreme pornographic images**

50. This provision extends the existing offence of possession of extreme pornographic images to extend its scope to include the possession of extreme images of rape or other non-consensual acts. This follows developments made in the rest of the United Kingdom.

### **Early Removal Scheme**

51. The proposed Early Removal Scheme will apply to certain categories of Foreign National Prisoners (FNPs) in two circumstances: those whom the sentencing court has determined should be deported to their country of origin on completion of their sentence; and those whom the Home Office has determined to have breached the conditions of their leave to enter or remain in the UK because of their conviction. Removal from the United Kingdom will be the responsibility of Immigration Enforcement which is part of the Home Office

52. The scheme will allow the Department of Justice, with the prisoner's permission, to facilitate removal from prison, for the purposes of removal from the United Kingdom at any time up to 135 days before the end of the custodial part of their sentence. For a prisoner to qualify they must be serving a determinate sentence of at least 6 months and they must have served at least one-half of the requisite custodial period. Those serving extended custodial sentences, indeterminate custodial sentences or life sentences are excluded from the terms of the scheme. Prisoners so removed will not be subject to any licence conditions or any other forms of management or control once removal has been effected.

53. If a prisoner so removed returns to Northern Ireland before their sentence expiry date they will be liable to arrest and return to custody. They will be detained in custody until either they have served a period equal in length to their outstanding custodial period (counted from the day they were removed) or until their sentence expiry date, whichever is earlier.

At present Irish nationals do not qualify for any UK prisoner early removal schemes.

54. Full details on all miscellaneous provisions are provided in the Commentary on Clauses section below.

## **General**

Part 4 of the Bill makes a number of general provisions dealing with regulation and order making, commencement and short title, and ancillary provision.

## **COMMENTARY ON CLAUSES**

55. A full commentary on Clauses is provided at Annex A.

## **FINANCIAL EFFECTS OF THE BILL**

56. In terms of financial effects, the Bill as a whole will primarily be delivered within existing resources.

57. The Prisoner Ombudsman provisions, the prisoner removal scheme, and the lay visitor proposals will require no additional resources. Nor will the new offence of possession of extreme pornography which is an extension of an existing offence.

58. Proposals for a new fine collection and enforcement service will cost less to deliver than the current collection and enforcement arrangements. Reductions in prisoner numbers and the change from a police-led to a civilian-led fine collection service for example will provide more effective and appropriate use of criminal justice resources.

59. Across the piece, the Bill is intended to improve the payment of financial penalties; to increase the amounts recovered to the public purse; and to deliver a range of savings and efficiency gains.

## **HUMAN RIGHTS ISSUES**

60. All proposals have been screened and are considered to be Convention compliant.

## **EQUALITY IMPACT ASSESSMENT**

61. The Department has concluded that the package as a whole is fair and equal to all Section 75 groups. The provisions creating the Prisoner Ombudsman, the voluntary prisoner removal scheme, the additional visiting arrangements at police stations, and the new sexual offence have no Section 75 impacts.

62. In the area of fine collection, the Department recognises that criminal justice provisions often apply to young males on the basis that they are the largest group likely to be engaged in the criminal justice process. The Department also recognises that a number of the fine collection proposals in the Bill could impact differently on people on the basis of their income – and whilst income is not in itself a Section 75 category it can be related to some such groups in a secondary way.

63. The Department concluded that a full equality assessment on its fine collection proposals would therefore be appropriate. The Department has published its equality assessment for public consultation with a view to making the results available during the scrutiny stage of the Bill. The full consultation document is available at:

<http://www.dojni.gov.uk/index/public-consultations/current-consultations/proposals-for-draft-legislation-on-financial-penalties-collection-and-enforcement-equality-assessment-consultation.pdf>

64. The Department's conclusion in the equality assessment is that its proposals provide a balanced package that is fair and equal to all Section 75 groups.

## **SUMMARY OF THE REGULATORY IMPACT ASSESSMENT**

65. The Department's assessment is that the fine collection proposals in the Bill will have some cost impacts on three areas of the private sector but none for the voluntary sector.

66. For the private sector the Department has identified a potential cost impact for the legal profession by reducing the Department's legal aid outlay for Fine Default Hearings. The Department views these impacts as savings to the public purse rather than any extra charges that the legal profession will have to meet.

67. The proposals will also have some cost impacts on employers some of whom may have to implement "attachment of earnings orders" and banks or relevant financial institutions should a bank account order be required. Whilst the Department has constructed the Bill's provisions to ensure these orders are used sparingly or only in appropriate circumstances, the proposal will allow employers and banks to add administration charges to the defaulted amount. Neither will therefore face additional costs.

68. Similar to the approach taken to the equality assessment, the Department has published in Regulatory Impact Assessment for public consultation with a view to making the results available during the scrutiny stage of the Bill. The Department's assessment and public consultation document is available at:

<http://www.dojni.gov.uk/index/public-consultations/current-consultations/proposals-for-draft-legislation-on-financial-penalties-collection-and-enforcement-regulatory-impact-assessment.pdf>

## **LEGISLATIVE COMPETENCE**

69. The Justice Minister, David Ford MLA, has made the following statement under section 9 of the Northern Ireland Act 1998:

*"In my opinion the Justice Bill would be within the legislative competence of the Northern Ireland Assembly."*

## **SECRETARY OF STATE CONSENT**

70. A statement is required under section 8 of the Northern Ireland Act 1998, on Secretary of State consent:

*"The Secretary of State has consented under section 8 of the Northern Ireland Act 1998 to the Assembly considering this Bill."*

## **COMMENTARY ON CLAUSES**

### **PART 1**

#### **Chapter 1: Collection of Fines Etc.**

##### Clause 1: Application of Chapter

This clause defines the circumstances to which this Chapter applies and defines the meaning of certain terms used throughout the Chapter.

The provisions of the Chapter will apply to fines and other sums adjudged to be paid on conviction as well as sums that are treated in law in the same way (Clause 1(1) (a)) referred to as “sums due”. In effect this means that the provisions of the Chapter apply to fines, compensation orders, the offender levy, costs imposed by court, fixed penalties and penalty notices and any other sums that are subsequently registered or treated as court fines.

