

JUSTICE (NORTHERN IRELAND) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the draft Justice (Northern Ireland) Bill. They have been prepared by the Northern Ireland Office in order to assist the reader of the draft Bill.

SUMMARY

2. The purpose of the Bill is to implement the recommendations of the Criminal Justice Review Group in its report, "Review of the Criminal Justice System in Northern Ireland"¹ (the "Review Report"). The Bill also makes a few other minor changes such as the provision for exceptional legal aid.

3. The Review Group was set up on 27 June 1998 under the Belfast Agreement². It was required to undertake a wide-ranging review of criminal justice (other than policing and those aspects of the system relating to emergency legislation). It reported in March 2000, producing 294 recommendations for change across the criminal justice system. On publication the Government announced a consultation period of six months and undertook to publish legislation and a detailed timetable for implementation once the responses to the consultation exercise had been considered.

4. The draft Justice (Northern Ireland) Bill and these draft explanatory notes are being published as part of the Government's response to the Review Report. Some of the Review Group's recommendations require legislation and the draft Justice (Northern Ireland) Bill addresses a number of these.

5. A number of the Review recommendations relate to the proposal to devolve responsibility for justice matters to the Northern Ireland Assembly, or are dependent on responsibility having been devolved. If the devolved institutions are working

¹ Copies of the Review of the Criminal Justice System in Northern Ireland are available from The Stationery Office bookshops.

² Copies of the Belfast Agreement (cm 3883) are available from The Stationery Office bookshops.

effectively, the Government intend to devolve responsibility for policing and justice functions, as set out in the Belfast Agreement. We need first to take some major steps to implement the Criminal Justice Review and to make some more progress on detailed implementation of the Patten report. A final decision to devolve these functions can only be taken at the time taking account of security and other relevant considerations. But the Government's target is to devolve policing and justice after the Assembly elections scheduled for May 2003.

6. The main provisions of the Bill are:

- to amend the law relating to the judiciary and courts in Northern Ireland, including provision for the creation of a Judicial Appointments Commission and for the removal of judges, changes to eligibility criteria, a new oath and provisions to make the Lord Chief Justice head of the judiciary in Northern Ireland;
- to provide for the appointment of the Attorney General for Northern Ireland after devolution and to establish a public prosecution service;
- to establish a Chief Inspector of Criminal Justice and a Northern Ireland Law Commission;
- to set out the aims of the youth justice system and to make other provisions dealing with the youth justice system, including extending that system to 17 year olds;
- to provide for the disclosure of information about the release of offenders in Northern Ireland to victims of crime and to confer on victims the right to make representations in relation to the temporary release of offenders; and
- to provide for measures in relation to community safety.

OVERVIEW

7. The Bill has 6 parts and 11 Schedules.

- Part 1 (The Judiciary) provides that those with responsibility for the administration of justice must guarantee the continuing independence of the judiciary. It provides for a Judicial Appointments Commission to select people to be appointed, or recommended for appointment, to specified judicial offices (listed in Schedule 1) and for people to be removed from those offices only following a recommendation by a judicial tribunal. Schedule 2 sets out provisions for the Judicial Appointments Commission's staffing, funding and other procedural arrangements. These provisions will come into force after devolution. Part 1 also contains the provisions to establish the Lord Chief

Justice as head of the judiciary in Northern Ireland. These provisions will come into force after devolution. In addition, Part 1 amends the eligibility criteria for judicial office and requires all new appointees to the offices listed at Schedule 3 to take a new oath. These provisions will come into force before devolution of justice functions. Finally, Part 1 provides for the creation of the office of lay magistrate. These provisions may be brought into force either before or after devolution.

- Part 2 (Law Officers and Public Prosecution Service) provides for the appointment of the Attorney General for Northern Ireland and the creation of a Westminster-based Advocate General for Northern Ireland, both of which would take place on or after the devolution of justice functions to the Northern Ireland Assembly. It also establishes a new Public Prosecution Service for Northern Ireland.
- Part 3 (Other new institutions) establishes a Chief Inspector of Criminal Justice in Northern Ireland and a Northern Ireland Law Commission.
- Part 4 (Youth Justice) sets out the aims of the youth justice system and makes a number of amendments to existing legislation so as to provide for the Review's proposals on juvenile justice.
- Part 5 (Miscellaneous) sets out arrangements for the display of the Royal Arms at courthouses; makes provision in relation to the rights of victims of crimes; makes provision in relation to community safety; empowers the Lord Chancellor to direct that exceptional legal aid be available; empowers the Lord Chancellor to abolish the Northern Ireland Court Service and to transfer its functions; and requires the Northern Ireland Court Service to provide security in courts.
- Part 6 (Supplementary) sets out the commencement arrangements, provisions for the exercise of order-making powers under the Bill and the extent of the Bill. It also places limitations on the ability of the Northern Ireland Assembly to legislate in some of the areas covered by the Bill.

COMMENTARY

PART 1: THE JUDICIARY

GENERAL

8. The Review recommended a number of changes to the appointment, removal and structure of the judiciary in Northern Ireland. The current arrangements revolve

around the role of the Lord Chancellor – he is responsible for making or advising on all judicial appointments in Northern Ireland, has responsibility for removing judges up to Supreme Court level on grounds of incapacity or misbehaviour and holds the pivotal position as the head of all tiers of the judiciary in Northern Ireland. Under devolution there is the need to secure a transparent process for appointment and removal and to replace the Lord Chancellor with the Lord Chief Justice as head of the judiciary in Northern Ireland. Other changes which are explained below include broadening of eligibility criteria for appointments and a new oath. More information on the current system and recommended changes can be found in Chapters 5, 6 and 7 of the Review.

Clause 1: Guarantee of continued judicial independence

9. This clause places those with responsibility for the administration of justice in Northern Ireland under a duty to uphold the continued independence of the judiciary, regardless of what administrative structures might be put in place for administering justice matters in the future.

APPOINTMENT, REMOVAL AND COMPLAINTS

Clause 2: Introductory

10. This clause sets out the offices which are covered by the clauses dealing with judicial appointment and removal. These include the offices of Lord Chief Justice, Lords Justices of Appeal and any other office listed in Schedule 1. *Subsection (2)* provides for the First Minister and deputy First Minister, acting jointly, to be able to amend this list of offices. The list may only be amended with the agreement of the Lord Chief Justice (*subsection (3)*).

Clause 3: Northern Ireland Judicial Appointments Commission

11. The Lord Chancellor is currently responsible for making or advising on all judicial appointments in Northern Ireland.

12. The Review recommended that on devolution a Judicial Appointments Commission should be set up to enhance public confidence in the judicial appointments system. This clause provides for the creation of a Judicial Appointments Commission (which would be put in place on devolution of justice functions). The Commission will be responsible for making recommendations to the First Minister and deputy First Minister on judicial appointments from the level of High Court judge downwards.

13. The Commission will have 13 members, including the Lord Chief Justice as chairman (*subsection (2)*). *Subsection (4)* provides for the senior Lord Justice of Appeal to act as chairman in the Lord Chief Justice's absence. As well as the chairman, there will be five judicial members (*subsections (5)(a)*). These will be drawn from the judicial tiers listed in *subsection (6)*. In addition, there will be a barrister, a solicitor and five lay members appointed by the First Minister and deputy

First Minister (*subsections (5)(b) and (5)(c)*). *Subsection (7)* requires the First Minister and deputy First Minister to ensure, so far as possible, that the lay membership is representative of the community in Northern Ireland in overall terms.

14. *Subsection (3)* gives effect to Schedule 2 which provides for the Commission's status, staff, funding and procedural arrangements.

Clause 4: Appointment to most senior judicial offices

15. This clause replaces section 12 of the Judicature (Northern Ireland) Act 1978. It requires the Prime Minister to consult the First Minister and deputy First Minister before making recommendations to Her Majesty The Queen as to who should fill the posts of Lord Chief Justice and Lords Justices of Appeal. As recommended by the Review (para 6.109), *subsection (4)* provides for the Commission to advise the First Minister and deputy First Minister over the procedure they should adopt for formulating their response to the Prime Minister. This procedure will be submitted to the Prime Minister for approval (*subsection (5)*).

16. Clause 4 also amends the Judicature (Northern Ireland) Act 1978 to provide that the First Minister and deputy First Minister must advise Her Majesty The Queen on appointments to the post of High Court judge based on the Commission's recommendation (new section 12A and clause 5(1)).

Clause 5: Appointment to listed judicial offices

17. This clause provides that only a person selected by the Commission can be appointed, or recommended for appointment, to an office listed in Schedule 1. It sets out the procedure to be adopted by the Commission and the First Minister and deputy First Minister for filling those offices.

18. Once the Commission is informed by the First Minister and deputy First Minister of a vacancy it must select a person to be appointed or recommended for appointment, solely on the basis of merit (*subsection (6)*). The Commission is required (*subsection (3)*) to inform the First Minister and deputy First Minister of the person selected and provide them with a report explaining why that candidate was selected. The First Minister and deputy First Minister can require the Commission to reconsider its decision once (*subsection (4)*), giving their reasons for doing so. The Commission can either reaffirm its selection or select a different person, reporting the reason for its decision to the First Minister and deputy First Minister (*subsection (5)*).

Clause 6: Removal from most senior judicial offices

19. This clause amends the Judicature (Northern Ireland) Act 1978 to provide for the removal of the Lord Chief Justice, a Lord Justice of Appeal or certain judges of the High Court. It requires the Prime Minister and the Lord Chancellor to consult the First Minister and deputy First Minister before making a motion for an address to Her Majesty by both Houses of Parliament recommending removal of a person from these offices, and no such motion may be presented in respect of any person unless a tribunal convened by the First Minister and deputy First Minister under clause 8 has

recommended that the person be removed from the office and reported this recommendation to the First Minister and deputy First Minister.

20. The First Minister and deputy First Minister must send a copy of this report, together with any response of their own, to the Lord Chancellor and Prime Minister to be laid before both Houses of Parliament before the Lord Chancellor and Prime Minister make a motion for removal. *Subsection (8)* provides for the suspension of the Lord Chief Justice, Lord Justice of Appeal or judge of the High Court while the Lord Chancellor and Prime Minister consider making any such motion.

21. *Subsection (10)* provides that removal and suspension of judges of the High Court appointed after the coming into force of clause 7 are dealt with under clause 7 of the Bill instead of under the Judicature (Northern Ireland) Act 1978.

Clause 7: Removal from listed judicial offices

22. This clause gives the First Minister and deputy First Minister the power to remove or suspend a person holding a judicial office listed in Schedule 1 for misbehaviour or inability to perform the functions of the office, but only on the basis of the recommendation of a tribunal convened under clause 8 and only with the agreement of the Lord Chief Justice.

23. This clause also provides for the First Minister and deputy First Minister to suspend persons from judicial offices pending a decision on their removal, if a tribunal recommends this and the Lord Chief Justice agrees.

Clause 8: Tribunals for considering removal

24. This clause provides for the creation of tribunals for the purpose of considering the removal of the Lord Chief Justice, a Lord Justice of Appeal or any of the offices listed in Schedule 1. A tribunal to consider the removal of the Lord Chief Justice may only be convened by the First Minister and deputy First Minister (acting jointly) after consulting the Prime Minister (*subsections (1) and (3)*). A tribunal to consider the removal of a Lord Justice of Appeal may be convened by the First Minister and deputy First Minister after consulting the Lord Chief Justice and the Prime Minister or by the Lord Chief Justice after consulting the First Minister and deputy First Minister and the Prime Minister (*subsections (2) and (3)*). Tribunals to consider the removal of any other listed judicial office-holder may be convened by the First Minister and deputy First Minister (after consulting the Lord Chief Justice) or by the Lord Chief Justice (after consulting the First Minister and deputy First Minister) (*subsection (2)*).

