

*These notes refer to the Justice Act (Northern Ireland)  
2016 (c.21) which received Royal Assent on 12 May 2016*

# Justice Act (Northern Ireland) 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1

#### Fines and Other Penalties: Enforcement

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

##### *Section 1: Application of Chapter*

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

The provisions of the Chapter 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 (Section 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 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 (Section 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.

##### *Section 2: Collection officers*

This Section 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 (Section 2(1)) who can provide information and advice and whose role is to ensure collection orders are complied with (Section 2(2)). Section 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.

### ***Section 3: Collection order***

This Section provides that a collection order must be imposed by the court unless it is impracticable or inappropriate to do so (Section 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) (Section 3(2)).

The Section 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 (Section 3(4)).

When the Court makes a collection order it must provide it to the debtor and the collection officer (Section 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 (Section 3(6)).

The Section 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 (Section 3(7)(b)).

### ***Section 4: Additional powers where collection order made***

This Section 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 (Section 4(1)). (These orders are described more fully at Sections 14-19 below.)

These deduction orders can only be made by the court when making a collection order where the offender has consented (Section 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 (Section 4(2)(a)).

### ***Section 5: Default on payment: collection officer to contact debtor***

This Section stipulates what a collection officer must or can do where an offender fails to comply with the collection order. Section 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 (Section 5(2)). Appropriate information can also be sought when the debtor is a company (Section 5(3)).

The Section 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 (Section 5(4)). Failure to provide information when requested by a collection officer or to provide false information is an offence under Section 5(6) which can attract a penalty of up to £500 (as provided by Section 24 by way of a fine not exceeding level 2 on the standard scale).

***Section 6: Powers of collection officer in relation to debtor***

This Section confers a power of referral on the court on the collection officer, at any time during the collection process he sees fit (Section 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 Section 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 (Section 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 (Section 6(3)). Where a debtor is both employed and on benefits, the collection officer can use his discretion in deciding which order to pursue (Section 6(3)(c)).

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

The Section 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 (Section 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 *including* the likely charges and costs of the sale (Section 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 (Section 6(8)).

Where a collection officer has referred the matter to court, he may not thereafter exercise any of his collection powers (Section 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 (Section 6 (10)).

The Section 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 (Section 6(11)), the penalty which is for a fine not exceeding level 2 on the standard scale (Section 24).

***Section 7: Referral to the court: collection officer's report etc.***

This Section 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 (Section 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 Section 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 (Section 23(5)).

***Section 8: Referral to the court in case where no collection order made***

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

***Section 9: Powers of court on referral of debtor's case***

Where the referral has been made under Section 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 where he is in default of distress, or remit the whole or part of the sum due (Section 9(1)).

Where the referral has been made under Section 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 (Section 9(2)).

This Section sets out the sequence of using the above options and provides for when they may or may not be used (Section 9(3) – (5)). The Section 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 whether or not in default of distress, the court must give reasons for its decision (Section 9(6)).

This Section 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 (Section 9(7)). 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 Section, in order to recover the outstanding amount (Section 9(8)).

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 Section, then the interim order is discharged (Section 9(9)). Where a full bank account order is made the interim order will only be discharged when full payment is received (as provided in Section 22(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 (Section 9(10)).

***Section 10: Power to issue arrest warrant where debtor fails to attend hearing referral of case***

This Section allows for a court to issue a warrant for the arrest of a debtor for failure to attend a hearing under Section 9.

The warrant can only be issued where the court is not satisfied that the summons (requiring the debtor's attendance at the hearing) was served on the debtor or that the debtor is evading service, but the court is satisfied that a reasonable attempt has been made to serve the summons on the debtor; the court is satisfied that the debtor is aware of the liability to pay the sum due and of the possible consequences of defaulting on the payment; the court is considering issuing a warrant to commit the debtor to prison under section 9(1)(i); and the court is satisfied that issuing a warrant for the debtor's arrest (instead of re-issuing the summons) is proportionate to the objective of securing the debtor's appearance before the court. The warrant must be endorsed for bail so that the person will be released upon entering into the recognizance.