The provisions will apply to any such sums due when imposed by courts in Northern Ireland, or where a court in Northern Ireland is responsible for their enforcement, for example, sums due as a result of their being transferred to Northern Ireland from Great Britain or by an EU Member State (Clause 1(1)(b)).

The term “debtor” is used throughout the Chapter to refer to the person due to pay the sum imposed or being enforced by the Court.

##### Clause 2: Collection officers

This clause provides how collection officers are to be designated and the functions they will have. Collection officers will be civil servants designated by the Department of Justice (Clause 2(1)) who can provide information and advice and whose role is to ensure collection orders are complied with (Clause 2(2)). Clause 2(3) provides a regulation making power to allow modification of the functions of collection officers should it prove necessary. This power will be subject to draft affirmative procedure in the Northern Ireland Assembly.

##### Clause 3: Collection order

This clause provides that a collection order must be imposed by the court unless it is impracticable or inappropriate to do so (Clause 3(1)). It stipulates that a collection order cannot be imposed where the sum in question relates to a confiscation order (which has its own separate collection and enforcement statutory provisions) (Clause 3(2)).

The clause provides the information that a collection order will contain and whom it should be served on. It must detail the amount or amounts due, any partial payments already made

and the amount outstanding, how payment can be made, how to contact the collection officer, and other information (Clause 3(4)).

When the Court makes a collection order it must provide it to the debtor and the collection officer (Clause 3(5)). Where the debtor appeals his case and a collection order had been made, the collection order is suspended pending the outcome of the appeal (Clause 3(6)).

The clause makes provision for the application of the collection order to transitional cases which were already in the criminal justice system before the legislation comes into effect. Collection orders will be available for all those not yet sentenced whether they have yet been convicted or not. In cases where a debtor has already defaulted on a sum and been dealt with for default, a collection order will not be available (Clause 3(7)(b)).

#### Clause 4: Additional powers where collection order made

This clause provides that when a court makes a collection order, it may also order the collection officer to make an application for deduction from benefits, or it may make an attachment of earnings order (Clause 4(1)). (These orders are described more fully at Clauses 10-14 below.)

These deduction orders can only be made by the court when making a collection order where the offender has consented (Clause 4(2)(b)) and the court will not make such orders or directions without first considering whether additional time to pay or payment by way of instalments would be appropriate (Clause 4 (2)(a)).

#### Clause 5: Collection officer to contact debtor in default

This clause stipulates what a collection officer must or can do where an offender fails to comply with the collection order. Clause 5(2) provides the information that the collection officer can seek from an individual who has failed to comply with an order. The information that can be required includes the debtor's name, address, date of birth, National Insurance number, as well as details of earnings or income, welfare benefits, bank accounts or vehicles registered in their name (Clause 5(2)). Appropriate information can also be sought when the debtor is a company (Clause 5(3)).

The clause also allows for the collection officer to apply to the court for a summons requiring the debtor to attend for a meeting with the collection officer should the debtor fail to make contact or fail to provide any of this information (Clause 5(4)). Failure, without reasonable excuse, to provide information when requested by a collection officer, providing false information or failing to disclose a material fact are offences under Clause 5(5) and (6) which can attract a penalty of up to £500 (as provided by Clause 19 by way of a fine not exceeding level 2 on the standard scale).

#### Clause 6: Powers of collection officer in relation to debtor in default

This clause confers a power of referral on the court on the collection officer, at any time during the collection process he sees fit (Clause 6 (1)). The matter is referred to the court level where the original sentence was passed or which is responsible for the enforcement of the penalty.

The clause allows for a debtor to apply to the collection officer, either orally or in writing, for an extension of the period for repayment, payment by way of instalments, or amendment of the instalments dates and/or amounts (Clause 6 (2)).

The collection officer also has the power to make an attachment of earnings order or apply for a deduction from benefits order, whether or not on application of the debtor and whether or not he has consented to such orders being imposed (Clause 6(3)). Where a debtor is both employed and on benefits, the collection officer can use his discretion in deciding which order to pursue (Clause 6(3)(c)).

Clause 6(4) requires the collection officer to consider allowing extra time or payment by instalments before making a deductions application or attachment order.

The clause also provides that where attachment or deduction orders are inappropriate or unworkable, and if the collection officer is satisfied that the debtor has funds in an account in his sole name, then the collection officer may pursue an interim bank account order (Clause 6 (5)). Where an interim bank account order is made, the collection officer must refer the matter to the appropriate court for a hearing to decide on whether a full order should be made.

Where the collection officer's other powers are unsuccessful, he may request the court to make a vehicle seizure order against the debtor, if satisfied that the debtor has funds available to pay the sum due, the vehicle in question is registered to the debtor and the sale of the vehicle would discharge the sum owing (Clause 6(6) and (7)). The collection officer may not request a vehicle seizure order without first informing the debtor of his intentions and affording the debtor an opportunity to pay the sum owing. There is no requirement to inform the debtor of his intentions with regard to an interim bank order (Clause 6(8)).

Where a collection officer has referred the matter to court, he may not thereafter exercise any of his collection powers (Clause 6(9)).

Where a collection officer makes complaint to a magistrates' court, a summons may be issued requiring the debtor to appear before the appropriate court for the hearing (Clause 6 (10)).

The clause makes it an offence for a person informed of a possible application for a vehicle seizure order to attempt to hide or dispose of the vehicle in question in order to frustrate the application (Clause 6 (11)), the penalty which is for a fine not exceeding level 2 on the standard scale (Clause 19).



#### Clause 7: Referral to the court: collection officer's report etc.

This clause states that where the collection officer refers a case to the appropriate court, he must send a report to accompany that referral, outlining the contact he has had with the debtor, any information he has received, any payments made, the actions he has taken to date, the outcomes of those actions and the steps the debtor has taken to attempt payment (Clause 7(1)).

Where the referral to court is made on foot of an application for a vehicle seizure order, the collection officer must state within the report that he is satisfied of the criteria outlined above in clause 6(7) and that the vehicle does not fall within the list of prohibited vehicles, namely one used by police, ambulance, fire and rescue services, by medical practitioners on call, by those holding a blue badge or one used for a disabled person's needs (Clause 18 (4)).

#### Clause 8: Referral to the court in case where no collection order made

This clause applies where a person defaults on payment of the sum due where no collection order has been made (Clause 8(1)). The clerk of the appropriate court may refer the matter back to that court for a hearing on the debtor's default (Clause 8 (2)). A summons may be issued upon a complaint of the clerk to require the debtor to attend at that hearing (Clause 8 (3)).