25. Three members are to be appointed to the tribunal (*subsections (4) and (5)*). These are a chairman, a judicial member and a lay person. The chairman and judicial member are to be selected by the Lord Chancellor or the Lord Chief Justice (*subsections (7) and (8)*) and the lay person is to be selected by the First Minister and deputy First Minister (*subsection (9)*).

26. *Subsection (10)* provides for the Lord Chief Justice or, in the Lord Chief Justice's absence or when the Lord Chief Justice is under consideration for removal by a tribunal, the tribunal chairman to determine the procedure of the tribunal.

Clause 9: Complaints about judges

27. This clause requires the Lord Chief Justice to prepare and publish a code of practice relating to the handling of complaints against any person who holds the office of Lord Chief Justice or Lord Justice of Appeal or any of the offices listed in Schedule 1.

DISTRICT JUDGES (MAGISTRATES' COURTS) IN NORTHERN IRELAND

Clause 10: Renaming of resident magistrates

28. This clause provides for the office of Resident Magistrate to be renamed as District Judge (Magistrates' Court) in Northern Ireland. The office of Deputy Resident Magistrate will be renamed Deputy District Judge (Magistrates' Court) in Northern Ireland.

Clause 11: Presiding District Judge (Magistrates' Courts) in Northern Ireland

29. The Review recommended that the Lord Chief Justice should be the head of the judiciary in Northern Ireland (see clause 18) and that each tier of the judiciary should have a representative or President in order to facilitate the co-ordination and management of court business and provide a figurehead (see also clauses 13 and 17). This clause requires the Lord Chief Justice to appoint a Presiding judge for the tier of District Judge (Magistrates' Court). This person will hold their office in accordance with their terms and conditions of appointment (*subsection (2)*).

LAY MAGISTRATES

Clause 12: Lay magistrates

30. The Review recommended that the criminal justice functions of Justices of the Peace and the office of lay panellist should be undertaken by holders of the new office of lay magistrate. This clause creates the office of lay magistrate and provides for the Lord Chancellor to appoint lay magistrates to each county court division in Northern Ireland ("county court division" is defined in *subsection (11)*).

31. *Subsection (2)* provides that a person may not be appointed as a lay magistrate unless he has either completed a course of training approved by the Lord Chancellor or has undertaken in writing to attend such a course of training. *Subsection (3)* requires all appointees to the office of lay magistrate to complete their training within a year of appointment, unless given leave by the Lord Chancellor to take longer.

32. The Lord Chancellor can make further provision about eligibility to be appointed as a lay magistrate by regulations, including that a person may not be

appointed if he is a bankrupt or lives outside of a prescribed distance of the county court division to which the appointment relates (*subsections (4) and (5)*). *Subsection (9)* provides for the Lord Chancellor to be able to remove a lay magistrate.

Clause 13: Presiding lay magistrate

33. This clause provides for the Lord Chief Justice to appoint a Presiding lay magistrate as representative of that tier for administrative purposes (see clause 11 for more detail). This is part of the administrative change required to establish the Lord Chief Justice as head of the judiciary after devolution of justice functions (see clause 18).

Clause 14: Functions of lay magistrates

34. This clause empowers lay magistrates to sit in Youth and Family Proceedings Courts and with a judge to hear appeals from Youth Courts. They will also be empowered to issue warrants, hear complaints for the issue of summonses and certain other criminal functions currently undertaken by Justices of the Peace and lay panel members.

OTHER PROVISIONS

Clause 15: Qualification for appointment

35. This clause provides for changes to the appointment criteria for Lords of Appeal in Ordinary, the Lord Chief Justice, Lords Justices of Appeal, High Court Judges, statutory officers listed in Schedule 3 of the Judicature (Northern Ireland) Act 1978 (including district judges), County Court Judges (and deputy county court judges), District Judges (Magistrates' Courts) and coroners. Currently many of these posts are only open to barristers or to solicitors and appointment depends on 'practice' (the period spent actively working as a barrister or solicitor) or 'standing' (the period since being called to the Bar or admitted as a solicitor). The clause makes these posts available to barristers and solicitors and makes the qualifying criterion 'standing' alone. *Subsection (10)* makes it clear that a person is qualified to be appointed as the Crown Solicitor if he is a solicitor or a barrister.

Clause 16: Judicial oath or affirmation

36. This clause extends the number of posts required to take a judicial oath and provides for a new form of oath or affirmation and declaration. This oath is to be taken by appointees to the judicial offices listed in Schedule 3, which can be amended by the Lord Chancellor. It replaces the current Oath of Allegiance and the Judicial Oath set out in the Promissory Oaths Act 1868. These oaths are outlined in full in paragraph 6.24 of the Review. The new oath focuses on the impartiality and independence of the judiciary. The clause also allows the Lord Chancellor to amend the list of offices to which the oath applies.

Clause 17: Presiding county court judge

37. This clause amends section 102 of the County Courts Act (Northern Ireland) 1959 to require the Lord Chief Justice to appoint a county court judge as the Presiding county court judge to represent that tier administratively (see clause 11 for more detail).

Clause 18: Functions of Lord Chief Justice

38. This clause gives effect to Schedule 4 which transfers certain powers of the Lord Chancellor over the courts in Northern Ireland to the Lord Chief Justice. This means that the Lord Chief Justice will replace the Lord Chancellor as administrative head of the courts in Northern Ireland following the devolution of justice matters. The Lord Chief Justice will be able to work with the presiding judges appointed under clauses 11, 13 and 17 to ensure that court business runs smoothly. *Subsection (2)* allows the Lord Chancellor to add functions to Schedule 4.

Clause 19: Secretaries to Lord Chief Justice

39. This clause removes the offices of Principal Secretary and Legal Secretary from Schedule 3 to the Judicature (Northern Ireland) Act 1978 (i.e. the list of statutory offices). As a consequence, appointment of these offices will not fall within the Commission's remit and the post-holders will not be required to take the judicial oath. It also provides for the Principal Secretary to the Lord Chief Justice and a person appointed by the Lord Chancellor to be joint secretaries to certain court Rules Committees.

PART 2: LAW OFFICERS AND PUBLIC PROSECUTION SERVICE

GENERAL

40. The Office of the Director of Public Prosecutions was created by the Prosecution of Offences (Northern Ireland) Order 1972. This Order gives the Director of Public Prosecutions an overview of all prosecutions in Northern Ireland. The Director has a role in ensuring that all prosecutions are carried out properly and he can take over prosecutions being conducted by any other individual or agency. Article 5(1)(c) of that Order provides that the Director shall, where he thinks proper, initiate and undertake on behalf of the Crown proceedings for indictable offences (tried in the Crown Court) and for any summary offence or class of summary offence that he considers should be dealt with by him. The remainder of summary offences are prosecuted by police officers, usually in the magistrates' courts.

41. Under Article 3(2) of the Prosecution of Offences (Northern Ireland) Order 1972 the Director operates under the superintendence and direction of the Attorney General in all matters and he is responsible to the Attorney for the performance of his functions. The Northern Ireland Constitution Act 1973 provides that the Attorney General for England and Wales is also Attorney General for Northern Ireland and the

Director's line of accountability has therefore been to the Attorney General at Westminster.

42. This Part of the Bill implements the recommendations in Chapter 4 of the Review of the Criminal Justice System in Northern Ireland, establishing a Public Prosecution Service for Northern Ireland and providing for the appointment of the Attorney General for Northern Ireland after the devolution of justice functions. After devolution, the Attorney General for England and Wales will hold the new post of Advocate General for Northern Ireland. This Westminster figure will be responsible for matters relating to prosecutions that are not within the competence of the devolved administration, for example matters relating to national security and international relations.

ATTORNEY GENERAL

Clause 20: Attorney General for Northern Ireland

43. It is planned to commence the provisions in clauses 20 to 26 and clauses 37 to 39 on the devolution of justice functions to the Northern Ireland Assembly. *Subsection (1)* of clause 20 will remove the linkage, established by section 10 of the Northern Ireland Constitution Act 1973, between the Attorney General for England and Wales and the Attorney General for Northern Ireland (the repeal of this provision is set out in Schedule 11). The Law Officers Act 1997 is also relevant here: it allows the Solicitor General to carry out the functions of the Attorney General for Northern Ireland. The associated amendment to this Act (to allow the Solicitor General to carry out the functions of the post of Advocate General for Northern Ireland) is set out later in the Bill at clause 25.

44. *Subsection (2)* of this clause gives the First Minister and deputy First Minister the power to appoint a person to be Attorney General for Northern Ireland, after consulting the Advocate General for Northern Ireland (see *paragraph 13* of Schedule 5). *Subsection (3)* sets out the legal qualifications for the post. These are equivalent to those of a judge of the High Court in Northern Ireland (see clause 15(3)). Under *subsection (4)* the First Minister and deputy First Minister may make arrangements to fill the post of Attorney General temporarily during a vacancy. Before doing so they must consult the Advocate General for Northern Ireland (see Schedule 5(12)).

Clause 21: Removal of Attorney General

45. *Subsection (1)* provides that the First Minister and deputy First Minister can only remove or suspend the Attorney General for Northern Ireland from office on the recommendation of a tribunal. The members of the tribunal will be judges in England, Wales or Scotland (*subsection (4)*). The tribunal will be convened by the First Minister and deputy First Minister and its members will be appointed by the Lord Chancellor.

Clause 22: Terms of appointment of Attorney General

46. *Subsection (2)* of this clause provides that the local Attorney General cannot be appointed for a period of longer than five years at a time. It would be possible for the First Minister and deputy First Minister to reappoint an individual to the post of Attorney General for Northern Ireland after such a period of five years has come to an end. No-one is eligible to hold the post of Attorney General for Northern Ireland if they are 70 years of age or older. If the holder of the post of Attorney General would reach the age of 70 during a 5-year period of appointment the term of appointment would have to be shortened so that the holder would leave office before reaching the age of 70.

47. The effect of *subsections (6) to (8)* is to disqualify the holder of the post of Attorney General for Northern Ireland from being a member of the House of Commons, the Northern Ireland Assembly or a local authority in Northern Ireland.

48. *Subsection (9)* makes the local Attorney General subject to the provisions of the Freedom of Information Act 2000. This is equivalent to the position of the Attorney General in England and Wales.

Clause 23: Participation by Attorney General in Assembly proceedings

49. The effect of this clause is to make the Attorney General accountable before the Northern Ireland Assembly for the operation of the Prosecution Service. He will be allowed to answer questions and make statements pursuant to standing orders, but without the right to vote. *Subsection (3)* will give him the right to refuse to answer questions or produce documents on public interest grounds or where that might prejudice criminal proceedings. *Subsection (4)* makes the Attorney subject to the provisions of section 43 of the Northern Ireland Act 1998 (members' interests), under which he will be required to declare any interests in the register maintained by the Assembly before taking part in any relevant proceedings of the Assembly.

Clause 24: Annual report by Attorney General

50. This clause sets out arrangements whereby the Attorney General for Northern Ireland is required to write an annual report for each financial year on how he has exercised his functions. This report will be laid before the Northern Ireland Assembly by the First Minister and deputy First Minister, who will also arrange for it to be published.

