

MAGISTRATES' COURT BENCH BOOK

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FOREWORD BY THE LORD CHIEF JUSTICE

This Benchbook flows, in the first instance, from the work of the Criminal Courts Judicial Committee which, under the chairmanship of Mr. Justice Hart, has had as its primary focus the efficient management of cases coming before the criminal courts for the benefit of all participants, consonant with the overriding object of ensuring that those cases are disposed of fairly and justly.

Earlier this year, in furtherance of that aim, a JSB case management workshop for the Magistrates' Courts tier was held with the express purpose of sharing good practice across the tier. The agreed conclusions formed the basis of an extremely useful practice note on case management subsequently issued by the Presiding District Judge with my approval. This important practice note, together with other, related, case management materials, now occupies a central place within this manual and establishes definitively the appropriate manner by which to progress summarily prosecuted criminal charges.

Additionally, the Benchbook contains those portions of the Magistrates' Courts Sentencing Guidelines which have already been issued by the Sentencing Group. As further guidelines are produced by the Magistrates' Courts sub-committee of that group, these will likewise be added to the book, thus providing the judiciary in the adult court with a comprehensive and readily available resource to assist them in sentencing deliberations.

Other existing resources such as: the recently created table of orders ancillary to sentencing; and certain useful specimen directions have similarly been included to provide the Benchbook with added value for its primary users, the District Judges (Magistrates' Courts). It is hoped that, in its totality, the Benchbook will come to be seen – and made use of – as the proverbial *vade mecum* of the Magistrates' Courts tier.

Everything contained in this Benchbook will also be publicly available as an easily accessible electronic resource on the JSB website, so that both practitioners and members of the general public may see the way in which these courts are run. This transparency is only right in our era and I am hopeful that it will serve to enhance the public's confidence in the administration of justice.

I wish to register my gratitude to Judge Fiona Bagnall, Presiding District Judge, for the significant work that she has done in ensuring the creation of this book and I warmly commend it to all who sit in the Magistrates' Courts in this jurisdiction.

The Right Hon. Sir Declan Morgan
Lord Chief Justice of Northern Ireland
December, 2011

MAGISTRATES' COURT BENCH BOOK

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A. Practice Note: Case Management in the Magistrates' Courts

Introduction

[1] This guidance applies to all cases coming before the adult magistrates' court and the youth court. It is issued by the Presiding District Judge (Magistrates' Courts) with the approval of the Lord Chief Justice. The purpose of the guidance is to minimise avoidable delay in these courts by advocating a best practice approach to case management and the contents of this Practice Note reflect the broad consensus of the District Judges (MC) in formal discussions on this subject.

Case Progression Sheets

[2] Case Progression Sheets should always be attached to each set of papers in the magistrates' court and the youth court and completed in all respects on each occasion on which the matter comes before the court. In particular the District Judge (MC) should enter a full and clear record of the reasons for any adjournments as well as any directions given to the parties so that there is a clear chronology of the progress of the case in court. In cases started by way of summons the target date should be entered by court staff; in charge sheet cases the District Judge (MC) should enter this date¹ when advised that the Notice of Decision has been served with the papers.

Listing Contests

[3] All listing of contests should follow the format noted below:

- On a plea of not guilty the District Judge (MC) will expect the defence to advise both the court and the prosecution which witnesses if any can be agreed in accordance with paragraph 6.1(c) of the Protocol on Criminal Case Management in the Magistrates' Court.
- The case will be adjourned for **2 weeks** to allow parties to check availability of witnesses.
- The PPS and the defence, where relevant, will complete fully the contest listing form and e-mail it to the Case Progression Officer no later than 24 hours before the next listed date.
- The Case Progression Officer will advise the District Judge (MC) of a suitable court date for contest in line with the information provided. At the next listing the court will fix the date and decide whether a review is necessary in light of any outstanding issues identified on the form.

Video link

[4] In all courts where a video link facility is available District Judges (MC) should be proactive in maximising the use of this facility and reducing the number of prisoners being produced to court unless this is clearly necessary. Where adult defendants are remanded in custody the District Judge (MC) should make active

¹ In adult cases the target date for disposal is 9 weeks from the Notice of Decision. In youth cases the target date within which to make a finding is 12 weeks from the Notice of Decision.

enquiry of the defendant's legal representatives whether it is appropriate to undertake the plea and sentence on video link and do so where at all possible.

Specific Sentence Reports/ Shortened Pre-sentence Reports

[5] District Judges (MC) should order SSRs/Shortened Pre-sentence Reports in all suitable cases. Probation will be able to facilitate this for:

- public order offences - including assaults on police;
- damage to property;
- benefit fraud;
- minor thefts; and,
- driving cases.

The reasons why cases in these categories of offences may not be suitable for such reports should only be matters such as *serious* mental health issues, *serious* addiction issues or lengthy relevant criminal records.

Ordering Pre-sentence Reports

[6] When ordering a pre-sentence report the District Judge (MC) should ask the defendant to confirm his/her address and advise him/her that probation will write to that address.