#### Clause 9: Powers of court on referral of debtor's case

Where the referral has been made under clause 6, i.e. where the debtor is in default of a collection order, the responsible court may give additional time to pay, allow payment by way of instalments, impose an attachment of earnings order or direct an application for deduction from benefits, make a bank account order (even if the collection officer has not previously made an interim bank account order), make a vehicle seizure order, issue a warrant of distress, make a supervised activity order or in the case of a child an attendance centre order, commit an adult debtor to prison in default of payment, or remit the whole or part of the sum due (Clause 9 (1)).

Where the referral has been made under clause 8, i.e. where no collection order has been made, the court can decide to impose one at this point. If it does, then all of the options will be open to it. If the court decides not to impose a collection order, then all of the options bar the deductions from benefits and attachment of earnings orders will be open to it. Deductions/attachments orders will not be available as these require a collection officer to administer them (Clause 9 (2)).

This clause sets out the sequence of using the above options and provides for when they may or may not be used (Clause 9 (3) – (4)). The clause stipulates that where the court is dealing with someone aged under 18 or decides in the case of an adult to make a supervised activity order or commit an adult debtor to prison, the court must give reasons for its decision (Clause 9 (5)).

This clause provides for the collection officer to attend at the hearing where he has imposed an interim bank account order and allows for representations from the deposit-taker as well as the debtor as to why the order should not be made (Clause 9 (6)). Where the court makes a bank account order, but the amount in the account is not sufficient to discharge the sum due, the court may use any of the other actions specified in this clause, in order to recover the outstanding amount (Clause 9 (7)).

If an interim bank account order was imposed but the court decides not to make a full order or uses a different enforcement option from subsection (1) of this clause, then the interim order is discharged (Clause 9(8)). Where a full bank account order is made the interim order will only be discharged when full payment is received (as provided in Clause 17(5)).

In a case where the sum due was imposed not as a result of a conviction, for example, a penalty notice, then the date of conviction is to be treated the same as the date when the debtor's liability to pay the sum due arose (Clause 9 (9)).

#### Clause 10: Application for deduction from benefits

This clause defines what an application for a deduction from benefits is, namely an application to the Department of Social Development for deductions to be made from a debtor's relevant welfare benefit to pay the sum that he owes to the Court (Clause 10(1)). Such an application may only be made in respect of those aged 18 years or older (Clause 10(2)). The relevant welfare benefits are jobseeker's allowance, state pension credit, employment and support allowance and income support (Clause 10 (3)).

The Department for Social Development will have discretion in whether to approve the application. If the application is granted, the Department must deduct the sums payable by the debtor from his benefit and pay these to the Court (Clause 10 (4)). The application will fail if the Department rejects the application, the application is withdrawn by the collection officer, the application is successfully appealed or the Department stops making the deductions whilst the debtor is still liable to pay any part of the sum owing to the Court (Clause 10 (5)). In such a case sections 5 and 6 will apply as if the debtor had failed to comply with the collection order.

The clause confers an order making power on the Department of Justice to amend the list of relevant benefits (Clause 10(7)).

#### Clause 11: Deductions from benefits: further provision in regulations

This clause provides for regulations to be made in respect of applications for deductions from benefits, and outlines what, in particular, regulations may provide for. Regulations made by the Department for Social Development may provide for the procedure for application, the eligibility for deductions, the deduction amounts and periods, the cessation of deductions, the priority between collection order deductions and other deduction orders (Clause 11(1)). Regulations made by the Department of Justice may provide for the notification requirements and contents of the application (Clause 11 (2)).

#### Clause 12: Enquiries into debtor's means

This clause requires the court to request information from the debtor before making an order for an application for deductions from benefits (Clause 12(1)). The clause sets out what kinds of information the court may request from the debtor, namely his name, address, date of birth, National Insurance number and benefits information (Clause 12(1)).

Furthermore the clause creates offences of non-compliance with the court's request for information, either by failing, without reasonable excuse, to provide the information (Clause 12(2)), or by providing false information or failing to disclose a material fact (Clause 12 (3)). The maximum penalty for each of these offences is level 2 on the standard scale, as provided for by Clause 19.

#### Clause 13: Attachment of earnings order

This clause defines the attachment of earnings order, namely that a person who employs the debtor must deduct specified amounts from the debtor's wages and pay them to the court in order to discharge the outstanding amount (Clause 13 (1)). As with the deduction from benefits order, this order only applies to those aged 18 years or older (Clause 13(2)).

The clause sets out what information the attachment of earnings order must contain and allows for regulations to add to this list (Clause 13(4)). The clause provides a formulation for the employer/ employee relationship (Clause 13(5)) and that a definition of "earnings" will be provided in regulations (Clause 13(6)). Further information regarding the attachment of earnings order may be found at Schedule 1 (Clause 13(7)).

#### Clause 14: Statement of earnings

Where an attachment of earnings order is being proposed, or at any time after one has been made, the court or collection officer may direct the debtor or employer to provide a statement of the debtor's earnings, containing all of the information required by subsection (2) and (3) of this clause (Clause 14(1) -14(4)).

Such statements may be received in evidence without further proof during proceedings arising out of an attachment of earnings order (Clause 14(5)).

This clause states that failure to provide a statement, without reasonable excuse, when requested is an offence (Clause 14(6)). The clause provides further offences of providing false information or failing to disclose a material fact at clause 14(7).

The maximum penalty for each of these offences is level 2 on the standard scale, as provided for by Clause 19.

#### Clause 15: Interim bank account order

An interim bank account order requires a deposit-taker with which a debtor has an account to freeze the sum specified in the order in the account and to not reduce the credit balance

below that amount. If the credit balance is already below the sum specified in the order, then it must not be reduced any further (Clause 15(1)).

Where the debtor instructs that the money from the account should 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 (Clause 15(2)).

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 (Clause 15(3)).

Where such notice is received, the court will dismiss the referral to court for hearing of the matter if the full sum owing has been paid, but where the full sum has not been paid, the matter will proceed to hearing and the court will have the options from clause 9 open to it to recoup the outstanding amount (Clause 15(4)).