ADVOCATE GENERAL

Clause 25: Advocate General for Northern Ireland

51. There are certain functions of the present Attorney General for Northern Ireland that cannot be given to the Attorney General for Northern Ireland appointed by the First Minister and deputy First Minister. These relate to matters over which the Northern Ireland Assembly has no jurisdiction. These 'excepted matters' are set out in Schedule 2 to the Northern Ireland Act 1998 and include, for example, international

relations (including treaties and the European Union), the defence of the realm, taxation and national security. Accordingly, this clause establishes a new post of Advocate General for Northern Ireland to take responsibility for Northern Ireland interests in these issues. *Subsection (1)* of this clause makes the Attorney General for England and Wales the holder of this post. The amendments set out in *subsection (2)* allow the Solicitor General (as the Attorney General for England and Wales's deputy) to also carry out the functions of the post of Advocate General for Northern Ireland. This is done by amending the provisions of the Law Officers Act 1997. The office and functions of the Advocate General are made an excepted matter by means of *subsection (4)*, which adds them to the list of excepted matters in Schedule 2 to the Northern Ireland Act 1998.

Clause 26: Functions of Advocate General

52. This clause introduces Schedule 5 to the Bill which sets out the functions of the new post of Advocate General for Northern Ireland (see also below).

PUBLIC PROSECUTION SERVICE FOR NORTHERN IRELAND

Clause 27: Public Prosecution Service for Northern Ireland

53. *Subsection (2)* of this clause sets out the composition of the Prosecution Service. There are two statutory office holders: the Director and Deputy Director of Public Prosecutions.

54. *Subsection (3)* deals with the staff of the Prosecution Service. These are currently civil servants, who are considered to be on secondment from the Northern Ireland Department of Finance and Personnel. There are no plans to change this arrangement. As the main work of the service will be the conduct of prosecutions, staff to be designated as prosecutors will need to be legally qualified, as set out in *subsection (4)*.

Clause 28: Director of Public Prosecutions for Northern Ireland

55. This clause sets out the appointment criteria for the Director and Deputy Director. The legal qualifications for the two post-holders are set out in *subsections (2)* and *(3)* respectively.

56. The Director and Deputy Director would normally hold their posts until they reach the age of 65, unless the Attorney General for Northern Ireland extends their period of appointment, they resign by giving notice in writing, or are dismissed by the Attorney General under clause 36 (which applies prior to devolution) or clause 39 (which sets out the arrangements for an independent tribunal which will operate after devolution) (*subsections (5) and (6)*).

57. *Subsections (7) and (8)* set out the arrangements for temporarily exercising the functions of Director and Deputy Director should those posts fall vacant. If there were no Director, it would be for the Deputy Director to exercise the functions of the

post until another Director was appointed by the Attorney General for Northern Ireland. If the post of Deputy Director became vacant, then the Attorney General for Northern Ireland could appoint an acting Deputy Director from the prosecution service staff under *subsection (8)* to cover that period.

58. In accordance with the recommendations of the Review Group, *subsection (11)* provides that the Director cannot be required by the Assembly to answer questions or produce documents other than in relation to the finances and administration of the prosecution service. As the Director is meant to have complete independence in the exercise of his functions (subject to the accountability measures and limits set out in this legislation) it would not be appropriate for the Assembly to question him on individual cases. These provisions also apply to the Deputy Director and other members of staff.

Clause 29: Conduct of prosecutions

59. This clause sets out the core functions of the Prosecution Service. It will be the responsibility of the Prosecution Service to undertake all prosecutions for both indictable and summary offences committed in Northern Ireland that were previously the responsibility of the Director of Public Prosecutions for Northern Ireland or the police (apart from fixed penalties for motoring offences).

60. Under *subsection (1)*, the Director will have a duty to take over all prosecutions instituted by the police. On commencement the Director will take over responsibility for all prosecutions instituted by the police. Clause 80(4) provides that if, for example, preparatory work is not sufficiently advanced to allow the Prosecution Service to take on all prosecutions at that time, the Director will only have responsibility for those types of prosecutions which it is reasonably practicable for him to conduct. Under *subsection (2)*, the Director will also be able to institute criminal proceedings himself where he considers it appropriate.

61. *Subsection (3)* ensures that the right to institute private prosecution remains, although it will continue to be open to the Director to take over any privately instituted prosecution under *subsection (4)* (other than proceedings instituted by the Serious Fraud Office). *Subsection (5)* requires the Director to give advice to police forces operating in Northern Ireland on prosecutorial matters. Advice is limited to such issues; it is not intended that the Director should supervise police investigations.

Clause 30: Consents to prosecutions

62. Certain offences are considered serious enough that they require the consent of either the Director of Public Prosecutions or (at present) the Attorney General for Northern Ireland before a prosecution can be undertaken. The provisions in this clause set out the detail of how this consent is to be given by the Director and used by

the courts³. After devolution, the Attorney General for Northern Ireland will no longer be able to consent to the prosecution of offences and all of those provisions requiring his consent (other than those that relate to “excepted” matters) will be passed to the Director. Commentary on this change is set out at clause 37.

Clause 31: Police complaints

63. The amendments to the Police (Northern Ireland) Act 1998 set out in this clause are intended to allow the Director to refer any allegations made to him of criminal conduct by police officers to the Police Ombudsman. The Ombudsman would then report the outcome of any investigation it was felt should be undertaken into those allegations to the Director. This builds on the Director’s powers in clause 32 (see below).

Clause 32: Information for Director

64. *Subsections (1) and (2)* of this clause require court officials, District Judges (Magistrates’ Court) and lay magistrates to send the Director copies of relevant information when persons are committed for trial or a complaint has been made. This will ensure that the Director is made aware of prosecutions which he has not heard about through other channels. It would then be open to him to take over the conduct of those prosecutions under clause 29.

65. There is a requirement in *subsection (3)* for coroners to report to the Director the circumstances of a death where it appears that an offence may have been committed. *Subsection (4)* of this clause requires the Chief Constable to send to the Director information about offences alleged to have been committed which are of a description specified by the Director. This information will enable the Director to monitor the progress of investigations and proceedings in relation to particular types of offences.

66. *Subsection (5)* requires the Chief Constable to send information to the Director at his request about criminal offences that may have been committed or any other information that the Director might need in order to carry out his functions (this reflects provisions currently in force in Article 6(3) of the Prosecution of Offences (Northern Ireland) Order 1972)). This could be used, for example, where the Director had gained information that indicated a criminal offence might have been committed. He could ensure that it had been thoroughly investigated and request any associated papers in order to ensure that a decision could be made by the Prosecution Service as to whether any prosecution should be instituted. These provisions do not, however, constitute a power for the Director to supervise the conduct of investigations by the police.

³ These provisions will also apply to consents given by the Advocate General for Northern Ireland (see Schedule 5, paragraph 33).

Clause 33: Exercise of functions by and on behalf of Service

67. This clause allows the Director to delegate any or all of his functions to a member of his staff. All staff members must carry out their work subject to the direction of the Director (see clause 27(5)). *Subsection (2)* allows the Director to retain the services of a barrister or a solicitor to prosecute cases on his behalf, but they must act in accordance with any instructions issued by a Public Prosecutor.

Clause 34: Code for Prosecutors

68. Under the provisions in this clause the Director must publish a Code of Practice for Public Prosecutors and barristers and solicitors conducting cases for the Director. This would incorporate a code of ethics. The Code of Practice would contain guidance on the general principles to be applied by Prosecutors in the matters set out in *subsection (3)*, such as the grounds on which the Prosecutor would make the decision to prosecute (the evidential and public interest tests); for what charge; and on what grounds proceedings would be discontinued. The code will be published *subsection (5)*; clause 35 requires the code to be included in the Director's annual report.

Clause 35: Reports by Director

69. This clause contains the reporting arrangements for the Prosecution Service. For each financial year the Director will have to prepare an annual report for the Attorney General for Northern Ireland that contains details of how he has exercised his functions for that year, the Code of Practice (including the Code of Ethics) which the Director is required to produce under clause 34 (see above) and any alterations made to those codes during the previous year.

70. The Director will present the Attorney General with a copy of his report and it will then be for the Attorney General to ensure that the report is published. *Subsection (5)* allows the Attorney General to exclude parts of the report from publication on public interest grounds.

RELATIONSHIP OF DIRECTOR AND ATTORNEY GENERAL FOR ENGLAND AND WALES

Clause 36: Superintendence, removal and reports

71. This clause sets out the relationship between the Director and the Attorney General prior to devolution and the appointment of a local Attorney under clause 20. This reflects the current relationship between the existing Director and the Attorney.

RELATIONSHIP OF DIRECTOR AND ATTORNEY GENERAL APPOINTED BY MINISTERS

Clause 37: Transfer of functions etc.

72. This clause sets out the changes to the functions of the Attorney General that

will occur as a consequence of that changed relationship. *Subsection (2)* will end the ability of the Attorney General to consent to prosecutions for certain, specified offences. The power to consent to those prosecutions will be split between the Director of Public Prosecutions for Northern Ireland and the Advocate General for Northern Ireland (with the offences for which the Advocate General's consent is required set out in Schedule 5, *paragraphs 24 to 32*).

73. *Subsection (3)* will allow the Director, rather than the Attorney General for Northern Ireland, to stop a prosecution by means of entering a *nolle prosequi*. This allows proceedings upon indictment to be halted at any time after the Bill of Indictment is signed and before judgement. It is now usually directed to be entered in cases where the accused person cannot be produced in court to plead or stand trial owing to physical or mental incapacity which is expected to be permanent. A *nolle prosequi* puts an end to the prosecution but does not operate as a bar or discharge or an acquittal on the merits and the party remains liable to be re-indicted.

74. *Subsection (4)* will remove the power of the Attorney General to present a Bill of Indictment so as to obtain trial before the Crown Court without the necessity of committal proceedings. *Subsection (5)* will allow the Director, rather than the Attorney General for Northern Ireland, to appeal where he feels that a sentence handed down by a court is unduly lenient. *Subsection (6)* will allow the Director to refer a point of law to the Court of Appeal following an acquittal on indictment.

Clause 38: Independence of Director

75. This clause sets out the arrangements for consultation and advice between the Director of Public Prosecutions, the Attorney General for Northern Ireland and the Advocate General for Northern Ireland after the devolution of justice functions to the Northern Ireland Assembly. It includes a statutory declaration of the independence of the Director of Public Prosecutions in the exercise of his functions and limits consultation with each law officer to the areas for which the Attorney General and Advocate General are responsible to the Assembly and Parliament respectively.

Clause 39: Appointment and removal of Director by Attorney General

76. This clause sets out the appointment and removal criteria for the Director and Deputy Director. As the Director will be carrying out some prosecutions that fall within the area of responsibility of the Advocate General for Northern Ireland the Attorney will have to consult the Advocate before making an appointment. The Director and Deputy Director can only be suspended or dismissed on the recommendation of a tribunal convened under *subsection (4)* (see *subsection (2)*). The membership of such a tribunal is set out at *subsection (5)*. The tribunal will be convened by the Attorney General for Northern Ireland, after consulting the Advocate General for Northern Ireland, and its members will be chosen by the Lord Chancellor (see *subsections (4) and (6)*).

SUPPLEMENTARY

Clause 40: Interpretation

77. This clause defines when proceedings in any case are to be considered to have been instituted for the purposes of this Part.

PART 3: OTHER NEW INSTITUTIONS

CHIEF INSPECTOR OF CRIMINAL JUSTICE IN NORTHERN IRELAND

Clause 41: Chief Inspector of Criminal Justice

78. This clause provides for the creation of an office of Chief Inspector of Criminal Justice in Northern Ireland. The Chief Inspector is to be appointed by the Secretary of State. Schedule 6 makes provision dealing with the practical aspects of the new office, such as tenure, staff, delegation of powers, etc.