Judge Fiona Bagnall
Presiding District Judge (Magistrates' Courts)
Dated 5th September, 2011

B. Matters for guidance

Adjournments

a) For instructions

In a case which commences in court by way of a summons the defence should have instructions at the first appearance in accordance with paragraph 4.1(a) of the Protocol on Criminal Case Management in the Magistrates' Court, where this is not possible no more than a week should be allowed to take instructions apart from exceptional cases. When a case commences by way of a charge sheet no more than 1 week should be granted to take instructions once the Notice of Decision has been served except in exceptional cases.

b) On the day of contest

District Judges (MC) should maintain a robust approach to adjournments from either prosecution or defence. If a witness or defendant has not attended, time should be allowed for solicitor or counsel to contact them. In the case of prosecution witnesses this may mean an officer calling at the witness' house. Parties will be expected to make every effort to ensure the contested hearing proceeds and only make an adjournment application after every avenue has been explored. The judge must consider the application in light of the triangulation of interests. In the normal course of matters adjournments should only be given where there are compelling and clear reasons.

c) For preparation of pre-sentence reports

If a defendant fails to attend an interview for the preparation of a pre-sentence report, the District Judge (MC) should not allow a further opportunity to attend unless he/she is satisfied that the defendant had a good reason for not attending or it would be unjust to sentence without the benefit of a report.

Judge Bagnall
5th April 2011

C. PROTOCOL ON CRIMINAL CASE MANAGEMENT IN THE MAGISTRATES' COURT

1.0 THE OVERRIDING OBJECTIVE

1.1 The overriding objective of this protocol is that criminal cases be dealt with justly.

1.2 Dealing with a criminal case justly includes:-

- (a) acquitting the innocent and convicting the guilty;
- (b) dealing with the prosecution and defence fairly;
- (c) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;
- (d) respecting the interests of witnesses and victims and keeping them informed of the progress of the case;
- (e) dealing with the case efficiently and expeditiously;
- (f) ensuring that appropriate information is available to the court when issues of bail and sentence are considered; and
- (g) considering any need for non-statutory reporting restrictions, and
- (h) dealing with the case in ways that take into account:-
 - (i) the gravity of the offence alleged;
 - (ii) the complexity of what is in issue;
 - (iii) the severity of the consequences for the defendant and others affected; and
 - (iv) the needs of other cases.

2.0 THE DUTY OF PARTICIPANTS IN A CRIMINAL CASE

2.1 Each participant, in the conduct of each case, must:-

- (a) prepare and conduct the case in accordance with the overriding objective;
- (b) be fully acquainted with the facts, issues and history of the case and be in a position to respond in detail to any queries raised by the court;
- (c) communicate effectively and in a timely manner with the other parties, any experts etc and the court;
- (d) ensure clients and witnesses (where appropriate) are acquainted with Magistrates' Court procedure.
- (e) Ensure that all applications (whether made before or during the trial)
 - (i) are made at the earliest possible opportunity; and
 - (ii) are communicated to the other parties and to the court at the earliest possible opportunity;
- (f) comply with any directions by a judge that any correspondence, skeleton argument, written submission, agreed statement of facts, expert's report, or any other document or exhibit be lodged in court and served on any party in a particular way and by a specified date and time;

2.2 In addition, in a Youth Court each participant must seek to comply with the Youth Court guidelines.

3.0 GUILTY PLEAS CASES

PROSECUTION

3.1 The prosecution in presenting a case, in which a plea of “guilty” is entered, must:-

- (a) be in a position to present all the relevant facts, including aggravating and mitigating factors to enable the court to pass the appropriate sentence or make the appropriate order;
- (b) be in a position to advise the court by drawing attention to any statutory provisions that govern the court’s sentencing powers and to any relevant sentencing guidelines.
- (c) be in a position to assist the court of any aggravating factors including facts which would lead the court to conclude that an offence is aggravated by hostility as defined by Article 2(3)(a) of the Criminal Justice (No 2) (NI) Order 2004;
- (d) be in a position to advise the court of any essential facts in dispute of which they are aware, so as to enable the court to decide if a Newton Hearing is required;
- (e) ensure, where appropriate, that any necessary witnesses are available for a Newton Hearing or a special reasons hearing;
- (f) furnish to the court all up-to-date criminal records including the criminal records of members of the European Union in their own countries, where appropriate;
- (g) ensure all relevant information is before the court to make any orders ancillary to sentence, eg compensation, costs;

- (h) have sufficient copies of documents which need to be drawn to the court's attention, and, in particular, in a Youth Court ensure that a copy of any document is available for each member of the panel;
- (i) provide, upon request, either orally or in writing, a summary of the facts of the case to the defence either prior to or on the morning of the plea being entered;
- (j) in the event that a defendant does not appear in answer to a summons charging an indictable offence triable summarily, ensure that an officer, who can connect the defendant with the charge is present at the next hearing.

4.0 GUILTY PLEA CASES

DEFENCE

4.1 The defence solicitor/counsel shall:-

- (a) take sufficient instructions in relation to the prosecution case as contained in available statements or as made known otherwise (including a PACE interview) so as to be in a position to inform the court of a plea of "guilty" at the earliest opportunity. (McDonald, McDonald and Maternaghan refers – Attorney General's Ref. No 1 of 2006).
- (b) Obtain the current address, home, work and mobile telephone numbers of the defendant in order to facilitate communication.