The clause provides a regulation making power in order, in particular, to make further provisions about requesting information from the deposit-taker, the contents of the interim order, service and administrative charges (Clause 15(6)).

Clauses 15(7) and (8) create new offences of failing, without reasonable excuse, to provide information required by virtue of such regulations, or providing false information or failing to disclose a material fact. The maximum penalty for each of these offences is level 2 on the standard scale, as provided for by Clause 19.

The clause makes provision for the application of the interim bank account order to transitional cases which were already in the criminal justice system before the legislation comes into effect. Interim bank account orders will be available for those who are not yet sentenced. (Clause 15(9)). In cases where a debtor has already defaulted on a sum, an interim bank account order will not be available (Clause 3(7)(b)).

#### Clause 16: Hardship payments

This clause allows the debtor to apply in writing to the collection officer for a hardship payment out of his 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 (Clause 16(1) & (2)).

The clause provides for regulations, in particular to specify the content, form, service and procedure of such an application, as well as circumstances to be taken into account by the collection officer when considering the application (Clause 16 (3)).

#### Clause 17: Bank account order

This clause defines a bank account order, namely that the deposit-taker must pay out of the debtor's account the amount specified to court (Clause 17(1)). This is the effect of the full bank account order which can only be made at a court hearing.

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. Where the court makes a bank account order of its own motion, the court will determine the amount to be paid (Clause 17(2)). The release of funds under this order discharges the deposit-taker's liability to the debtor for that amount, that is to say the debtor cannot claim that the deposit-taker should still hold that amount for the debtor in his account (Clause 17(3)).

The clause allows for regulations to provide for a minimum account balance below which an account cannot be reduced (Clause 17(4)). Clause 17(5) and (6) requires the collection officer or proper officer (as defined in Clause 8) to discharge full or interim bank account orders if the outstanding amount has been paid and to notify the court and deposit-taker.

The content of regulations may provide for further information to be requested from the deposit-taker, for the contents and service of the order and for administrative charges to be imposed (Clause 17(7)).

Clauses 17(8) and (9) create new offences of failing, without reasonable excuse, to provide information required by virtue of such regulations, or providing false information or failing to disclose a material fact. The maximum penalty for each of these offences is level 2 on the standard scale, as provided for by Clause 19.

#### Clause 18: Vehicle seizure order

This clause defines a vehicle seizure order, namely that a debtor's vehicle may be seized in order to secure payment of the sum due. The vehicle may be sold, scrapped or otherwise disposed of and any proceeds of sale are to be used to pay the outstanding amount (Clause 18(1)). Only police officers or a person authorised by the Department of Justice may seize a vehicle (Clause 18(2)).

When the collection officer makes a referral to the court under clause 6(6) requests a vehicle seizure order, he must attend at the hearing in order to give any evidence that the court may require (Clause 18(3)).

This clause provides for certain vehicles which cannot be made the subject of a vehicle seizure order. These vehicles are those which have a disabled person's badge on display, those used for the carriage of a disabled person, those which are used by the police, ambulance, fire and rescue services, and those used by medical practitioners on call (Clause 18(4)).

The clause allows for regulations to specify what a collection officer must take into account before making a request for this order, what the court must take into account, the content of the order, details around the sale of the vehicle, the removal, securing and storage of the vehicle, the release of the vehicle and the protected interests of any innocent third parties in the vehicle (Clause 18(6)).

The clause makes provision for further detail to be included in regulations relating to the release of the vehicle and in particular to include a condition requiring the payment of charges (Clause 18(7)).

The clause makes provision for the application of the vehicle seizure order to transitional cases which were already in the criminal justice system before the legislation comes into effect. Vehicle seizure orders will be available for those not yet sentenced (Clause 18(8)). In cases where a debtor has already defaulted on a sum, a vehicle seizure order will not be available (Clause 3(7)(b)).

#### Clause 19: Offences

This clause provides that any offence mentioned in Chapter 1 is to be punishable by a fine not exceeding £500 (level 2 on the standard scale) (Clause 19(1)). The clause also ensures that companies and partnerships can be subject to these offences (Clause 19(2)) and that where an offence is committed by a partnership and the partner has consented, contributed or has acted in a neglectful manner so as to assist the commission of the offence, the partner as well as the partnership is guilty of the offence (Clause 19(3)).

#### Clause 20: Appeals

This clause provides that where a collection officer's decision is appealed, that appeal will take place at the court level where the fine was originally imposed or which is responsible for its enforcement (Clause 20(1)). The clause allows for that court to quash or confirm the decision in question (Clause 20(2)).

The clause provides, following a default hearing, that the normal appeal structure will apply whereby an appeal of a magistrates' court decision is made to a county court and an appeal of a Crown Court decision is made to the Court of Appeal (but only with leave) (Clause 20 (3) & (4)).

The clause explains that where an appeal is brought, the collection order is suspended until that appeal is resolved (Clause 20(6)). Therefore the collection officer will not take any further enforcement actions under the collection order until after the appeal is completed.

#### Clause 21: Guidance

This clause provides for the Department of Justice to issue guidance relating to the operation of the collection order and the associated processes (Clause 21(1)) as well as

revising the guidance (Clause 21(2)). The clause stipulates that the collection officer must have regard to this guidance (Clause 21(3)).

#### Clause 22: Interpretation etc.

This clause provides for the definitions of terms used within Chapter 1 and sets out where these definitions may be found.

#### Clause 23: Minor and consequential amendments

This clause gives effect to Schedule 2, which contains the minor and consequential amendments relating to this Chapter.

### **Chapter 2: Other Enforcement Procedures**

#### Clause 24: Supervised activity orders

This clause substitutes a new Article 45 into the Criminal Justice (Northern Ireland) Order 2008. As well as providing for the imposition of a supervised activity order (“SAO”) when a person is in default of payment, the new Article also now provides for an SAO to be made when the person makes an application for a SAO, default not yet having occurred.

The amount in respect of which an order may be made is increased from £500 to £1000, and this will now include other financial penalties as well as fines (new Article 45(1) of the 2008 Order).

Where the court could have imposed imprisonment but considers that a SAO would be more appropriate in the circumstances, it may make the order instead (new Article 45(2) of the 2008 Order).

A SAO is defined in new Article 45(3) as an order requiring an individual to attend at a place for a period specified in the order to carry out activities as specified by the order.