Clause 42: Functions of the Chief Inspector

79. This clause lists the organisations in respect of which the Chief Inspector must conduct inspections. The Chief Inspector will be responsible for ensuring the inspection of all aspects of the criminal justice system, excluding the courts. However, he is not permitted to conduct inspections of organisations if he is satisfied that the organisation is already subject to adequate inspection, for example, by bodies such as Her Majesty's Inspector of Constabulary (*subsection (2)*).

80. The Chief Inspector may inspect the activities of the organisations listed. He may also inspect any buildings provided or managed by them. This would allow him to inspect prisons, young offenders centres, juvenile justice centres, secure accommodation provided for the purpose of custody care orders (as to which see clause 52) and attendance centres. *Subsection (4)* allows the Chief Inspector to inspect other organisations providing juvenile justice centres or attendance centres but only in respect of those activities. For example, the Secretary of State has entered into an arrangement under Article 50(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (NI 9)) (the "1998 Order") with the Young Men's Christian Association ("YMCA") in Belfast whereby the YMCA provides an attendance centre. By virtue of *subsection (4)* the Chief Inspector may only inspect the activities of the YMCA in so far as they relate to attendance centres. Similarly, *subsection (5)* ensures that any inspection of a Health and Social Services Board or Trust may only deal with the activities related to keeping children in secure accommodation, where the court has made the young person the subject of a custody care order (see clause 52).

81. *Subsection (6)* provides for the Secretary of State to change the list of organisations, either by adding, removing, or changing the description of organisations on the list. This would be done by order. As the courts are not within

the remit of the Chief Inspector, *paragraph (a)* makes it clear that courts or tribunals cannot be added to the list.

Clause 43: Further provisions about functions

82. This clause sets out more functions of the Chief Inspector and also provides for certain limits to the exercise of his functions.

83. The Chief Inspector must consult the Secretary of State and the Attorney General for Northern Ireland when preparing his programme of inspections (*subsection (1)*). The Secretary of State is given powers to require the Chief Inspector to carry out inspections (*subsection (3)*) or provide advice and assistance (*subsection (7)*) in relation to particular organisations listed in clause 42 and to carry out reviews into any matter relating to the criminal justice system in Northern Ireland (other than a matter relating to a court or tribunal) (*subsection (4)*). However, the consent of the Attorney General for Northern Ireland is necessary before the Secretary of State may require the Chief Inspector to carry out any inspection relating to the Public Prosecution Service (*subsection 5*). These powers, and the general functions of the Chief Inspector in clause 42, are subject to two express limitations, set out in *subsection (6)*, namely that the Chief Inspector is not permitted to carry out inspections or reviews of individual cases, nor may he carry out inspections relating to activities of an organisation which do not relate to the criminal justice system in Northern Ireland.

Clause 44: Powers of inspectors

84. This clause sets out the powers of persons carrying out inspections or reviews for the Chief Inspector, including powers to require documents to be produced and explained. The offence of failing to comply with such a requirement without reasonable excuse, which is created by *subsection (3)*, is triable in the magistrates' courts (see *subsection (4)*). The current maximum for a fine on level 3 is £1,000.

Clause 45: Reports

85. This clause sets out how often and in what form the Chief Inspector must produce reports and to whom he should give copies. The Chief Inspector must report to the Secretary of State on each inspection and review he carries out, and the Secretary of State must then place a copy of the report before both the House of Commons and the House of Lords and arrange to have it published (*subsections (1) and (2)*).

86. *Subsection (3)* enables the Secretary of State to leave out part of the report from the copy laid before the Houses of Parliament and published on the limited grounds stated. Under *subsection (4)* when the Secretary of State has excluded a part of a report, he must produce a statement with the report that part of it has been excluded.

87. If the report relates to the Prosecution Service, *subsection (5)* requires the Secretary of State to send a copy to the Attorney General for Northern Ireland. This

reflects the fact that the activities of the Director of Public Prosecutions for Northern Ireland is to be overseen by the Attorney General for Northern Ireland. This obligation would continue post-devolution, when the Attorney General for Northern Ireland will not supervise the Director, but will continue to oversee his activities.

NORTHERN IRELAND LAW COMMISSION

Clause 46: Northern Ireland Law Commission

88. *Subsection (1)* provides for the establishment of a Law Commission for Northern Ireland, which will review the criminal and civil law of Northern Ireland, including procedure and practice, with a view to making recommendations to Government for reform, codification, simplification and consolidation of legislation.

89. *Subsections (2), (3) and (4)* require the Secretary of State to appoint a chairman and four other Commissioners. The chairman must be a person who holds the office of judge of the High Court of Northern Ireland and of the other Commissioners one must have experience as a barrister, one must have experience as a solicitor and one must have experience as a teacher of law in a university. The remaining Commissioner must be a lay person.

90. *Subsection (5)* requires the Secretary of State to consult with the Lord Chancellor, the First Minister and deputy First Minister and the Attorney General for Northern Ireland before appointing Commissioners. *Subsection (6)* requires the Secretary of State in exercise of the powers of appointment to secure, as far as possible, that the Commission is representative of the community in Northern Ireland. *Subsection (7)* and Schedule 7 make further provision about the Commission, including Commissioners' tenure, salaries, staff and financial provisions.

Clause 47: Duties of Commission

91. *Subsections (1) and (2)* require the Commission to keep the law of Northern Ireland under review and to have its work programme approved by the Secretary of State. The Commission is required to provide advice and information to and receive remits from Government. With the consent of the Secretary of State, the Commission will provide advice and information to Northern Ireland departments and other authorities or bodies on proposals for law reform or amendment of any branch of the law of Northern Ireland. In order to assist it to fulfil its duties, *subsection (2)(f)* enables the Commission to obtain information on the legal systems of other countries.

92. *Subsection (3)* requires the Secretary of State to consult the Lord Chancellor, the First Minister and deputy First Minister and the Attorney General for Northern Ireland before approving the Commission's programme of work. *Subsection (4)* requires the Commission in performing its duties to consult with the Law Commissions of England and Wales and of Scotland and the Law Reform Commission of the Republic of Ireland. *Subsection (5)* requires the Commission to

report annually on how it has performed its duties.

Clause 48: Reports etc.

93. This clause requires the Commission to submit its approved programme, proposals for reform and its annual report to the Secretary of State and the First Minister and deputy First Minister and sets out arrangements for the laying of these documents before Parliament and the Northern Ireland Assembly. Thereafter, the Commission must arrange to publish these documents (*subsection (4)*).

PART 4: YOUTH JUSTICE

AIMS

Clause 49: Aims of youth justice system

94. The principal aim of the youth justice system is set out in *subsection (1)*: to protect the public by preventing offending by children. This clause provides that all persons and bodies exercising functions in relation to the youth justice system (such as the police, the Director of Public Prosecutions and the courts) must have regard to the principal aim of the youth justice system and to the welfare of children affected by the exercise of those functions (*subsections (2) and (3)*). Thus, decisions as to whether to prosecute children, how to deal with them if they are found guilty, and the content of any sentence will have to be made having regard to these matters. The “youth justice system” is defined in *subsection (4)*. “Children” are defined in *subsection (6)* as persons under the age of 18.

NEW ORDERS

Clause 50: Reparation orders

95. This clause amends the Criminal Justice (Children) (Northern Ireland) Order (S.I. 1998/1504 (NI 9)) (the “1998 Order”) by adding to that Order a number of Articles dealing with reparation orders.

96. A reparation order is a new sentence available to courts dealing with child offenders in Northern Ireland. The reparation ordered to be made by the child would be either to the victim of the offence or some other person affected by it or to the community at large. It would be for the court to decide to whom the reparation is to be made and what form it should take in any individual case. Forms of reparation will be as varied as the offences in respect of which they are imposed, but it could take the form of repairing property in cases of property damage or some worthwhile community work. A reparation order must not require the offender to work for more than 24 hours and the reparation must be made within 6 months of the order being made (new Article 36C(1)(a) and (3)(b)).

97. The court cannot make a reparation order unless the offender (new Article 36B(1)) and, where reparation is to be made to a person, that person (new Article 36C(1)(b)) consent. The effect of new Article 36B(2) and new Article 36J(8) (see clause 52) is that a reparation order may only be combined with an attendance centre order, probation order or fine. By virtue of new Article 36A(4) and (5), before making a reparation order, the court must obtain a report indicating the type of work suitable for the offender and the attitude of the victim or victims of the offence to the requirements proposed to be included in the order. The court must also obtain a pre-sentence report before imposing a reparation order, unless it considers it unnecessary in the circumstances (see the amendment to Article 9(3) of the 1996 Order, made by *paragraph 31* of Schedule 10).

98. Reparation orders are a “community sentence” within the meaning of Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (NI 24)) (the “1996 Order”) (by virtue of the amendment made to that Order by *paragraph 30(2)* of Schedule 10). New Article 36B(4) requires that the court, before making a reparation order, must state in open court that it is of the opinion that Article 8(1) of the 1996 Order applies and why it is of that opinion. This means that the court must be satisfied that the offence, or the combination of the offence and one or more other offences associated with it, was serious enough to warrant a reparation order. The concept of offences associated with other offences is defined in Article 2(7) of the 1996 Order (see *paragraph 37(9)* of Schedule 10). Provision for dealing with breach of a reparation order and for the revocation or amendment of an order is made in Schedule 8 (which adds a new Schedule 1A to the 1998 Order). Under Article 36C(5) and (6) the Secretary of State may make rules regulating the making of reparation orders. These may regulate the functions of responsible officers (defined in new Article 36D(2) and limit the number of hours of making reparation on any one day as well as setting the requirement for keeping records of such hours.

Clause 51: Community responsibility orders

99. This clause amends the 1998 Order to provide for a further additional sentencing option for the courts in relation to children.

100. Where a child is found guilty of an offence for which the court could (if the offence were committed by an adult) sentence him to a period of imprisonment, the court may make a community responsibility order. Such an order will have two distinct components. The first part will require the offender to attend a specific place for a few hours at a time where they will receive “relevant instruction in citizenship” (new Article 36E(2)(a)). This part must be at least one-half of the total number of hours specified in the order (new Article 36E(5)). “Relevant instruction in citizenship” is defined in new Article 36E(3) and covers personal and social responsibility, the impact of crime on victims and any factors in the offender’s life that may be linked to crime. The second part of the order will require the offender to carry out, for a specified number of hours, such practical activities as the responsible officer (defined in new Article 36E(4)) considers appropriate in the light of the instruction given to the offender. The aggregate number of hours specified in the

order must be not less than 20 and not more than 40 (new Article 36E(6)). Both aspects of the order must be completed within 6 months of the order being made (new Article 36G(4)). A community responsibility order can only be made with the offender's consent (new Article 36F(1)).

101. Community responsibility orders are community sentences within the meaning of Article 2(2) of the 1996 Order (by virtue of the amendment to that Order made by *paragraph 30(2)* of Schedule 10). By virtue of Article 9(3) of the 1996 Order (as amended by *paragraph 31* of Schedule 10) the court must obtain a pre-sentence report before making a community responsibility order, unless it considers it unnecessary to do so in the circumstances. New Article 36F(4) requires the court, before making a community responsibility order, to state in open court that it is of the opinion that Article 8(1) of the 1996 Order applies and why it is of that opinion. This means that the court must be satisfied that the offence, or the combination of the offence and one or more other offences associated with it, was serious enough to warrant a community responsibility order. The concept of offences associated with other offences is defined in Article 2(7) of the 1996 Order (see *paragraph 37(9)* of Schedule 10).