4.2 Immediately upon receipt of instructions the solicitor/counsel shall:-

- (a) write to the defendant to confirm the date, time and venue of the court appearance and request the defendant to inform him of any change of address or telephone number. In road traffic cases he shall advise the defendant to bring his driving licence to court, irrespective of which jurisdiction or country has issued the licence;
- (b) advise the court and the prosecution if an interpreter will be required and, if so, in what language;
- (c) be in a position to present all the relevant facts in mitigation to enable the court to pass the appropriate sentence or make the appropriate order;
- (d) be in a position to advise the court of any essential facts in dispute to enable the court to decide if a Newton Hearing is required;
- (e) ensure, where appropriate, that any necessary witnesses are available for a Newton Hearing or for a special reasons hearing;
- (f)(i) be in a position to assist the court by drawing attention to any statutory provisions that govern the court's sentencing powers and to any relevant sentencing guidelines;
- (ii) be familiar with and aware of the relevant sentencing guidelines as approved by the Lord Chief Justice which appear on the Judicial Studies Board website;
- (g) have sufficient copies of documents which need to be drawn to the court's attention and, in particular, in a Youth Court ensure that a copy of any document is available for each member of the panel;
- (h) advise the court of any special requirements (with regard to access or other arrangements) of the defendant or any defence witness;

- (i) advise the court (well in advance) of the Form of Oath required by any defence witness.

5.0 NOT GUILTY PLEA CASES

PROSECUTION

- 5.1 Upon a plea of not guilty being entered, the prosecution must ensure that, within such time as is allowed by the court:-
 - (a) a disclosure schedule together with a copy of all material to be disclosed is delivered to the defendant's solicitor;
 - (b) a schedule of witness availability is obtained for a period of at least 3 months ahead. Contact details for all prosecution witnesses should be compiled.
 - (c) All CCTV footage and still photographs taken from such footage is delivered to the defendant's solicitor.

- 5.2 Prior to a case being fixed for hearing, the prosecutor must be able to advise the court if any application for bad character, hearsay, special measures, expert evidence or other matters is to be made, whether an interpreter will be required, and the likely duration of the trial.

- 5.3 Prior to a hearing, the prosecutor must check whether the witnesses have confirmed that they will be in attendance, and, if not, or where otherwise appropriate, apply for a witness summons to be issued to ensure the attendance of a witness at court. The PPS letter inviting witnesses to attend should have a reply date and if this is missed other

steps should be taken to ensure attendance, including, ultimately, a witness summons.

- 5.4 The prosecutor should promptly inform the court and the other parties promptly of anything that may:-
- (a) affect the date or duration of the trial, including, in particular, any proposed application for an adjournment;
 - (b) significantly affect the progress of the case in any other way.
- 5.5 In advance of the day of hearing, the prosecutor must ensure, in co-operation with court staff, that, where necessary, facilities for live television links or to play video and/or audio recordings are available.
- 5.6 In addition, the prosecutor must have sufficient copies of documents eg maps or photographs for the defence, witnesses and the court. In particular, in a Youth Court, sufficient copies of any documentation must be available for each member of the panel.
- 5.7 In advance of the day of hearing the prosecutor must advise the court of any requirements (in relation to access or other arrangements) of any prosecution witnesses.
- 5.8 In advance of the day of hearing the prosecutor, if he/she becomes aware of any particular requirement as to the Form of Oath required by any prosecution witness should inform the court accordingly.

5.9 On a finding of guilty or a change of plea to guilty the points in paragraphs 3 and 4 apply.

6.0 NOT GUILTY PLEA CASES

DEFENCE

6.1 Upon a plea of not guilty being entered, within such time as is allowed by the court, the defence solicitor/counsel must be in a position to advise the court:-

- (a) as to the availability of the defendant and his witnesses for a period of 3 months. Contact details for the defendant and all defence witnesses should be compiled;
- (b) if any application for bad character, hearsay, special measures, expert evidence, abuse of process or other matters is to be made;
- (c) whether each witness relied upon by the prosecution is required to attend in person to give evidence, or whether some or all of the witnesses' evidence can be read by agreement, or placed before the court by way of an agreed statement of fact(s). In particular, a special effort should be made to agree the statements of medical witnesses and officers whose only role is to attend a PACE interview, whether neither the admissibility nor the content of the interview is in dispute. Where possible this information should be communicated to the prosecution after instructions have been taken and in advance of the first hearing;

(d) respond to any request from the prosecution to agree a witness or witnesses in writing in a timely manner, or by the time fixed by the court;

(e) the likely duration of the trial.

6.2 Following primary disclosure, where a defence statement is to be served, the defence solicitor must ensure that it is served within the time limits set out in The Criminal Procedure and Investigations Act (Defence Disclosure Time Limits) Regulations 1997.

6.3 The defence solicitor/counsel must also:-

(a) ensure that the defence witnesses are available and willing to attend the trial. If not, an application should be made for a witness summons;

(b) advise the court in advance of the day of hearing if facilities to play video and/or audio recordings will be required;

(c) promptly inform the court and the other parties of anything that may affect the date or duration of the trial or significantly affect the progress of the case in any other way;

(d) have sufficient copies of documents eg maps, photographs for the defence, witnesses and the court. In particular, in a Youth Court, ensure that a copy of any documentation is available for each member of the panel;

(e) advise the court and prosecution if an interpreter will be required and, if so, in what language;

- (f) advise the court in advance of the hearing of any requirements (in regard to access or other arrangements) of the defendant or any defence witness;
- (g) advise the court in advance of the hearing of the Form of Oath required by the defendant or any defence witness.