New Article 45(4) sets out the minimum and maximum hours that must be performed according to the level of the fine. The Department of Justice may amend the maximum amount in respect of which a SAO may be made or the time periods by order (new Article 45(5)).

The clause specifies that the SAO comes into force as soon as it is made (new Article 45(6)) and where part performance of the order has been carried out, the sum outstanding shall be reduced proportionally by the period of part performance (new Article 45(7)).

The clause specifies how an order is to be discharged, namely by payment of the amount, performance of the order or imprisonment (new Article 45(8)). The clause also points the reader to Schedule 3 to the 2008 Order where more information on supervised activity

orders may be found (new Article 45(9)) and to amendments within that Schedule (Clause 24(2)-(8)).

Clause 24(10) amends Article 100 of the 2008 Order so that an order made under new Article 45(5) may not be made unless a draft of it has been laid before, and approved by, a resolution of the Assembly.

In terms of transitional arrangements, the SAO will operate for those who have already been prosecuted and sentenced as well as for those who have yet to be prosecuted and convicted (Clause 24(12)).

#### Clause 25: Restriction on detention of children for default in paying fines etc.

This clause amends the Criminal Justice (Children) (Northern Ireland) Order 1998 by inserting new Article 46C. New Article 46C provides that a child shall not be detained in custody for fine default unless that child is already in custody or has been ordered to be detained in custody for a period which has not yet begun (new Article 46C(1)). The child in those circumstances may be ordered to be detained for a period which is concurrent with the first period and which must not last longer than that first period (new Article 46C(2) and (3)).

The clause also inserts new Articles 37(1A) and (1B) into the 1998 Order to ensure that an attendance centre order may still be made (in spite of new Article 46C), where the child has defaulted on payment and is not in custody or prison, or been ordered to a period of custody yet to begin (Clause 25 (2)).

This clause also repeals Article 48 of the 1998 Order, which had allowed for committal of children in default (Clause 25(4)).

The clause amends section 35 of the Criminal Justice Act (Northern Ireland) 1945 (Clause 25(5)), and Articles 56, 91 and 92 of the Magistrates' Courts (Northern Ireland) Order 1981 (Clauses 25(6)-(8)) in order to cross refer to new Article 46C of the Criminal Justice (Children) (Northern Ireland) Order 1998. It amends Article 93 of the 1981 Order in order to dis-apply it to children (Clause 25(9)) and repeals Article 94 of that Order (Clause 25(10)).

In terms of transitional arrangements, this clause will operate for those who have already been convicted (as well as for those who have yet to be prosecuted and convicted) (Clause 25(11)).

#### Clause 26: Distress in default

This clause amends section 3 of the Fines Act (Ireland) 1851 to prevent a warrant of distress being executed at the point of sentence in the Crown Court (Clause 26(1)). It also amends Article 92 of the Magistrates' Courts (Northern Ireland) Order 1981 to prevent the same in the magistrates' courts (Clause 26(2)).



### Clause 27: Limitation on remission

This clause amends section 13 of the Prison Act (Northern Ireland) 1953 by inserting new section 13(7A) to state that prison rules may not provide for remission to a person imprisoned for defaulting on payment of the sum due or for imprisonment imposed for breaching a supervised activity order (Clause 27(1)). Schedule 3 to the Criminal Justice (Northern Ireland) Order 1998 (which deals with supervised activity orders) is amended at paragraph 5 and 6 to reflect this (Clause 27(2) and (3)). In terms of transitional arrangements, this clause does not apply to offences committed before the commencement of this clause (Clause 27(4)).

## **PART 2**

### **The Prison Ombudsman for Northern Ireland**

Part 2 of the Bill creates the office of Prison Ombudsman for Northern Ireland, and sets out the functions of the office

### Clause 28: The Prison Ombudsman for Northern Ireland

This clause creates the office of Prison Ombudsman as a corporation sole (Clause 28(1) and (2)), and states the aims and outcomes expected of the exercise of the Ombudsman's powers. In particular the Ombudsman should ensure the powers of the office are exercised so as to secure efficiency, effectiveness and independence, and the confidence of those affected by the exercise of those powers. (Clause 28(4)).

### Clause 29: Main functions of the Ombudsman

This clause lists the main functions that the Ombudsman must carry out, namely dealing with complaints, investigating deaths in custody and carrying out any other investigations as may be requested by the Department of Justice.

### Clause 30: Complaints

This clause requires the Ombudsman to investigate a complaint (Clause 30(1)) to which the clause applies. The clause sets out who may bring a complaint (Clause 30(3)) and allows a person to be entitled to complain on behalf of another person who has died or is unable to act.

This clause provides for circumstances where the Ombudsman may decide not to conduct an investigation (Clause 30(6)) and allows for the deferral of investigations in certain scenarios (Clause 30(7)). In particular the Ombudsman may decide not to investigate a complaint which the Ombudsman considers frivolous, vexatious or raises no substantial issue, or one that has not been made within reasonable time from the exhaustion of the

internal complaints procedures. The Ombudsman can reopen a deferred investigation at any time (Clause 30(8)) and can decide the extent of that investigation (Clause 30(9)).

This clause provides that where the Ombudsman decides not to investigate a complaint, defers the investigation or reopens a deferred investigation then the Ombudsman must notify the complainant with reasons as to the decision (Clause 30(10)) , and this notification may be made orally (Clause 30(11)).

Clause 30(5) enables regulations to amend the matters about which complaints may be made and or the descriptions of persons who may make complaints. Clause 30(13) enables regulations to be made about the procedures to be followed when making and investigating a complaint. The Ombudsman will determine which procedures are applicable in dealing with complaints and their investigation (Clause 30(14)).

#### Clause 31: Report of investigation of complaint

This clause specifies that the Ombudsman must report in writing on the outcome of an investigation into a complaint to the Department and the complainant (Clause 31(1)), and may report to any other person as the Ombudsman sees fit (Clause 31(2)). Within a report to the Department the Ombudsman may make recommendations arising out of the investigation (Clause 31(3)). The Department must respond (Clause 31(4)) and the Ombudsman can report on the response (Clause 31(6)). These recommendations may relate for example to the resolution of the complaint or redress for the benefit of the complainant, or any other individual affected, or suggested improvements to the administrative processes of the Department.