102. Provision for dealing with breach of a community responsibility order and for the revocation or amendment of an order is made in Schedule 8 (which adds a new Schedule 1A to the 1998 Order). Article 36H allows the Secretary of State to make rules for regulating both the attendance of offenders subject to community responsibility orders and the functions of responsible officers (defined in Article 36E(4)).

Clause 52: Custody care orders

103. This clause creates a new form of custodial sentence for child offenders, to be known as a custody care order. It does this by adding a number of Articles to the 1998 Order.

104. A custody care order may only be imposed on a child who has attained the age of 10 but is not yet 14 and who has been found guilty of an offence for which the court could (if the offence had been committed by an adult) sentence him to a period of imprisonment (new Article 44A(1)). At present, if a court wished to impose a custodial sentence on such a child, it would have to make a juvenile justice centre order (under Article 39 of the 1998 Order). A child in respect of whom a custody care order is made would be held in secure accommodation by an "appropriate authority" for a specified period (rather than being held in a juvenile justice centre), and thereafter be under supervision for a further period (new Article 44A(2)). The period of time for which a child would be held in secure accommodation is to be one half of the total period of the order (new Article 44A(6)). The total period of the order is to be 6 months unless the court specifies a longer period, which cannot be more than 2 years (new Article 44A(3)). An "appropriate authority", in relation to a child, is (by virtue of Article 2(2) of the 1998 Order) the Health and Social Services Board or Trust within whose area the child is ordinarily resident or, if that is not known, the Board or Trust within whose area the child is. "Secure accommodation" is also

defined in Article 2(2) of the 1998 Order (as amended by *paragraph 37(7)* of Schedule 10).

105. New Article 44A(4) provides that a court must not make a custody care order unless, after taking into account the matters which it is required to by Article 37 of the 1996 Order, it has formed the opinion under Articles 19 and 20 of that Order that a custodial sentence would be justified for the offence. Article 37 provides that, when considering the seriousness of any offence, the court may take into account any previous convictions of the offender or any failure of his to respond to previous sentences. It also provides that, when considering the seriousness of any offence committed while the offender was on bail, the court must treat this as an aggravating factor (that is to say, something which makes the offence more serious). Thus a custody care order could not be imposed if the offence, taking into account these further matters, was not serious enough to warrant a custodial sentence.

106. New Article 44B sets out the legal regime which is to apply to a child held in secure accommodation pursuant to a custody care order. It does this by applying, and modifying where necessary, a number of provisions in the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (NI 2)) (the “1995 Order”). The effect is that the regime which will apply is in a number of respects similar to that which would apply if the child were the subject of a care order within the meaning of Article 49 of the 1995 Order. Nonetheless, while in secure accommodation pursuant to a custody care order, a child is subject to a legal regime distinct from that which applies to a child under a care order. To help keep this distinction clear, new Article 44B(5) provides that any care order made in respect of a child has no effect while the child is held in secure accommodation pursuant to a custody care order. In the light of the custodial nature of this order, provision is made to deal with those children who escape from secure accommodation, and those who assist them or take them away without lawful authority (new Article 44C) and with the taking into custody by the police or other responsible person of the child (new Article 44D). These provisions are comparable to the provisions which apply in respect of a child in respect of whom a juvenile justice centre order is made (see Articles 54 and 42 of the 1998 Order, respectively).

107. A child in respect of whom a custody care order is made may attain the age of 14 before the period he is to serve in secure accommodation is completed. In the light of this, new Article 44A(8) gives the court, when making the order, a power to provide that such a child shall be detained in a juvenile justice centre for the whole or part of the period after he reaches 14.

108. The supervision element of a custody care order will be carried out by a probation officer or other person designated by the Secretary of State (new Article 44E(1)). The Secretary of State may make rules regulating this supervision (new Article 44E(4)). Article 44F provides that, in the event of a failure to comply with supervision requirements, a court may impose a fine or a period of detention not exceeding 30 days (new Article 44F(3) and (4)).

109. Where a child in respect of whom a custody care order is in force is convicted by or before a court of another offence that court must revoke the custody care order and, in passing sentence for the new offence, take into account the length of time left to run on that order (new Article 44G(1)). If, in respect of the new offence, the court decides to make a further custody care order the effect of new Article 44G(2) is that the order may be of any period not exceeding 2 years and the period of secure accommodation can be whatever portion of the whole the court specifies. Similar provision is made where the court, in sentencing the child for the new offence, makes a juvenile justice centre order (i.e. where the child has reached 14 between the passing of the first custody care order and his conviction for the later offence) (new Article 44G(3)).

YOUTH CONFERENCES

GENERAL

110. These clauses add a number of new Articles to the 1998 Order. These new Articles create for Northern Ireland a wholly new way of dealing with child offenders and with children who, but for these provisions, would be the subject of proceedings.

Clause 53: Youth conferences and youth conference plans

111. This clause inserts new Article 3A into the 1998 Order, which makes general provisions about youth conferences (whether diversionary or court-ordered). A youth conference is a meeting or series of meetings held to consider how a child ought to be dealt with for an offence (new Article 3A(1)). The meetings will be under the chairmanship of a person to be known as a youth conference co-ordinator (new Article 3A(2)(a)). This person will be given powers to run the meetings effectively (under rules to be made under new Article 3B). The aim of the youth conference will be to devise a youth conference plan which will propose how the child should be dealt with (new Article 3C). The purpose of a youth conference plan is to require the child to carry out specified actions in order to make reparation for the offence, address the child's offending behaviour, and/or meet the needs of the victim. The content of the plan is for the youth conference to decide, from the various options listed in new Article 3C(1), such as apologising, making reparation, or participating in activities designed to address offending behaviour, offer education or assist with rehabilitation. The conference can propose any combination of these options it wishes. The plan must specify the period within which it must be completed, and this must not be more than one year (new Article 3C(4) and (5)).

112. There are three distinct groups of people who may be involved in a youth conference. The first is the core group without whom the youth conference cannot proceed. These are the youth conference co-ordinator, the child, a police officer and an "appropriate adult" (new Article 3A(2)). "Appropriate adult" means a parent or guardian of the child, but provision is made for the case where such a person is unable

or unwilling to participate or the child is in care (within the meaning of the 1995 Order) (new Article 3A(4) and (5)). The second group are those who have a right to participate but in whose absence the youth conference may proceed. This group includes the victim of the offence (new Article 3A(6)). The final group are those who may participate or attend if the youth conference co-ordinator thinks that would be of value (new Article 3A(8)). This could include persons who play a significant role in the child's life (such as a community or religious leader) or people who can provide support to the victim.

113. A key feature of youth conferences is that none of the child, his parents or guardians, or the victim can be compelled by any person or the court to participate. In particular, the child must agree to a youth conference being held (new Article 10A(3)(b) (clause 54) and new Article 33A(6) (clause 55)) and must agree to the youth conference plan (new Article 10C(2)(a) (clause 54) and new Article 33E(3)(a) (clause 55)). Neither the fact that a child has made any admission to a Public Prosecutor or agreed to participate in a conference, or withdrawn such an admission or agreement (new Article 10B(2) (clause 54)), nor any matter relating to the youth conference (new Article 3A(9)) may be used in any subsequent criminal proceedings as evidence of the child's guilt.

114. There are two distinct types of youth conference: diversionary youth conferences (clause 54) and court-ordered youth conferences (clause 55).

Clause 54: Diversionary youth conferences

115. A reference to a diversionary youth conference could be made by the Director of Public Prosecutions (and only the Director) and would be made at an early stage, either before proceedings had been instituted for the offence or shortly after (new Article 10A(1)). The decision as to whether to refer the child and offence to a diversionary youth conference is for the Director, but he can only make a reference if the child admits that he has committed the offence. If a reference is made no further steps may be taken in relation to proceedings against the child for the offence until the youth conference is completed or terminated (new Article 10A(4)).

116. The youth conference co-ordinator would submit a youth conference plan (as agreed by the child, police officer and any other person required to agree by new Article 10C) to the Director. The Director must decide whether to accept the youth conference plan or not. If he accepts it, no further steps in any proceedings against the child for the offence may be taken unless the child fails to comply with the youth conference plan to a significant extent (new Article 10A(6)). The child's compliance is monitored by the youth conference co-ordinator or other person nominated by the Secretary of State, and this person must report to the Director on the child's compliance (new Article 10D). If the Director rejects the plan, or if he accepts it but the child fails to comply to a significant extent, or if the conference is unable to agree a plan, the Director can institute or continue the proceedings against the child in the normal way. For the purpose of calculating any time limits for instituting proceedings, the period taken by the diversionary youth conference and compliance

with any youth conference plan is to be disregarded (new Article 10B(4)).

117. The Director may refer any offence to a youth conference, i.e. there is no restriction on referring even the most serious offences. However, the youth conference can recommend to the Director that the child should not be the subject of a youth conference plan at this stage but that proceedings should be instituted in the normal way (new Article 10A(2)(b)). Equally, the youth conference may recommend that no further action should be taken against the child (new Article 10A(2)(a)).

Clause 55: Court-ordered youth conferences

118. The second type of youth conference is that ordered by the court. A court-ordered youth conference would occur after a court had found a child guilty of an offence and provides a way to consider how to deal with the child for the offence in question. It is not itself a sentence. Unlike diversionary youth conferences, specific rules are laid down as to when a court must, may and may not refer a child and offence to a youth conference (new Article 33A). The effect of this is that the court must refer a child and offence to a youth conference if the offence in question is anything other than -

- an offence for which the sentence (in the case of an adult) is fixed by law as imprisonment for life (such as murder);
- the offence of manslaughter;
- offences which are, in the case of an adult, triable on indictment only (i.e. triable only in the Crown Court);
- offences which are “scheduled offences”, i.e. offences listed in Parts 1 or 3 of Schedule 9 to the Terrorism Act 2000;
- in certain specified circumstances only, an offence for which a diversionary conference has been held (new Article 33C(1)); or
- an offence for which the court intends to grant an absolute or conditional discharge (new Article 33C(4)).

119. A court may not refer a child and offence to a youth conference where the offence is either one for which the sentence (in the case of an adult) is fixed by law as imprisonment for life, or one of manslaughter, or where it intends to grant an absolute or conditional discharge. In any other case (i.e. where the offence is one of those mentioned in the third, fourth or fifth bullet points above) the court may refer the child and offence to a youth conference, but is not obliged to do so.

120. New Article 33B sets out the rules to deal with the situation where the child is found guilty of more than one offence. If any of the offences are ones for which the sentence (in the case of an adult) is fixed by law as imprisonment for life or one of

manslaughter, the court cannot refer any of the offences to a youth conference (paragraph (2)). If the combination of offences includes both one or more for which a court-ordered youth conference is mandatory and one or more for which it is at the discretion of the court, the court may (but is not obliged to) refer all or any of the offences to a youth conference (paragraph (3)).

121. As well as recommending a youth conference plan to a court, a court-ordered youth conference can also recommend that the court simply exercise its existing power to deal with the child or recommend that a youth conference plan and a custodial sentence be combined (new Article 33A(5)). In each case the child, the police officer and other persons in accordance with new Article 33E must consent to the recommendation. If the conference is unable to agree any recommendation the co-ordinator will report this to the court.

122. If a court does not refer a case to a youth conference co-ordinator where it has the power to do so, it must give its reasons in open court (new Article 33C(3)).