7.0 **FIRST REMANDS**

7.1 At a first remand, the prosecutor should:-

- (a) ensure that an officer sufficiently acquainted with the facts of the case is available to connect a defendant to a charge; to deal with any issues arising from a bail application,
- (b) be in a position to present the facts in any case where a plea of guilty is entered and can be accepted;
- (c) bring the defendant's criminal record to court;
- (d) be in a position to furnish a certificate of suitability for summary trial in appropriate cases;
- (e) where a full file is required in a case which will clearly be tried summarily, be in a position to advise the court of the timescale for submission of the file to the PPS;

7.2 A case should not be called by any party unless satisfied the papers have been lodged in court, are with the court clerk and that any necessary witness is present in court.

7.3 The defence should consider in advance the availability of sureties and an appropriate address for the defendant.

8.0 **THE COURT**

8.1 The court will seek to ensure that cases are dealt with justly and efficiently and will seek:-

- (a) to identify the real issues at an early stage including which witnesses may be agreed and to ensure that only those witnesses whose evidence is in dispute are required to attend court.;
- (b) to identify the needs of witnesses, and their availability;
- (c) to consider the impact on the victim;
- (d) to set a timetable for the progress of the case;
- (e) to monitor the progress of the case and compliance with directions;
- (f) to ensure that evidence, whether disputed or not, is presented in the shortest and clearest way;
- (g) to discourage delay, by dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary adjournment.

8.2 In order to manage the trial the court may require a party to identify:-

- (a) which witnesses he intends to give oral evidence;
- (b) the order in which he intends those witnesses to give their evidence;
- (c) whether he requires an order compelling the attendance of a witness;

- (d) what arrangements, if any, he proposes to facilitate the giving of evidence by a witness;
- (e) what arrangements, if any, he proposes to facilitate the participation of any other person, including the defendant;
- (f) what written evidence he intends to introduce;
- (g) what other material, if any, he intends to make available to the court in the presentation of the case;
- (h) whether he intends to raise any point of law that could affect the conduct of the trial.

8.3 The Court must actively manage the case by giving directions appropriate to the needs of that case as early as possible.

D. Protocol on continuity of work

Protocol for Resident Magistrates and Deputy Resident Magistrates sitting in Courts not assigned to them.

This protocol is designed to regulate the efficient conduct of lists and to ensure clear communication between assigned RMs, visiting, peripatetic and deputy RMs.

1. It is the responsibility of the assigned RM to advise any visiting/peripatetic/deputy RM of any relevant issues in any case which they will be dealing with while sitting in the assigned RM's court, to ensure proactive and consistent case management.
2. Whilst judicial independence in dealing with any case is acknowledged any visiting/peripatetic/deputy RM should give careful consideration to the assigned RM's practices or advices in relation to cases in the list, and where possible comply with them.
3. Where a visiting/peripatetic/deputy RM has found it necessary to depart from the expected course in a case, for example adjourn a case listed for contest. It is the responsibility of that RM/deputy RM to advise the assigned RM why such a course had to be taken so that the case can be properly case managed in the future.
4. If a visiting/peripatetic/deputy RM has to adjourn a case back to him/herself, enquiries should be made to adjourn the case to a date which is convenient for the assigned RM to vacate a list.

Fiona Bagnall
Presiding Resident Magistrate
Date 26th April 2007

SPECIMEN DIRECTIONS: INTRODUCTION

In *Chief Constable v. Cassells* [2007] NICA 12 the Court of Appeal (*per* Kerr LCJ) observed of the Youth Court as follows: ‘On a purely legal issue we would expect lay magistrates to pay close attention to the views of the resident magistrate and while of course they must hold true to their own judgment, unless they can discern a clear reason for not accepting the view of the resident magistrate on the applicable law, they should follow the advice given to them.’

It was considered that it might be useful to include within the *Magistrates’ Courts Bench Book* a selection of the Specimen Directions to the Jury from the *Crown Court Bench Book* so as to assist District Judges (MC) in their above noted function of advising lay magistrate colleagues regarding the applicable law. As with the adult magistrates court, it is important that the fact finding tribunal be properly directed as to the questions to be addressed by the tribunal in order to arrive at a decision as to guilt or innocence which conforms to the legal requirements of the case. It is left entirely at the discretion of District Judges (MC) how – if at all – they wish to make use of these resources to that end.

MAGISTRATES' COURT BENCH BOOK

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PRACTICE DIRECTION: CROWN COURT
CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1988, ARTICLE 4

1. At the conclusion of the evidence for the prosecution, Article 4(2) of the Criminal Evidence (Northern Ireland) Order 1988 (as amended with effect from 10th April 1995 by paragraph 61(3)(b) of Schedule 10 to the Criminal Justice and Public Order Act 1994) requires the court to satisfy itself that the accused is aware that the stage has been reached at which evidence can be given for the defence and that he can, if he wishes, give evidence and that, if he chooses not to give evidence, or having been sworn, without good cause refuses to answer any question, it will be permissible for the court or jury to draw such inferences as appear proper from his failure to give evidence or his refusal, without good cause, to answer any question.

2. **IF THE ACCUSED IS LEGALLY REPRESENTED**

(a) **Where there is one accused**

- (i) Article 4(1) of the 1988 Order provides that Article 4(2) does not apply if, at the conclusion of the evidence for the prosecution, the accused's legal representative informs the court that the accused will give evidence. In the case of proceedings on indictment conducted with a jury this should be done in the presence of the jury. If counsel indicates that the accused will give evidence, the case should proceed in the usual way.