This clause enables regulations to be made for the procedures to be used in relation to reports of investigations into complaints including who may see a draft of the report, who may be identified within the report, and what is to happen where the complainant has died or is unable to act (Clause 31(7)).

#### Clause 32: Investigations into deaths in custody

This clause provides that the Ombudsman must investigate the death of any person at a prison or in the custody of a prison officer outside a prison, and may also investigate a death if it appears to be linked to events which occurred while the deceased was being held at a prison or in such custody (Clause 32(1)). The clause provides for the facts the Ombudsman must try to establish and the concerns to be addressed (Clause 32(2)).

The Ombudsman will determine the scope of the investigation (Clause 32(3)) and may defer and reopen it according to the same criteria in clause 30 above (Clause 32(4) and (5)). The Ombudsman shall draw to the attention of the police any matter relevant to any criminal investigation into the death and shall draw to the attention of any person or body any matter which calls for action to be taken by that body or person (Clause 32(6)).

### Clause 33: Report on investigation into death

This clause provides that where an investigation into a death has taken place and a report has been produced, certain authorities and persons must be given that report (Clause 33(1)). This includes a personal representative of the deceased. The clause provides that the Ombudsman may report to other persons he considers should receive the report (Clause 33(2)). The Ombudsman has the power to make recommendations in that report to the Department and a Health and Social Care Trust (Clause 33(3)) who must respond to the recommendations (Clause 33(4)). The Ombudsman may report on that response to such persons as the Ombudsman sees fit (Clause 33(6)).

Regulations may provide for procedures regarding the report, its publication in whole or in part, for individuals identified in the report to remain anonymous, and its contents (Clause 33(7)). It is envisaged that prior to publishing such reports, the consent of the personal representative of the deceased should be obtained

### Clause 34: Investigations requested by the Department

The clause provides that the Department can request the Ombudsman to carry out an investigation into any custody related matter (Clause 34(1)). This includes matters related to a juvenile justice centre. The Ombudsman must decide whether to conduct the investigation and must notify the Department of that decision (Clause 34(3)). The Ombudsman will determine the procedures for the investigation (Clause 34(4)) and may make recommendations to the Department (Clause 34(5)).

### Clause 35: Report on investigation under section 34

This clause stipulates that where such an investigation has been carried out, a report must be produced and given to the Department and any other person the Department may request (Clause 35(1)). Regulations may make provision as to the procedures regarding the report, its publication and contents (Clause 35(3)).

### Clause 36: Powers of Ombudsman

This clause confers powers on the Ombudsman of entry into a prison, juvenile justice centre or any other premises occupied by the Department for the purposes of its functions under the Prison Act (NI) 1953 (Clause 36(1) and (2)). The Ombudsman may also require the production of documents or other information (Clause 36(3)). This clause creates the offence of obstruction of the Ombudsman, the penalty for which is a fine not exceeding level 3 on the standard scale (Clause 36(4)). It is expected that the Ombudsman will continue to rely on good investigative practices and the contractual obligations of staff in ensuring cooperation from witnesses, however this power will enable the Ombudsman to ensure the provision of relevant information from key witnesses in event of non-cooperation.

#### Clause 37: Disclosure of information

This clause states that information collected by the Ombudsman during the course of an investigation is protected (Clause 37(1)). The clause prescribes the persons to whom and purposes for which protected information may be disclosed (Clause 37(2)). The clause also creates an offence of disclosing such information improperly (Clause 37(9)), the penalty for which is a fine not exceeding level 5 on the standard scale. The placing of restrictions on the circumstance in which information can be disclosed reflects the extensive powers of the Ombudsman in obtaining information. The Ombudsman is given discretion to disclose information for the purposes of certain legal proceedings and in certain other limited circumstances. The clause provides that for the purpose of defamation law, the publication of any matter by the Ombudsman for purposes connected with the Ombudsman's functions shall be absolutely privileged (Clause 37(7)).

#### Clause 38: Guidance to Ombudsman in relation to matters connected with national security

This clause requires the Ombudsman to have regard to guidance issued by the Secretary of State in relation to any matter connected with national security. The Secretary of State acknowledges that the Prison Ombudsman requires full access to material held by the Northern Ireland Prison Service in order to carry out functions in an effective manner, including information relating to national security. Guidance has been prepared which details arrangements for accessing, reviewing, disclosing, handling and reporting of national security information by the Ombudsman in the course of an investigation.

#### Clause 39: Interpretation

This clause explains the meanings of certain words used within the Bill. In particular it explains that references to "prison" include a young offenders centre.

#### Clause 40: Transitional provision: the Prisoner Ombudsman for Northern Ireland

This clause provides that the person holding the existing non-statutory office of Prisoner Ombudsman immediately before the appointed day will continue to hold the office of Prison Ombudsman and will do so for the remainder of their term. Maximum term periods are specified. Provision is also made for the Prison Ombudsman to take on existing investigations of the Prisoner Ombudsman (Clause 40(5)).

### **PART 3**

#### **Miscellaneous**

#### Clause 41: Lay visitors

This clause amends section 73 of the Police (Northern Ireland) Act 2000 to extend the scope of lay visitors to all police stations in Northern Ireland. At present, only stations

designated by the Chief Constable for the purpose of detaining arrested persons fall within the statutory remit of the custody visitor scheme.

#### Clause 42: Possession of pornographic images of rape and assault by penetration

This clause amends Part 5 of the Criminal Justice and Immigration Act 2008 (“the 2008 Act”) which provides for the offence of possession of extreme pornographic images, so as to extend its provision to cover the possession of extreme pornographic images that depict non-consensual sexual penetration.

Subsection (2) amends section 63(6) of the 2008 Act, so as to include a reference to new subsection (7A) (inserted into the 2008 Act by section 37 of the Criminal Justice and Courts Act 2015).

Specifically, subsection (7A) includes two additional categories of prohibited material: an image which portrays, in an explicit and realistic way: (i) an act which involves the non-consensual penetration of a person’s vagina, anus or mouth by another with the other person’s penis; and (ii) an act which involves the non-consensual sexual penetration of a person’s vagina or anus by another with a part of the other person’s body or anything else. The new category of prohibited material will include any image of that nature, irrespective of whether the act is real or simulated (or staged) or whether the person has come into possession of that image from an electronic source or otherwise.