The Section also provides that a warrant issued under the Section is not to be regarded for the purposes of Article 19(1)(a)(i) of the Police and Criminal Evidence (NI) Order 1989 as a warrant issued in connection with or arising out of criminal proceedings. This is to ensure that no power of entry attaches to an arrest warrant issued under this Section.

***Section 11: Arrest under warrant under Section 10***

This Section provides that if the debtor enters into a recognizance upon arrest it will not be necessary to take the debtor to the police station. Where the debtor is taken to the police station he must be released on entering into the recognizance.

If the debtor enters into a recognizance, the debtor's case will be heard at the time and place specified in the recognizance. If the debtor fails to enter into a recognizance he must, as soon as practicable, be brought before either a magistrates' court or the Crown Court whichever is sitting next. The Section then specifies the powers of the court when the debtor is brought before it. The Court must either hear the case or, if that is not possible, adjourn the hearing and either remand on bail or commit the debtor to custody.

Payment of the outstanding amount of the financial penalty may be made to the police or the court and on payment the warrant for arrest ceases to have effect.

***Section 12: Remand or committal under Section 11***

This Section sets out how the remand on bail or the committal in custody of the debtor works. The provisions in this Section follow the procedure in the Magistrates' Courts (NI) Order 1981.

***Section 13: Costs relating to referral of debtor's case***

This Section provides that costs of hearing a debtor's case under Section 9 of the Act are to be defrayed in the first instance by the Department of Justice at such rates or amounts approved by the Department of Finance and Personnel.

The Court may order the debtor to pay the whole or any part of the costs of hearing his case under Section 9 of the Act. Where the debtor is under 18 the costs ordered cannot exceed the amount of the outstanding amount owing on the financial penalty.

***Section 14: Application for deduction from benefits***

This Section defines what an application for a deduction from benefits is, namely an application to the Department for Social Development for deductions to be made from a debtor's relevant welfare benefit to pay the sum that he owes to the Court (Section 14(1)). Such an application may only be made in respect of those aged 18 years or older (Section 14(2)). The relevant welfare benefits are jobseeker's allowance, state pension credit, employment and support allowance and income support (Section 14(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 (Section 14(4)).

The application will be treated as having failed 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 (Section 14(5)).

The Section confers a regulation making power on the Department of Justice to amend the list of relevant benefits (Section 14(7)).

***Section 15: Deductions from benefits: further provision in regulations***

This Section 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 (Section 15(1)). Regulations made by the Department of Justice may provide for the notification requirements and contents of the application (Section 15(2)).

***Section 16: Enquiries into debtor's means***

This Section requires the court to request information from the debtor before making an order for an application for deductions from benefits (Section 16(1)). The Section 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 (Section 16(1)).

Furthermore the Section creates offences of non-compliance with the court's request for information, either by failing to provide the information (Section 16(2)), or by providing false information knowingly or recklessly, or failing to disclose a material fact (Section 16(3)).

***Section 17: Disclosure of information***

This Section provides a power for the Department for Social Development ("DSD"), or a person providing services to DSD, to disclose social security information (as defined in sub-section (2)) to a court or a collection officer for the purpose of facilitating a decision by a court or a collection officer whether or not to make an application for deduction from benefits in order to enforce payment of the outstanding amount of an unpaid financial penalty.

Sub-section (3) makes it an offence for a person to whom information is disclosed under this Section to unlawfully disclose the information to another person or use it for a purpose not specified in the Section.

Sub-section (6) specifies that the penalty for unlawful disclosure is a fine not exceeding the statutory maximum (£5,000) on summary conviction, or 2 years imprisonment or an unlimited fine or both on conviction on indictment.

### ***Section 18: Attachment of earnings order***

This Section 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 (Section 18(1)). As with the deduction from benefits order, this order only applies to those aged 18 years or older (Section 18(2)).