- (ii) If the court is not so informed, or if the court is informed that the accused does not intend to give evidence, the judge should (in the presence of the jury in the case of proceedings on indictment tried with a jury) enquire of counsel in these terms:

"Have you advised your client that the stage has now been reached at which he may give evidence and, if he chooses not to do so or, having been sworn, without good cause refuses to answer any question, the (court) (jury) may draw such inferences as appear proper from his failure to do so?"

- (iii) If counsel replies to the judge that the accused has been so advised, then the case shall proceed. If counsel replies that the accused has not been so advised, then the judge shall direct counsel to advise his client of the matters set out in paragraph 2(a)(ii) hereof and should adjourn briefly for this purpose before proceeding further.

(b) **Where there are more than one accused**

- (i) At the conclusion of the evidence for the prosecution, the judge should address counsel in the following terms:

"The stage has now been reached at which your clients may give evidence, and if any of them chooses not to do so or, having been sworn, without good cause refuses to answer any question, the (court) (jury) may draw such inferences as appear proper from his failure to do so. When the time comes for each accused to present his case, I shall ask counsel for each if his client intends to give evidence, and if not whether he has been advised about the inferences which may be drawn if he chooses not to do so."

- (ii) The judge should then proceed to ask counsel for the accused named first on the indictment whether that accused intends to give evidence, and if not whether he has been so advised about the inferences which may be drawn from his failure to do so. The judge should repeat this inquiry at the time when the case for the second and each subsequent accused is ready to commence.

3. **IF THE ACCUSED IS NOT LEGALLY REPRESENTED**

(a) **Where there is one accused**

If the accused is not legally represented the judge should at the conclusion of the evidence for the prosecution (and, in the case of proceedings on indictment tried with a jury, in the presence of the jury) say to the accused:

"You have heard the evidence against you. Now is the time for you to make your defence. You may go into the witness box and give evidence on oath, and be cross-examined like any other witness. If you do not give evidence or, having been sworn, without good cause refuse to answer any question, the (court) (jury) may draw such inferences as appear proper. That means the (court) (jury) may take it into account against you.

You may also call any witness or witnesses whom you have arranged to attend court.

Afterwards you may also, if you wish, address the jury by arguing your case. But you cannot at that stage give evidence.

Do you now intend to give evidence?"

(b) **Where there are more than one accused**

- (i) Where none of the accused are legally represented the judge should at the conclusion of the evidence for the prosecution (and, in the case of proceedings on indictment tried with a jury, in the presence of the jury) address all of the accused in the following terms:

"You have heard the evidence against you. Now is the time for you to make your defences. Each of you in turn and in the order in which you are named on the indictment may go into the witness box and give evidence on oath, and be cross-examined like any other witness. If any of you do not give evidence or, having been sworn, without good cause refuse to answer any question, the (court) (jury) may draw such inferences as appear proper. That means the (court) (jury) may take it into account against you.

Each of you may also call any witness or witnesses whom you have arranged to attend court.

Afterwards you may also, if you wish, address the jury by arguing your case. But you cannot at that stage give evidence."

- (ii) The judge should then proceed to ask the accused named first on the indictment whether he intends to give evidence and if not whether he understands that certain inferences may be drawn from his failure to do so. At the conclusion of the case for each accused the judge should ask the same questions of the next accused named on the indictment and should repeat so much of the greater address as he thinks advisable and appropriate.

REVISED AND UPDATED 5 FEBRUARY 2009

2.1 BURDEN AND STANDARD OF PROOF

ALWAYS GIVE THESE DIRECTIONS AT THE OUTSET OF THE SUMMING UP, EVEN IF YOU INTEND TO INCORPORATE THEM IN SPECIFIC DIRECTIONS LATER IN THE SUMMING UP.

BURDEN

"The prosecution must prove the defendant's guilt. He does not have to prove that he is innocent. (1)"

STANDARD

"The prosecution must prove that the defendant is guilty beyond reasonable doubt. (2)

Proof beyond reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based upon your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If on the other hand you think that there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty. (3)

You will note that I have referred to the prosecution's obligation to prove its case beyond reasonable doubt. That does not mean that every peripheral fact has to be established up to this standard, in other words every I does not need to be dotted and every T crossed. What has to be proved is the body of material facts which make up the charge against the defendant." (4)

NOTE

(1) If an issue arises as to which the defendant bears the 'legal' or 'persuasive' burden of proof, but not where the defendant bears only an 'evidential' burden, the following is appropriate.

"If the prosecution has not proved beyond reasonable doubt that the defendant has (set out what the prosecution must prove) that is the end of the matter and you must find the defendant not guilty. But if, and only if, you are satisfied beyond reasonable doubt of those matters, you must go on to consider whether the defendant (had a reasonable excuse etc.) for what he did. That is for him to prove on all of the evidence by showing that it is probable, that is more likely than not, that he (had a reasonable excuse etc.) for doing it. If you conclude that probably he did have a (reasonable excuse etc.) you must find him not guilty. If you do not find that, then, providing that the prosecution has proved beyond reasonable doubt what it has to prove, you must find him guilty."