Subsection (3) amends section 66 of the 2008 Act to apply a defence to possession of an image that portrays an act within new subsection (7A), alongside existing defences to the section 63 offence, to a person who is a participant in the image, as well as the possessor, where he or she can prove that, despite any appearance to the contrary, consent was given (freely and by someone who had capacity).

Subsection (4) amends section 67 to provide that a person found guilty of an offence of possessing images coming within the ambit of new subsection (7A) will be liable to a maximum sentence of imprisonment for three years, or a fine, or both.

#### Clause 43: Early removal from prison of prisoners liable to removal from United Kingdom

This clause makes general provision for the removal from a Northern Ireland prison of a prisoner who is liable for removal from the United Kingdom (subsection (1)(a)) and who has served at least one-half of the requisite custodial period (subsection (1)(b)). It also confirms 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 ending the day on which the prisoner will have served the requisite custodial period.

Subsection (2) provides that the prisoner to be removed must be serving a sentence of imprisonment for a determinate sentence of at least 6 months and that prisoners serving an extended custodial sentence under Article 14 of the Criminal Justice (NI) Order 2008 are excluded. Subsection (3) provides that for as long as the removed prisoner remains in

Northern Ireland they will be liable to be detained in pursuance of their sentence. Subsection (4) provides the Department with a power to amend the number of days specified in subsection 1 by order. Subsection (5) described the circumstances in which a prisoner is liable to removal from the United Kingdom.

#### Clause 44: Re-entry into Northern Ireland of offender removed under section 43

This clause provides for how a prisoner removed early from prison is to be treated should they return to Northern Ireland at a later date. Subsection (2) provides for a person returning to Northern Ireland before their original sentence expiry date to be detained in pursuance of their sentence for a period of time equal in length to the outstanding custodial period or until their sentence expiry date, whichever is sooner.

Subsection (3) provides a constable with a power to arrest without warrant any person suspected of being liable to be detained by virtue of subsection (2) and to take that person to a place where that person can be detained. Subsection (4) provides for a person so detained by virtue of subsection (2) to be unable to be removed again under Clause 43. Subsection (5) provides for a person detained under the provisions of subsection (2) to be released by whichever of the two dates specified in subsection (2) is the earlier. Subsection (6) sets out definitions of “further custodial period”, “outstanding custodial period” and “sentence expiry date”

## **PART 4**

### **General**

#### Clause 45: Ancillary provision

This clause enables the Department by order to make any supplementary, incidental, consequential, transitional or other provision necessary to give full effect to the provisions of the Act.

#### Clause 46: Regulations and orders

Subsections (1) and (2) provide for regulations under the Act to be made by the Department of Justice, except that the Department for Social Development will be responsible for making regulations under clause 11(1) which relates to deduction from benefits orders ..

Clause 46(3) and (4) provides for the Assembly control of regulations, while Clause 46(5) and (6) provides for the Assembly control for orders. .

#### Clause 47: Commencement and short title

This clause provides for the short title of the Act and for commencement. Parts 3 and 4 come into operation immediately after Royal Assent. Parts 1 and 2 come into operation on days to be appointed by order made by the Department of Justice.

### **SCHEDULES**

#### **Schedule 1**

##### **Attachment of earnings orders**

###### Paragraph 1: Service of order

This paragraph sets out how an attachment of earnings order may be served on the employer, as well as time limits for notifications which must be made in certain circumstances and offences of failing to comply with a notification requirement, providing false information, or failing to disclose a material fact. The maximum penalty for each of these offences is level 2 on the standard scale, as provided for by Clause 19.

###### Paragraph 2: Compliance with order

This paragraph stipulates that the employer must comply with the order and commits an offence where he fails to do so. The maximum penalty for this offence is level 2 on the standard scale, as provided for by Clause 19.

The paragraph states that non-compliance within 7 days of service of the order will not constitute an offence.

###### Paragraph 3: Power to determine whether payments are earnings

This paragraph provides for either an employer or an employee to apply to the court for a determination on what may constitute earnings. The employer must give effect to such a determination whilst it remains in force. This paragraph provides for an employer who has made such an application to court, to be free of liability for not complying with the order whilst that application is being determined.

###### Paragraph 4: Administrative costs of the employer

This paragraph allows for regulations to specify what administrative 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.

#### Paragraph 5: Change of circumstances

This paragraph outlines the process for notifying the collection officer of a change in the debtor's circumstances, both by the debtor himself and by his employer. This paragraph outlines what notifications must be made, as well as their contents and time limits for doing so. This paragraph creates offences of failing to comply with a notification requirement, providing false information, or failing to disclose a material fact. The maximum penalty for each of these offences is level 2 on the standard scale, as provided for by Clause 19.

#### Paragraph 6: Variation of order

This paragraph provides that an attachment of earnings order may be varied either of the collection officer's own motion or on application by the debtor. The court may also vary the order on application of either of the aforementioned parties or of its own motion. This paragraph outlines the circumstances for variation to be considered appropriate, the requirements for service of the variation order and compliance with it, and creates an offence for non-compliance. The maximum penalty for this offence is level 2 on the standard scale, as provided for by Clause 19.

#### Paragraph 7: Discharge of order

This paragraph provides for the circumstances where an attachment of earnings order may be discharged and by whom. The paragraph allows for regulations to specify when an attachment of earnings order fails, as well as when notice of the discharge of the order must be given and whom it should be served upon. If a person is served with such a notice and continues to enforce the order anyway, he is guilty of an offence under this paragraph, except if that action was taken within 7 days of the date of service of the order. The maximum penalty for this offence is level 2 on the standard scale, as provided for by Clause 19.

#### Paragraph 8: Prioritisation of orders

This paragraph amends Part 2 of Schedule 1 to the Judgments Enforcement (Northern Ireland) Order 1981 so that attachment of earnings orders within this Act will be included in the definition of attachment of earnings orders for the purpose of that Part. It also inserts a definition of "collection order". This paragraph places collection orders on a par, in priority terms, with maintenance orders.

#### Paragraph 9: Crown employment

This paragraph allows for an attachment of earnings order to be made against an employee of the Crown and sets out who is to be treated as the employer and what is to constitute earnings. The paragraph stipulates who is to resolve any questions or issues arising from this, namely the Minister for the Department of Finance and Personnel; an application to whom can be made by the collection officer or court requesting a determination. The Minister's determination is receivable in evidence in any proceedings that may arise.