Clause 56: Youth conference orders

123. Where a recommendation made to a court by a youth conference includes a youth conference plan (whether alone or in combination with a recommendation that a custodial sentence be imposed) the court may make a youth conference order. This is a new type of sentence for the court. The youth conference order can be in identical terms to the youth conference plan or the court can vary that plan (and include within it anything from the range of options open to the youth conference) (new Article 36J(2)). In either case the child must consent to the youth conference order (new Article 36J(5)) and, where the court varies the youth conference plan, it must consult the youth conference co-ordinator (new Article 36J(6)). A youth conference order cannot be combined with any other court sentence unless the youth conference recommended it be combined with a custodial sentence, in which case the court may also impose any custodial sentence which it could have imposed for the offence (new Article 36J(9)). It is not bound by the youth conference's recommendation as to what that custodial sentence should be. However, the child must agree to any custodial sentence imposed.

124. Before making such an order, the court must state in open court that it is of the opinion that the offence was serious enough to warrant it (see new Article 36J(3) and (4) and why it is of that opinion (new Article 36K(1)).

125. Provision for dealing with breach of a youth conference order and for revocation and amendment of such an order is made by new Schedule 1A of the 1998 Order (added by clause 58 and Schedule 8).

Clause 57: Legal aid for youth conferences

126. This clause adds two new Articles to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (NI 8)) which make free legal aid available for attendance by legal representatives at diversionary youth conferences

and court-ordered youth conferences.

OTHER PROVISIONS

Clause 59 and Schedule 9: Extension of youth justice system to 17 year olds

127. The amendments made by Schedule 9 have the effect that persons who have not attained the age of 18 will be treated as children in respect of proceedings against them for criminal offences. At present a “child” is defined as a person who has not attained the age of 17.

Clause 60: Juvenile justice centre orders for 17 year olds

128. Currently a court cannot make a juvenile justice centre order in respect of a child who has attained the age of 17 (Article 39(1) of the 1998 Order). As a result of the amendments made in Schedule 9 (in particular that at *paragraph 17*), a court will be able to make such an order in respect of a 17 year old offender. The effect of the amendment made by this clause is to limit the ability of a court to make such an order to cases of 17 year olds who may be particularly vulnerable as recommended by the Review Group – paragraph 10.72. A 17 year old in respect of whom a court wishes to impose a custodial sentence and for whom a juvenile justice centre order cannot be made by virtue of this amendment will be sentenced to a period of detention in a young offenders centre.

Clause 61: Consultation about detention

129. Article 45 of the 1998 Order deals with children who have been found guilty of offences the sentences for which are (in the case of an adult) fixed by law as imprisonment for life (paragraph (1)) and, on indictment, for which an adult could be sentenced to 14 years or more imprisonment and the court thinks no other way of dealing with the offender (i.e. non-custodial) is suitable (paragraph (2)). In the case of offences to which paragraph (1) applies, the child is detained during the pleasure of the Secretary of State; in the case of offences to which paragraph (2) applies, the court specifies the period of detention. But in both cases the Secretary of State directs the place and conditions in which the child is to be detained. The amendment made to Article 45 by this clause requires the Secretary of State, before making such a direction in relation to a child of less than 14, to consult the appropriate authority (i.e. the Health and Social Services Board or Trust for the area where the child ordinarily resides or, if that is not known, for the area where he is).

PART 5: MISCELLANEOUS

THE ROYAL ARMS

Clause 62: Display of the Royal Arms at courts

130. This clause provides for the removal of the Royal Coat of Arms from within

courthouses. Royal Arms will continue to be displayed on the exterior of existing courthouses where they are already displayed.

VICTIMS OF CRIME

Clause 63: Information about the discharge and temporary release of prisoners

131. The Secretary of State must make a victim information scheme under *subsection (1)* to give to victims of offences the information specified in *subsection (3)*, that is, the month in which it is anticipated that the offender will be discharged and, where reasonably practicable, the fact that the offender is being considered for temporary release under the Prison Rules. The scheme can make provision about the giving of further, more detailed information (*subsection (4)*). However, information need not be given in the circumstances described in *subsection (8)*, for example, where this would adversely affect the well-being of a victim or threaten the safety of any person.

132. The information is to be given to the actual victim of the offence. But the Secretary of State may decide that it should also be given to other persons who he considers to have been directly affected by the offence (*subsection (5)*), such as the immediate family of a murder victim, or a person who was present when a violent offence was committed. The Secretary of State may also decide that the information should not be given to the actual victim but should instead be given to some other person on his behalf (*subsection (6)*), such as when the victim is a young child or is mentally disabled.

Clause 64: Views on temporary release

133. This clause makes provision for the rights of victims in relation to the temporary release of prisoners under the Prison Rules⁴. The Secretary of State must have regard to representations made by any person considered by the Secretary of State to be a victim of the offence for the purposes of the scheme under clause 63 if they are to the effect that the temporary release of the person serving a sentence in respect of that offence would threaten the safety or adversely affect the well-being of the actual victim or a person regarded as a victim by virtue of *subsection (5)* of clause 63. Thus, a person who is a victim for the purposes of the scheme by virtue of *subsection (6)* of clause 63 may make representations but they must relate to the safety or well-being of the actual victim or a person who is a victim by virtue of *subsection (5)* of that clause. The victim making the representations must be informed of the decision (*subsection (3)*).

⁴ Rule 27 of the Prisons and Young Offenders Centre Rules (Northern Ireland) 1995 permits the temporary release of eligible prisoners for any special purpose or to enable a prisoner to have medical treatment, to engage in employment, to receive instruction or training or to assist in the transition from prison to outside life.

Clause 65: Supplementary

134. This clause makes provision supplementary to clauses 63 and 64. Victim information schemes will only cover information about offenders aged 18 or over. *Subsection (1)* makes it clear that the victim information scheme will cover information about offenders aged 18 or over who were detained pursuant to Article 45 of the 1998 Order (i.e. who were found guilty of grave crimes as children and who are still in detention after they have attained the age of 18) or who were detained in a young offenders centre by the Crown Court (a young offenders centre can hold persons aged between 16 and 24, see Article 7 of the Treatment of Offenders (Northern Ireland) Order 1989).

135. The effect of *subsection (2)* is to require the scheme to cover-

- prisoners who are transferred from a prison in Northern Ireland to a prison elsewhere in the United Kingdom on what is known as a restricted transfer. Restricted transfer has the same meaning as in Part 2 to Schedule 1 to the Crime (Sentences) Act 1997. It means that, despite the transfer, they remain subject to Northern Ireland law in relation to their imprisonment, and
- prisoners on unrestricted transfer from another part of the United Kingdom, as they will be subject to Northern Ireland law in relation to discharge and temporary release.

136. The scheme will not cover -

- prisoners transferred from Northern Ireland to another part of the United Kingdom on an unrestricted transfer, or
- prisoners on restricted transfer from another United Kingdom jurisdiction, since they are not subject to discharge and temporary release provisions under Northern Ireland law (but remain governed by the law of the other part of the United Kingdom from which they were transferred).

COMMUNITY SAFETY

Clause 66: Community safety strategy

137. This clause puts a duty on the Secretary of State to publish a community safety strategy for Northern Ireland. “Community safety” is defined in *subsection (2)*. This includes not only the reduction of crime, but also the reduction of anti-social behaviour and the addressing of other factors that affect people’s perceptions of safety. Measures to enhance community safety could include approaches which seek to address the development of criminality among young people, reduce criminal opportunities and act upon the social conditions that sustain crime, for example.

138. The strategy published by the Secretary of State will identify what government

sees as the key priorities for community safety in Northern Ireland. It will set out how government believes those issues can best be addressed and the delivery mechanism for this (which will include the bodies created under clause 67 below). The strategy will also include details of the financial and other resources the Secretary of State will put into this area.

Clause 67: Local community safety partnerships

139. This clause gives the Secretary of State an enabling power to set up local community safety partnerships. This power would only be exercised after discussion with the Executive on the best way forward. These partnerships will identify local problems and the appropriate solutions, and will work in association with voluntary groups and others in the local community. The membership could include district councils, Health and Social Services Boards and Trusts, Education and Library Boards, the Probation Board, the police and the Northern Ireland Housing Executive, all of whom have statutory functions which have a bearing on community safety. These organisations are not specified in the Bill, since it would be premature to do so as many of them are likely to be affected by the review of public administration launched by the Executive. Accordingly, this clause does not set out the membership of the local community safety partnerships but allows the Secretary of State to determine this by order (*subsection (3)*).

140. The functions of the local community safety partnerships are set out in *subsection (4)* of this clause. One of those is to prepare and publish a local strategy for enhancing community safety which should take into account both the result of the local research and the Secretary of State's strategy (as published under clause 66 above). The local plan will not be identical to the regional strategy because it will reflect local concerns, but it must fit in with the Secretary of State's strategy.

LEGAL AID

Clause 68: Exceptional legal aid

141. This clause adds a new Article to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (NI 8)) (the "1981 Order") which gives the Lord Chancellor the power to direct that legal aid is to be available in proceedings for which legal aid is not otherwise available under that Order or for which assistance by way of representation may not be approved under Article 5 of the Order. It thus provides a power to ensure that legal aid is available in exceptional cases which would otherwise not be covered by the general provisions of the 1981 Order.

Clause 69: Proceedings before a coroner

142. This clause amends Schedule 1 to the 1981 Order in so far as it relates to the provision of legal aid for proceedings before a coroner. At present, legal aid is not available under the 1981 Order for proceedings before a coroner. Schedule 1 to the 1981 Order lists the proceedings for which civil legal aid is available. The reference in that Schedule to proceedings before a coroner has not been brought into force: this

clause deletes that reference. The new power to grant exceptional legal aid (see clause 68) will extend to proceedings before a coroner.

COURT SERVICE

Clause 70: Power to abolish the Court Service

143. The Review recommended that in the event of the devolution of justice matters, a Department of Justice should be created with responsibility for all justice functions. This would not include those Northern Ireland Court Service (“Court Service”) functions which are being devolved elsewhere, for example judicial appointments (see clause 3). The Review envisaged the remaining functions being delivered through a Next Steps agency. This clause provides for the Lord Chancellor to make an order transferring the Court Service’s functions and staff and allows this transfer to take place at any time. It provides for the Court Service to be abolished as part of this process.

COURT SECURITY

Clauses 71-73: Court security and court security officers

144. *Subsection (1)* of clause 71 imposes a duty on the Northern Ireland Court Service to take all reasonable steps to provide security at court-houses. *Subsections (2) and (3)* provide that court security officers will be employed at each courthouse. These officers may be either members of the Court Service’s own staff designated as such, or employees of other organisations with which the Court Service has entered into arrangements for the provision of court security officers under section 69 of the Judicature (Northern Ireland) Act 1978. Clause 72 sets out the powers and duties of court security officers. Clause 73 creates two new offences: first, an offence of assaulting a court security officer in the execution of his duty, which is punishable by a fine not exceeding level 5 on the standard scale or 6 months imprisonment or both, and secondly, an offence of resisting or intentionally obstructing a court security officer, which is punishable by a fine not exceeding level 3 on the standard scale. The present maximum fine on those scales is £5,000 and £1,000 respectively.

PART 6: SUPPLEMENTARY

Clause 74: Excepted matters: judicial office-holders

145. At present, the Northern Ireland Assembly cannot legislate about the appointment and removal of specified judicial office holders (it is an “excepted” matter under the Northern Ireland Act 1998). This clause provides for the appointment and removal of judicial office holders to become a “reserved” matter, in

preparation for the transfer of this power from Westminster to the Northern Ireland Assembly by order once responsibility for justice matters is devolved as recommended by the Review⁵. Remuneration and other terms and conditions of holders of these judicial offices (other than those relating to removal from office) are to remain an “excepted” matter.