(2) The traditional phrase "beyond reasonable doubt" is used throughout these specimen directions in preference to "sure", having been used in Article 74(2) of the Police and Criminal Evidence (NI) Order 198

(3) This passage is taken from the model instruction proposed by the US Federal Judicial Centre and approved by Justice Ginsburg in the Supreme Court decision in *Victor -v- Nebraska*, 611 U.S.1 (1994) at p.27.

(4) Although this may not be necessary in simple cases, it may be helpful in other cases, especially those which involve circumstantial evidence.

(5) If in an exceptional case the jury ask for an explanation of a reasonable doubt, in *Walters v R* [1969] 2 AC 26, approved in *R v Gray* 58 Cr. App. R. 177 at 183, the Privy Council upheld the following direction by the trial judge ‘A reasonable doubt is that quality and kind of doubt which, when you are dealing with matters of importance in your own affairs, you allow you to influence you one way or the other’. However, this explanation should only be provided in exceptional cases and it is unwise to attempt any further explanation.

ARCHBOLD 2010: 4-384 to 385

BLACKSTONE 2010: F3.39

UPDATED 5 FEBRUARY 2009

2.2 ACCORDING TO THE EVIDENCE

"It is your duty to decide the case according to the evidence you have heard in court, (and not be influenced by anything which you have heard, read or seen elsewhere). You must clear your minds of all sympathy for or against either the prosecution or the accused or the victim of the crime. You must decide the case calmly and fairly in the light of the evidence and nothing else.

(The evidence means the evidence for the prosecution as well as the evidence by (and/or on behalf of) the defendant. (The defendant did not have to give evidence but chose to do so and what he had to say is just as much evidence in the case as the evidence of the other witnesses who gave evidence.) You must consider all of the evidence before arriving at your verdict(s) and there may be something in the prosecution evidence which assists the defence case or in the defence case which assists the prosecution's case.)"

REVISED AND UPDATED 6 FEBRUARY 2009

2.3 SEPARATE TREATMENT

(1) ONE DEFENDANT AND MORE THAN ONE COUNT

"You must consider the case against and for the defendant separately. (There may of course be something in the evidence relating to one count that may assist you in reaching your verdict on (the other(s)/another count(s)) (Identify such evidence) (1) If you consider that there is such evidence you must be careful not to assume that your decision on that other evidence necessarily means that you must take the same view of the evidence relating to the count you are considering.) (For example, if you do not accept that one count relating to (the complainant) has been proved beyond reasonable doubt, it does not automatically follow that you have to reject (the complainant's) evidence relating to another count.) (2)

(2) TWO OR MORE DEFENDANTS AND TWO OR MORE COUNTS

"You must consider the case against and for each defendant separately. There may of course be something in the evidence relating to one count or to one defendant that may assist you in reaching your verdict on the counts against the other defendant(s). (1) (Identify such evidence, for example if one defendant has given evidence which implicates or exonerates another defendant.) For example, if you do not accept that one or more counts have been proved beyond reasonable doubt against one defendant, it does not automatically follow that you have to reach the same verdict on that count, or indeed on any count, in respect of another defendant. The evidence is different and therefore your verdicts need not be the same." (2)

NOTE.

- (1) See Specimen Direction 2.2.
- (2) See the observations of Kerr LCJ in *R v CK* [2008] NICA 31 at [5] to [10] on the need to take great care in framing such a direction if it is considered necessary.
- (3) Illustrate from the indictment, and deal with both in the direction on the law and in the summing up of the evidence.
- (4) In some circumstances it may be desirable to consider the evidence against one defendant on all the counts first, in which case the direction should be adjusted accordingly, always stressing that the evidence on each count must be considered separately.
- (5) There may be cases where, on the facts, if the jury finds a defendant guilty, or not guilty, on one count, it would be difficult for them to come to a different conclusion on another count. If so, say that to them.
- (6) See Specimen Direction 2.11 for direction where a co-defendant has pleaded guilty.

ARCHBOLD 2010: 4-377

BLACKSTONE 2010: D17.28

2.3A SPECIMEN CHARGES

A. Where the specimen is a separately identifiable offence (see Note 1)

Count... is a specimen Count. The prosecution allege that D also committed [numerous/state number] other offences of the same kind. Instead of loading up the Indictment with Counts charging many offences, they have selected one as an example, as they are entitled to do. However, you may convict D only if you are satisfied beyond reasonable doubt that he committed the particular offence charged in the Count..., whether or not you are satisfied beyond reasonable doubt that he also committed other such offences.

B. When the specimen is not a separately identifiable offence (see Note 2)

Count... is a specimen Count. The prosecution allege that, during the period referred to in that Count, D committed [numerous/state number] other offences of the same kind. Instead of loading up the Indictment with Counts charging many offences, they have selected one as an example, as they are entitled to do. To convict D you must be satisfied beyond reasonable doubt that he committed one such offence during the period concerned, whether or not you are satisfied beyond reasonable doubt that he also committed other such offences.

NOTE.

1. An example would be a Count of obtaining social security benefits by deception a specific sum of money on a specific day, evidence being adduced of a pattern of other such offences.
2. An example would be a Count of indecent assault on a child who claims to have been abused in the same way on many occasions, but cannot say precisely when or how often.
3. These directions will, of course, need adapting when there is more than one specimen Count.

ARCHBOLD 2010: 1-131 to 132.

BLACKSTONE 2010: D 11.33 to 35.