### Paragraph 10: Regulations

This paragraph allows for regulations to be made which make further provision as to attachment of earnings orders.

## **Schedule 2**

### **Collection Orders: Minor and Consequential Amendments**

#### Paragraph 1: Criminal Justice Act (Northern Ireland) 1945

This paragraph amends the 1945 Act to alter the court's powers of enforcement where a collection order is in force and to define what a collection order is.

#### Paragraph 2: Mines Act (Northern Ireland) 1969

This paragraph amends the 1969 Act to allow for payment of the costs of an inquiry under Schedule 3 to the Act to be subsumed into the collection order regime at the discretion of a district judge (magistrates' courts).

#### Paragraph 3: Magistrates' Courts (Northern Ireland) Order 1981

This paragraph amends the 1981 Order to include a definition of "collection order" at Article 2 (para. 3(1)), to prevent applications to the court for further time to pay or variation of an instalment order under Article 91 where a collection order has been made (para. 3(2)), to stop the grant of a warrant under Article 92 in a case of default where a collection order has been imposed (para. 3(3)), to allow the collection officer to make a winding up application under Article 92A, rather than the clerk of petty sessions, in a case where a collection order has been imposed (para. 3(4)) and to allow the transfer of fines from elsewhere in the United Kingdom under Article 96 to be subject to the imposition of a collection order (para. 3(5)).

#### Paragraph 4: Road Traffic Offender (Northern Ireland) Order 1996

This paragraph amends the 1996 Order in relation to fixed penalties. It inserts a definition of "collection order" (para. 4(1)), changes the time limit for registration of a sum payable in default (para. 4(2)), allows for a referral to a district judge (magistrates' courts) to decide whether a collection order should be imposed (para. 4(3)), allows for a collection order to be included as a proceeding for enforcing payment of the sum (para. 4(4)) and allows for a collection order to be made with regards to a sum payable in default without the need for a court hearing (para. 4(5)).

#### Paragraph 5: Criminal Justice and Immigration Act 2008

This paragraph amends section 88 of the 2008 Act to allow fines from outside the UK to be considered for a collection order (para. 5(1)(b)) and to insert new subsection (6ZA) to refer to Part 9 of the Magistrates Courts (Northern Ireland) Order 1981 and Chapter 1 of Part 1 of this Act as legislation which constructs mechanisms for enforcement of sums adjudged to be paid.

#### Paragraph 6: Justice Act (Northern Ireland) 2011

This paragraph amends the 2001 Act to change the time limits for registration of a fixed penalty (para.6(1)), to provide for the clerk of petty sessions to refer the case to a district judge (magistrates' courts) to decide whether to impose a collection order when a fixed penalty is registered (para. 6(2)), to allow a collection order to be included as a method of enforcing payment of the sum (para 6(3) & (4)) and to provide a definition of "collection order" within that Act (para. 6 (5)).

#### **Schedule 3**

#### **The Prison Ombudsman**

##### Paragraph 1: Appointment

This paragraph sets out that the Department appoints a person to be the Ombudsman. This will be achieved by way of a public appointment process.

##### Paragraph 2: Status

The Ombudsman is not the servant or an agent of the Crown.

##### Paragraph 3: Term of office

This paragraph sets out that the appointment will be for a single term of seven years. This term is in line with arrangements for comparable post-holders, and is considered to support the independence of the office, as there is no provision for a second term.

##### Paragraph 4: Resignation/Removal

This paragraph provides that a person holding office may resign by providing written notice (para 4(1)).

The Department may remove a person from office on certain specified grounds which are: ill-health, failure without reasonable excuse to discharge the functions of the office for a period of 3 months, bankruptcy, conviction of a criminal offence or otherwise inability, unfitness or unwillingness to perform the functions of the office (para 4(2)).

#### Paragraphs 5 and 6: Remuneration and allowances

These paragraphs set out that the Department will determine the salary and allowances payable; rates will be set to attract appropriate candidates. The position will be pensionable.

#### Paragraph 7: Appointment of acting Ombudsman

This paragraph provides that if there is a vacancy the Department can make a short term appointment of an acting Ombudsman.

#### Paragraph 8: The Ombudsman's officers

This paragraph sets out that the Ombudsman can appoint staff with numbers and conditions of employment subject to the approval of the Department. It is anticipated the office will be staffed by seconded civil servants, however the Ombudsman will also have the flexibility to second staff from other organisations. The Ombudsman may authorise staff to perform any of the functions of the office.

#### Paragraph 9: Advisers

This paragraph sets out that the Ombudsman may obtain advice from any person qualified to give it. This is likely to include legal, clinical and public relations advisers to assist in the exercise of the Ombudsman's functions.

#### Paragraph 10: Documents

This paragraph sets out that documents signed by or on behalf of the Ombudsman will be received in evidence and be taken to be so signed unless the contrary is proved.

#### Paragraph 11: Finance

This paragraph sets out that the Department will provide the Ombudsman with such sums as appear to it to be appropriate for meeting the expenses of the office, and determine the terms and conditions of that financing.

#### Paragraph 12: Annual report

This paragraph provides that the Ombudsman must prepare an annual report as soon as practicable after the end of the financial year on how the functions of the office have been carried out (para 12(1)). The Department will lay a copy of the report before the Assembly and arrange for it to be published (para 12(2)).

#### Paragraph 13: Data protection

This paragraph adds the Prison Ombudsman to the list of bodies that are exempt from the subject information provisions in any case, to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of those functions.

#### Paragraph 14: Freedom of information

This paragraph adds the Prison Ombudsman to the list of ombudsmen that the Information Commissioner may disclose information to if it appears to the Commissioner that the information relates to a matter which could be the subject of an investigation by that ombudsman (para 14(1)). It also adds the Prison Ombudsman to the list of Public Authorities detailed in the Freedom of Information Act (para 14(2)).

#### Paragraph 15: Public Services Ombudsperson

This paragraph adds the Prison Ombudsman to the list of bodies that can be investigated by the Public Services Ombudsperson.

#### Paragraph 16: Interpretation

This paragraph explains the meanings of words used within the Schedule.