Clause 75: Assembly Acts about the judiciary, law officers and prosecutions

146. *Subsection (1)* amends the Northern Ireland Act 1998 to add to the list of entrenched enactments in section 7 of that Act; clause 1 of this Bill (judicial independence) and this clause. These provisions of the Bill cannot therefore be modified by the Assembly or by a Minister of the Assembly.

147. The effect of *subsection (2)* is to require that, after devolution of justice functions, any Bill of the Northern Ireland Assembly that deals with certain matters relating to the judiciary, prosecution service or Attorney General for Northern Ireland will require cross-community support. Section 4(5) of the Northern Ireland Act 1998 defines cross-community support as -

- the support of a majority of members voting, a majority of the designated Nationalists voting and a majority of the designated Unionists voting; or
- the support of 60 per cent of the members voting, 40 per cent of the designated Nationalists voting and 40 per cent of the designated Unionists voting.

Clause 78: Commencement

148. *Subsection (3)* of this clause allows the provisions relating to youth conferences to be brought into force in different areas at different times, thus facilitating the piloting of these provisions in particular areas before they are commenced for the whole of Northern Ireland.

Clause 80: Transitionals and savings

149. *Subsection (2)* ensures that the current holders of the posts of Director and Deputy Director of Public Prosecutions for Northern Ireland will continue to hold office when the provisions relating to the Public Prosecution Service for Northern Ireland are commenced.

150. If, when clause 29 (conduct of prosecutions) comes into force, it is not practicable for the Director of Public Prosecutions to have the conduct of criminal proceedings for all indictable and summary offences, *subsection (4)* of this clause allows him to take over only the conduct of proceedings which it is practicable for him to do so until such a time as he can carry out all such prosecutions.

⁵ See paragraph 15 of Schedule 3 to the Northern Ireland Act 1998

151. *Subsections (8) and (9)* ensure that no one can be dealt with by the making of a reparation order or community responsibility order nor can a child and offence be referred to either a diversionary youth conference or a court-ordered youth conference in relation to an offence committed before the commencement of the relevant provisions.

Clause 81: Statutory Rules

152. This clause provides for orders, regulations or schemes made by either the Lord Chancellor, the Secretary of State, or the First Minister and deputy First Minister to be made by statutory rules.

SCHEDULE 1: LISTED JUDICIAL OFFICES

153. This Schedule lists the offices to which people can only be appointed if they are selected by the Judicial Appointments Commission and from which they can only be removed following a recommendation by a tribunal convened under clause 8. It is brought into effect by clause 2.

SCHEDULE 2: NORTHERN IRELAND JUDICIAL APPOINTMENTS COMMISSION

154. This Schedule sets out provisions in relation to the members of the Judicial Appointments Commission and the arrangements for its staffing and procedure. *Paragraph 1* provides for judicial members to remain on the Commission for as long as they hold their judicial office. Judicial members may resign or may be removed from office by the First Minister and deputy First Minister on the advice of the Lord Chief Justice.

155. *Paragraph 2* sets out the term of office for non-judicial members, including maximum periods of appointment, resignation and dismissal criteria. *Paragraph 3* requires the Commission to pay non-judicial members remuneration as decided by the First Minister and deputy First Minister. *Paragraph 4* sets out the staffing arrangements for the Commission. *Sub-paragraph (3)* provides for pensions for Commission staff.

156. *Paragraph 5* requires the Commission to publish an annual report at the end of each financial year. The report must include statistical information about the gender, age, ethnic origins, community background and geographical location of applicants for judicial posts. A copy of the report must be sent to the First Minister and deputy First Minister, laid before the Assembly and then published.

157. *Paragraphs 6 and 7* enable the First Minister and deputy First Minister to make grants to the Commission and require the Commission to keep proper accounts

and financial records.

158. *Paragraphs 8 to 10* make provision for the Commission to set up committees and sub-committees and regulate their procedure. Committees and sub-committees may include persons who are not members of the Commission. *Paragraphs 11 and 12* provide for the Commission to delegate its functions to a committee. Committees may further delegate to sub-committees. When the power to select a person for appointment is delegated then the committee or sub-committee must include a lay person.

159. *Paragraphs 13 to 17* set out miscellaneous matters including the status of the Commission.

SCHEDULE 3: OFFICE-HOLDERS REQUIRED TO TAKE JUDICIAL OATH

160. This Schedule lists the offices for which new appointees will be required to take a new oath (see clause 16).

SCHEDULE 4: TRANSFER OF FUNCTIONS TO LORD CHIEF JUSTICE

161. This Schedule lists the functions of the Lord Chancellor in relation to the operation of the courts which will transfer to the Lord Chief Justice following the devolution of responsibility for justice matters to the Northern Ireland Assembly.

SCHEDULE 5: FUNCTIONS OF ADVOCATE GENERAL

162. The changes in this Schedule are not intended to take effect until after the devolution of justice functions and the appointment of a local Attorney General for Northern Ireland.

163. *Paragraph 1* of the Schedule amends the Northern Ireland Act 1998 to allow the Advocate General for Northern Ireland to refer Bills of the Northern Ireland Assembly to the Judicial Committee of the Privy Council if he is unsure if they are within the legislative competence of the Assembly. The Attorney General for Northern Ireland will continue to have the same power.

164. *Paragraph 2* makes amendments to the Northern Ireland Act 1998, in order to involve both the Advocate General for Northern Ireland and the Attorney General for Northern Ireland in the institution and defence of proceedings in relation to devolution issues. *Paragraphs 3 and 4* amend corresponding provisions in the Scotland Act 1998 and the Government of Wales Act 1998 to substitute references to the Attorney General for Northern Ireland.

165. *Paragraph 11* makes arrangements for the carrying out of the functions of the Attorney General in the event that the operation of the Northern Ireland Assembly is suspended under the Northern Ireland Act 2000 after the devolution of justice functions. If that were to happen, the Attorney's functions would be exercised by the Advocate General for Northern Ireland for the duration of the period of suspension. If, at any stage after devolution the post of Attorney General for Northern Ireland is vacant, *paragraph 12* requires the First Minister and deputy First Minister to consult the Advocate General before filling the post temporarily (see clause 20(4)).

166. Under *paragraph 14*, it is for the Advocate General for Northern Ireland to appoint the Crown Solicitor for Northern Ireland. The holder of this post represents the Crown in civil matters in Northern Ireland. As many of these fall within the "excepted" field the power to appoint an individual to hold this post should be for the Advocate General for Northern Ireland to exercise.

167. Under *paragraphs 18 to 20* it will become the responsibility of the Advocate General for Northern Ireland to appoint special advocates to represent prisoners in front of the Sentence Review Commissioners on those occasions where the prisoners themselves are not allowed to appear. Special advocates are also used in tribunals convened under section 91(7) of the Northern Ireland Act 1998.

168. *Paragraphs 21 to 23* make changes to the Terrorism Act 2000 so that it will be the responsibility of the Advocate General for Northern Ireland to determine the mode of trial for proceedings for a scheduled offence. These are tried in Northern Ireland by means of the Diplock court system. It would be for the Advocate General for Northern Ireland to determine in each case whether the context of the offence indicates that it should be tried by a judge sitting alone or by a judge with a jury. If he judges that it should go through the more standard procedure, the Advocate General for Northern Ireland would then issue a certificate to remove that case from the Diplock system. The prosecution would then proceed as with other, non-scheduled offences and be purely the responsibility of the prosecution service from that point onwards.

169. *Paragraphs 24 to 32* make changes to those offences which currently require the consent of the Attorney General before a prosecution can be undertaken. It would not be consistent with the independence of the new prosecution service for the local Attorney to make decisions as to whether prosecutions should go ahead, particularly when the Criminal Justice Review Group recommended that the local Attorney should have no power to direct the prosecutor on individual cases (paragraph 4.162 of the Review Report). Accordingly, the power of the Attorney to consent to prosecutions will be transferred to the Director of Public Prosecutions, except in those cases when the offences are related to "excepted" matters (as set out in Schedule 2 to the Northern Ireland Act 1998). The provisions in these paragraphs transfer the power to give consent in cases related to "excepted" matters to the Advocate General for Northern Ireland.

SCHEDULE 6: CHIEF INSPECTOR OF CRIMINAL JUSTICE IN NORTHERN IRELAND

170. This Schedule deals with operational issues, such as appointment and tenure and staffing.

171. *Paragraph 7* enables the Chief Inspector of Criminal Justice to delegate any of his functions to a member of his staff, to members of the United Kingdom or Northern Ireland civil service who are assisting him (under paragraph 3(2)) or to Her Majesty's Inspector of Constabulary, Her Majesty's Chief Inspector of Prisons or Her Majesty's Chief Inspector of the Crown Prosecution Service.

172. *Paragraph 8* deals with the relationship between the Chief Inspector and those appointed under section 41(1) of the Police (Northern Ireland) Act 1998 as inspectors of constabulary for Northern Ireland (the "HMIC"). The effect is that if the Chief Inspector considers that any particular inspection should be carried out in relation to the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve he must give the HMIC the option of carrying out that inspection. If the HMIC do not wish to carry out the inspection, the Chief Inspector may do so, but only after consulting the Secretary of State with a view to obtaining his approval for the inspection. If the Secretary of State did not give his approval, it would still be open to the Chief Inspector to go ahead and carry out the inspection.

173. *Paragraph 11* allows the Chief Inspector to do anything which a private person could do, apart from borrow money, if he considers it appropriate for facilitating, or incidental or conducive to, the exercise of his functions. In particular, this would allow him to enter into contracts and other arrangements.

SCHEDULE 7: NORTHERN IRELAND LAW COMMISSION

174. *Paragraph 1(4)* sets out the grounds for dismissal of a Commissioner by the Secretary of State, which include a conviction for a criminal offence and bankruptcy. *Paragraph 2* provides for a person holding judicial office to be appointed as a Commissioner without relinquishing that office. Except for a person holding full-time judicial office, *paragraph 3* makes provision for payment of Commissioners' remuneration, allowances and pension provisions.

175. *Paragraph 4* requires the Secretary of State to approve the Commission's staffing complement, their salary and terms of employment. It enables the Commission to perform its functions by arranging to engage the assistance of members of the Civil Service and the Northern Ireland Court Service. *Paragraphs 4(3) and 4(4)* deal with superannuation provisions for staff in the employ of the Commission.

176. *Paragraph 5* enables the Secretary of State to make grants to the Commission.

Paragraph 6 sets out requirements on the Commission in terms of financial accountability.

SCHEDULE 8: YOUTH JUSTICE ORDERS: ENFORCEMENT ETC

177. This Schedule adds Schedule 1A to the 1998 Order. This makes provision dealing with the consequences of a breach of a reparation order, community responsibility order or youth conference order (each of which is referred to as a “relevant order” in the Schedule) and the revocation and amendment of a relevant order.

178. If a person in respect of whom a relevant order is in force breaches that order there are two possible ways the matter could be dealt with by the courts:

- it could impose an additional order as punishment for the breach (*paragraph 3*); or
- it could revoke the relevant order and re-sentence the offender for the original offence (*paragraph 4*).

179. When dealing with an offender under *paragraph 3 or 4*, the court must take into account the extent to which the offender has complied with the relevant order (*paragraph 2(3)*).