2.4 ALTERNATIVE OFFENCES

“Counts 1 and 2 are alternative counts. You cannot find the defendant guilty on both. First, consider count 1, which is the more serious one (set out ingredients briefly). If you find the defendant guilty on that count, do not consider count 2 at all, but if you are not satisfied beyond reasonable doubt that the defendant is guilty on count 1, then consider count 2 (which involves etc).” (1)

NOTE.

(1) Where an indictment contains alternative counts, a verdict should be taken first on the more serious alternative, and if the verdict is guilty the jury should be discharged from returning a verdict on the less serious charge. *R v Hill* 96 Cr. App. R. 456 at 459. This allows the Court of Appeal to substitute a verdict of the lesser alternative, or an alternative of equal gravity if there is one. See also *R v Fulton* [2009] NICA 39 at [117] et seq.

ARCHBOLD 2010: 4-443.

BLACKSTONE 2010: D18.69 and 18.70.

2.7 JOINT ENTERPRISE

(A) "The prosecution's case is that (the defendants committed this offence together) (the defendant committed this offence jointly with ...). Where an offence is committed by two or more persons, each of them may play a different part, but if they are acting together as part of a joint plan to commit the offence, they are each guilty of it. The word 'plan' does not mean that there has to be a formal agreement about what has to be done. A joint plan to commit an offence may arise on the spur of the moment. It can be made with a nod or a wink, or a knowing look (and even without such actions you may infer from the behaviour of those involved that they agreed to commit the offence(s)). Put simply, the question for you is "Were they in it together"? [Mere presence at the scene of a crime is not enough to prove guilt, but if you find that the defendant was at the scene, and intended by his presence alone to encourage the others in the offence(s), and did encourage them by his presence, then he is equally guilty.(1)]

Your approach to the case should therefore be as follows: If, looking at the case of [the/either/any] defendant, you are satisfied beyond reasonable doubt that he committed the offence on his own or that he did an act or acts as part of a joint plan with others/with B and C he is guilty."

(B) In the ordinary case, the above direction should suffice. However, where there is evidence and argument of unusual consequences etc and of non-participation of one defendant, B, because it is said that the act of another, A, was outside his foresight, it will be necessary to give further directions, for example if the issue arises whether participants in a concerted attack are liable for the use of a weapon which may have been different in character to any weapon foreseen by the others. This issue has to be considered in the light of the decision of R v Rahman [2008] 4 AER 351 where the House of Lords considered the leading authorities and, doubting the correctness of R v Gamble [1989] NI 268, at [68] restated the law as stated by Lord Lane CJ in R v Hyde [1991] 1 QB 134, [1990] 3 AER 892 as follows:

"If B realises (without agreeing to such conduct being used) that A may kill or intentionally inflict serious injury, but nevertheless continues to participate with A in the venture, that will amount to a sufficient mental element for B to be guilty of murder if A, with the requisite intent, kills in the course of the venture unless (i) A suddenly produces and uses a weapon of which B knows nothing and which is more lethal than any weapon which B contemplates that A or any other participant may be carrying and (ii) for that reason A's act is to be regarded as fundamentally different from anything foreseen by B."

The application of these propositions will require to be carefully tailored to the circumstances of each case, and it will almost always be desirable to discuss the proposed direction with counsel before the closing speeches. The suggested direction given below is, therefore, merely offered as a starting point, and is partly based on the trial judge's direction in Rahman modified to reflect the restatement above. It assumes there is not an alternative count to be considered by the jury.

“In the circumstances of this case you have to consider a number of questions in order to decide whether B is guilty of the murder of V.

(1) The first question is whether you are satisfied beyond reasonable doubt that A caused the death of V by (e.g. stabbing him with a knife/shooting him/striking him repeatedly with an iron bar) and intended to kill V or cause him really serious injury? If you answer this question “No” then you should find B not guilty because, as a matter of law, B cannot be guilty of murder unless A committed the offence of murder. If you answer this question “Yes” then you must go to the second question.

(2) Are you satisfied beyond reasonable doubt that B participated in the attack upon V? (Mere presence at, or very near, the scene of the attack is not enough to prove participation. But if you find that B was at the scene, and intended and did by his presence alone encourage A to attack V, that would be participation in the attack(1)) If you answer this question “No” you should find B not guilty. If you answer this question “Yes” then you must go to the third question.

(3) Are you satisfied beyond reasonable doubt that in taking part in the attack on V B realised that A might use such violence by the use of lethal weapons against V as to kill him or cause him really serious injury, even if B did not agree to such violence being used? If you answer this question “No” then you should find B not guilty. If you answer this question “Yes” then you must go to the fourth question.

(4) Was A’s action in (stabbing V with a knife/shooting V/striking V repeatedly with an iron bar) fundamentally different from anything foreseen by B? A’s action will not be fundamentally different from anything foreseen by B unless B knew nothing about (the knife/the gun/the iron bar) which A produced and used, and (the knife/gun/iron bar) was more lethal than any weapon that B contemplated that A may be carrying. If you are satisfied beyond reasonable doubt that A’s action was not fundamentally different from anything foreseen by B then you should find B guilty. If you consider that A’s action was, or might be, fundamentally different from anything foreseen by B then you should find B not guilty.