The Section sets out what information the attachment of earnings order must contain and allows for regulations to add to this list (Section 18(4)). The Section provides a formulation for the employer/ employee relationship (Section 18(5)) and that a definition of "earnings" will be provided in regulations (Section 18(6)). Further information regarding the attachment of earnings order may be found at Schedule 1 (Section 18(7)).

### ***Section 19: 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 Section (Section 19(1)-19(4)).

Such statements may be received in evidence without further proof during proceedings arising out of an attachment of earnings order (Section 19(5)).

This Section states that failure to provide a statement when requested is an offence (Section 19(6)), the penalty of which is level 2 on the standard scale as provided for by Section 24.

### ***Section 20: 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 (Section 20(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 (Section 20(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 (Section 20(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 Section 9 open to it to recoup the outstanding amount (Section 20(4)).



The Section 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 (Section 20(6)).

Failure to provide information when requested by a collection officer or to provide false information is an offence under Sections 20(7) and (8), which can attract a penalty of up to £500 (as provided by Section 24 by way of a fine not exceeding level 2 on the standard scale).

The Section 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 (Section 20(9)). In cases where a debtor has already defaulted on a sum, an interim bank account order will not be available (Section 3(7)(b)).

### ***Section 21: Hardship payments***

This Section 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 (Section 21(1) & (2)).

The Section 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 (Section 21(3)).

### ***Section 22: Bank account order***

This Section defines a bank account order, namely that the deposit-taker must pay out of the debtor's account the amount specified to court (Section 22(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 (Section 22(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 (Section 22(3)).

The Section allows for regulations to provide for a minimum account balance below which an account cannot be reduced (Section 22(4)). Section 22(5) and (6) requires the collection officer or proper officer (as defined in Section 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 (Section 22(7)).

Failure to provide information when requested by a collection officer or to provide false information is an offence under Sections 22(8) and (9), which can attract a penalty of up to £500 (as provided by Section 24 by way of a fine not exceeding level 2 on the standard scale).

### ***Section 23: Vehicle seizure order***

This Section 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 (Section 23(1)). Only police officers or a person authorised by the Department of Justice may seize a vehicle (Section 23(2)).

When the collection officer makes a referral to the court under Section 6(6) to request a vehicle seizure order, he must attend at the hearing in order to give any evidence that the court may require (Section 23(3)).

The Section provides that the court, in satisfying itself that a seizure order is justified, reasonable and proportionate, must take into account the impact of a vehicle seizure order on the debtor's ability to earn a living (Section 23(4)).

This Section 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 (Section 23(5)).

The Section allows for regulations to specify what a collection officer must take into account before making a request for this 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 (Section 23(7)).

The Section 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 (Section 23(8)).

The Section 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 (Section 23(9)). In cases where a debtor has already defaulted on a sum, a vehicle seizure order will not be available (Section 3(7)(b)).

### ***Section 24: Offences***

This Section provides that any offence mentioned in Chapter 1 is to be punishable by a fine not exceeding £500 (level 2 on the standard scale) (Section

24(1)). The Section also ensures that companies and partnerships can be subject to these offences (Section 24(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 (Section 24(3)).

### ***Section 25: Appeals***

This Section 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 (Section 25(1)). The Section allows for that court to quash or confirm the decision in question (Section 25(2)).

The Section 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) (Section 25(3) & (4)).

The Section explains that where an appeal is brought, the collection order is suspended until that appeal is resolved (Section 25(6)). Therefore the collection officer will not take any further enforcement actions under the collection order until after the appeal is completed.

### ***Section 26: Guidance***

This Section provides for the Department of Justice to issue guidance relating to the operation of the collection order and the associated processes (Section 26(1)) as well as revising the guidance (Section 26(2)). The Section stipulates that the collection officer must have regard to this guidance (Section 26(3)).

### ***Section 27: Interpretation etc.***

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

### ***Section 28: Minor and consequential amendments***

This Section gives effect to Schedule 2, which contains the minor and consequential amendments relating to this Chapter (Section 28(1)).

The Section also enables the Department by order to make any consequential, supplementary or incidental provision necessary to give effect to the provisions of Part 1 of the Act (Sections 28(2) and (3)).