180. *Paragraph 3* deals with the imposition of an additional order by the court for breach of the relevant order. The application must be brought to the youth court. *Sub-paragraph (1)* sets out what additional orders may be imposed. If such an order is made the offender is then subject to both the original relevant order and the new order imposed by the court as punishment for the breach. This paragraph makes certain modifications to the basic provisions relating to the orders which may be imposed for breach to ensure they work properly in this context. In relation to community service orders, *sub-paragraph (5)* provides that there is to be no minimum period for such an order when imposed for breach and a maximum of 60 hours. This is in contrast to the position where a community service order is imposed for an offence in which case it must be of at least 40 hours and no more than 240 hours (Article 13(2) of the 1996 Order).

181. *Paragraph 4* deals with the situation where the court thinks an additional order is not appropriate punishment for the breach of the relevant order and wants instead to revoke it and re-sentence the offender for the original offence. *Sub-paragraph (6) of paragraph 4* allows a court when re-sentencing an offender who has persistently failed to comply with a requirement to assume that the offender has not consented to the relevant order. This provision makes it clear that, where an offender breaches a relevant order, the court can rely on Article 19(3) of the 1996 Order and impose a

custodial sentence despite Article 19(2) of that Order. Article 19(2) provides that a court may only impose a custodial sentence for an offence where it is of the opinion that the offence was so serious that only such a sentence was justified or, in the case of a violent or sexual offence, that only a custodial sentence would be adequate to protect the public from serious harm. Article 19(3) provides that nothing in *paragraph 2* of that Article prevents a court from passing a custodial sentence where the offender refuses to give his consent to a community sentence proposed by the court and which requires his consent.

182. *Paragraph 5* enables the responsible officer or the offender to apply to the court for the revocation or amendment of the relevant order or for extension of the time within which the relevant order must be complied with. The powers provided by this paragraph are not dependent on the offender being in breach of the relevant order, but could be exercised in those circumstances instead of the specific powers to deal with breach discussed above.

183. *Paragraph 6* makes provision for the situation where the offender in respect of whom a relevant order is in force is convicted of another offence. This paragraph ensures that the courts have the power to make any order in respect of the relevant order necessary to take account of the subsequent conviction. The powers are the same as those conferred on the court under *paragraph 5* of the Schedule – to revoke or vary the relevant order or extend the period within which it must be complied with.

184. *Paragraph 8* provides that the offender must be in court before the court can make an order under *paragraphs 3, 4, 5 or 6* in respect of him, subject to the minor exceptions in *sub-paragraph (8)*. It sets out a procedure whereby the court can secure the presence of the offender in court. The reference in *sub-paragraph (6)(b)* to the place “to which it [the court] would remand him if making an order under Article 13” is a reference to the place of remand provided for by Article 13 of the 1998 Order for children. Article 13 is amended by *paragraph 39* of Schedule 10.

185. *Paragraph 9* provides a right of appeal to the county court for the offender in the specified circumstances. There is no right of appeal for the responsible officer for the relevant order.

SCHEDULE 9: EXTENSION OF YOUTH JUSTICE SYSTEM TO 17 YEAR OLDS

186. These amendments provide that a person who is under 18 is treated as a child for the purposes of criminal proceedings against him.

SCHEDULE 10: MINOR AND CONSEQUENTIAL AMENDMENTS

187. This Schedule makes a number of minor and consequential amendments.
188. *Paragraphs 1, 2 and 6* of this Schedule replicate amendments made by the Prosecution of Offences (Northern Ireland) Order 1972, which is repealed by this Bill.
189. *Paragraphs 3, 4 and 5* make minor amendments to the County Courts Act (Northern Ireland) 1959, including clarifying that one or more judges may be assigned to each county court division. *Paragraph 4* also reflects the current position in Belfast where four judges are assigned to Belfast, one of whom is appointed Recorder of Belfast. *Paragraph 5* is consequential on the repeal of section 105(3) of that Act (which makes provision about judicial oaths, now provided for by clause 16).
190. *Paragraphs 7, 8 and 9* make amendments to the Law Commission Act 1965 consequential on the establishment of an independent Northern Ireland Law Commission.
191. *Paragraph 11* amends the Criminal Appeal (Northern Ireland) Act 1980 (c.47) to provide for youth conference orders (see clause 56).
192. *Paragraphs 12 to 24* amend the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (“the 1981 Order”). *Paragraph 13* is consequential on the repeal of paragraph 5 of Schedule 1 to the 1981 Order (which provided for legal aid for proceedings before a coroner). *Paragraph 14* provides that advice and assistance under the 1981 Order will not be available for proceedings in respect of which legal aid is available under a direction given by the Lord Chancellor (provided for by clause 67). This replicates the existing restriction on the availability of advice and assistance when a civil aid certificate is in force.
193. *Paragraphs 15 and 16* are consequential on the repeal of Article 10(6) of the 1981 Order (position of providers and parties where services are given by way of legal aid) and the re-enactment of the same provisions (provided for by *paragraph 16*). *Paragraph 17* amends the effect of the indemnity granted in relation to contributions to include contributions arising from an exceptional grant of legal aid (provided for by clause 68). *Paragraph 18* adds a definition of “Legal Aid Committee” to the 1981 Order as a consequence of the creation of exceptional legal aid (provided for by clause 68). *Paragraph 19* amends the heading of Schedule 1 to the 1981 Order.
194. *Paragraphs 19 to 22* extend existing provisions to include free legal aid for diversionary youth conferences.
195. *Paragraph 23* adds definitions of child; court-ordered youth conference; and diversionary youth conference as a consequence of the provision of free legal aid for youth conferences (provided for by clause 57).
196. *Paragraph 36* amends the definition of “place of safety” in the Mental Health

(Northern Ireland) Order 1986 to include any young offenders centre and any secure accommodation provided by the Health and Social Services Boards in Northern Ireland.

197. *Paragraph 37* amends Schedule 3 to the Criminal Justice Act 1988 to allow the Director of Public Prosecutions for Northern Ireland (instead of the Attorney General for Northern Ireland) to make an appeal where it is thought that a sentence handed down by a court is unduly lenient (see also *clause 37(5)*).

198. *Paragraphs 38 to 42* amend the Police and Criminal Evidence (Northern Ireland) Order 1989 (the “1989 Order”). *Paragraph 39* adds definitions of “juvenile justice centre”, “secure accommodation” and “young offenders centre”, which are referred to in the substantive amendments made by paragraphs 24 and 25 to the 1989 Order. Article 19(1)(d) of that Order provides that a constable may enter premises without a search warrant for the purposes of recapturing a person who is unlawfully at large from specified custodial institutions. *Paragraph 40* adds secure accommodation (used for detaining a child who is subject to a custody care order) to that list. Article 39 of the 1989 Order provides for the detention after arrest of juveniles in a place of safety. *Paragraph 41* extends the definition of “place of safety” to include young offenders centres and secure accommodation.

199. *Paragraph 51(2)* provides that reparation orders and community responsibility orders are added to the definition of a “community order” for the purposes of the Criminal Justice (Northern Ireland) Order 1996 (the “1996 Order”). *Sub-paragraph (4)* provides that an order sending an offender to secure accommodation is included in the definition of “custodial sentence”.

200. *Paragraph 52* amends Article 9(3) of the 1996 Order (procedural requirements for community orders) to include “reparation order” and “community responsibility order” so that those provisions apply to these new orders. As a consequence of the creation of custody care orders (provided for by *clause 52*) the definition of orders on which restrictions are imposed by Article 18(1) is extended to include a custody care order (*paragraph 53*).

201. *Paragraph 54* adds references to a youth conference order to Article 19(3) of the 1996 Order. This has the effect that a court is not prevented from passing a custodial sentence if the offender refuses to consent to a youth conference order.

202. *Paragraph 57* amends section 42(3) of the Police (Northern Ireland) Act 1998 to include the Chief Inspector of Criminal Justice in the list of those who must receive a copy of a report by Her Majesty’s Inspector of Constabulary on the Police Service of Northern Ireland.

203. The amendments set out in *paragraph 58* of the Schedule are consequent on making the role and functions of the Advocate General for Northern Ireland an “excepted” matter (see commentary on *clause 26* above). They exclude the Advocate

General from the list of justice matters in the reserved field (as set out in Schedule 3 to the Northern Ireland Act 1998).

204. *Paragraph 60* adds a number of definitions to the Criminal Justice (Children) (Northern Ireland) Order 1998 (the “1998 Order”) consequential on the provision made by Part 4 of the Bill.

205. *Paragraph 61* amends Article 8(3) and (4) of the 1998 Order to provide that if a child under 14 cannot be released before he appears in court, he must be held in secure accommodation rather than in a juvenile justice centre.

206. *Paragraph 62* amends Article 13 (remand in custody) of the 1998 Order. Children under 14 must be held in secure accommodation. Those who are 14 but not yet 17 must be held in a juvenile justice centre, unless, in the case of a child who has attained the age of 15, the court considers he is likely to injure himself or someone else, in which case he must be held in a young offenders centre. Those children who have attained the age of 17 must be held in a young offenders centre unless two conditions are met. These are that, when he was first remanded in custody, he was not yet 17 years and 6 months old and that he has not had a custodial sentence passed on him in the previous two years. If these conditions are met the court must send him to a juvenile justice centre if it thinks that such an order is in the child’s best interest.

207. *Paragraph 63* adds references to youth conference orders to Article 30(3) of the 1998 Order. This ensures that the youth court retains jurisdiction to deal with breach of such orders, or to amend or discharge them, even though the offender has attained the age of 18 since the order was made.

208. *Paragraph 64* amends Article 37(4) (requirements of attendance centre orders) of the 1998 Order. This brings the language of the 1998 Order into line with Article 14 of the 1996 Order.

209. *Paragraph 65* amends Article 39(1) of the 1998 Order to provide, firstly, that juvenile justice centre orders cannot be made in respect of an offender who has not attained the age of 14 (for such offenders a custody care order is available) and, secondly, to clarify for which offences such orders are not appropriate.

210. *Paragraph 66* amends Article 41 of the 1998 Order. It omits reference to breach of juvenile justice centre orders by children under 14 as they will no longer be subject to such orders. It also provides that where a court orders an offender to be detained for breach of a juvenile justice centre order he will be held in a juvenile justice centre if he has not yet attained the age of 17 and a young offenders centre if he has, unless certain conditions are satisfied. Those conditions are that the offender is 17 but will not be 18 within the next 30 days (the maximum period for which he can be detained for breach) and that he has not had a custodial sentence (other than the juvenile justice centre order in respect of which he is in breach) in the previous two years. If these conditions are met and the court thinks it is in the child’s best

interest to be detained in a juvenile justice centre, he will be detained in such a place.

211. *Paragraph 67* amends Article 56(5)(a) of the 1998 Order to provide that the Secretary of State may by order provide that the functions of the Juvenile Justice Board shall include power to make and give effect to schemes for children who are subject to reparation orders, community responsibility orders and youth conference plans.

212. *Paragraphs 68 to 71* amend the Northern Ireland Act 2000. During any period in which section 1 of that Act is in force (when devolved government in Northern Ireland is suspended) no person may continue to hold office or be appointed as Attorney General for Northern Ireland. On restoration, the Attorney General who held office immediately before suspension would resume office, unless his term of appointment had expired, in which case a new Attorney General would be appointed in accordance with clause 20.

213. *Paragraph 73* amends the Regulatory Reform Act 2001 to require consultation with the Northern Ireland Law Commission before an order under section 1 of that Act can be made.

SCHEDULE 11: REPEALS AND REVOCATIONS

214. This Schedule sets out the repeals and revocations of other legislation.

COMMENCEMENT

215. The provisions of the Bill will be brought into force by order (see clause 78).