(C) If the defendant admits that he agreed to a joint plan, but claims he withdrew, the jury will have to be directed accordingly, and the direction carefully tailored to the circumstances of the case, particularly if the prosecution allege that the defendant could and should have done something to neutralise his earlier agreement or assistance. In such a case consideration should be given to the authorities discussed in **ARCHBOLD 18-26 et seq.**

“B has admitted that he agreed with A that they would commit this offence of (e.g. burglary), but he says that he had a change of heart and made quite clear to A that he intended to withdraw from their plan before A had time to commit the offence. Before you can convict B of this offence you have therefore to be satisfied beyond reasonable doubt that he did not withdraw from their joint plan, in other words you have to be satisfied that they were still in it together. It is for you to decide whether B had withdrawn from the joint plan in all of the circumstances of the case, but when considering this there are a number of matters which you may think are important. For example, did B tell A that he was withdrawing? Did B make it absolutely clear to A that

he was withdrawing, or was B ambiguous about whether he was still taking part in what they had planned to do? The prosecution allege/B admits he (e.g. gave A a key to the house), what did B do to stop A carrying out their plan? Was that all B could have done to prevent the plan from being carried out?"

NOTE.

(1) This should not be included unless relevant.

ARCHBOLD 2010: 18-15 et seq; 19-24 et seq.

BLACKSTONE 2010: A 5.5 to 15.

REVISED AND UPDATED 20 FEBRUARY 2009

2.8 AIDING AND ABETTING

"Before you can convict A of aiding and abetting B to commit the offence of ... you must be satisfied beyond reasonable doubt:

- (1) That B committed the offence;
- (2) That A knew at the time what B was doing (though not necessarily that it was an offence);
- (3) (That A was present at the commission of the offence and helped B to commit it)
or
(That A, with the intention of helping B to commit the offence, was near enough to help should the need arise, (eg by keeping watch etc) and that B knew that A was available to help him;)
or
(That A was present at or very near the commission of the offence and both intended to encourage B to commit it and deliberately did encourage him to commit it.

To prove aiding and abetting by encouragement the prosecution must prove that A intended to encourage and deliberately did encourage B to commit the offence. The mere voluntary presence of A at the scene of the offence is not in itself enough. But the fact that he was there, voluntarily and deliberately, watching the commission of the offence and doing nothing to prevent it, even though he could have done so, or to indicate his disapproval of what B was doing, may be strong evidence upon which you could conclude that he intended to and did encourage and so aided and abetted B in the commission of the offence.)"

- (4) (Where the act of assistance was done in advance of the crime and the crime was committed in the defendant's absence then the following may be appropriate.

"Before you can convict A of aiding and abetting B to commit the offence of ... you must be satisfied beyond reasonable doubt:

- (1) that B committed the offence; and
- (2) that the assistance given by A did assist B to commit that crime; and
- (3) at the time A gave assistance to B he foresaw as a real possibility that B would commit that offence; and
- (4) that A deliberately gave assistance to B realising that it was capable of assisting B to commit that crime.

NOTE.

- (1) Illustrate with one or more examples relevant to the type of offence charged.
- (2) Though the principles governing liability as an aider and abettor are the same whatever the offence, it is usually necessary to consider their application in the context of the primary offence.

- (3) This direction will be appropriate to those cases where a defendant is expressly charged with aiding and abetting, rather than where he is jointly indicted as a principal by virtue of the doctrine of joint enterprise. In the latter case a direction based upon **2.7 Joint enterprise** will be appropriate.

ARCHBOLD 2010: 17-68 to 73 and 18-9 to 18-19

BLACKSTONE 2010: A 5.1 to 15

REVISED AND UPDATED 20 FEBRUARY 2009

2.9 COUNSELLING AND/OR PROCURING

"Before you can convict A of counselling and/or procuring B to commit the offence of ... you must be satisfied beyond reasonable doubt:

- (1) That B committed the offence;
 - (2) That A ordered, advised, encouraged or persuaded him to do it
- or
- (3) That A procured him to do it, that is, set out to cause B to do it (directly or indirectly) and did cause B to do it.

(In the case of counselling, as distinct from procuring, it is not necessary for the prosecution to prove that the counselling was a substantial cause of the commission of the offence. E.g. the counsellor may not know which house is to be burgled or person is to be murdered)

(The counselling and/or procurement must be continuing. If A changed his mind before B's commission of the offence and expressly instructed B not to do it, A is not guilty.)"

NOTE.

- (1) For commission of a crime different from the one counselled or procured see **ARCHBOLD 18-24.**
- (2) As with aiders and abettors, though the principles governing liability as a counsellor and/or procurer are the same whatever the offence, it is usually necessary to consider their application in the context of the primary offence.
- (3) This direction will be appropriate to those cases where a defendant is expressly charged with counselling or procuring, rather than where he is jointly indicted as a principal by virtue of the doctrine of joint enterprise. In the latter case a direction based upon **2.7 Joint enterprise** will be appropriate.

ARCHBOLD 2010: 17-67 to 73 and 18-20 to 25

BLACKSTONE 2010: A 5.1 to 15.

2.10 ASSISTING OFFENDERS

"Before you can convict A of ... you must be satisfied beyond reasonable doubt:

- (1) That B has committed a relevant offence, which the offence of ... is;
 - (2) That A knew or believed him to be guilty of that offence (or of some other relevant offence)
- and
- (3) That A, in that knowledge or belief, acted with intent to impede (that is hinder) B's arrest or prosecution."
 - (4) That the act impeding (or hindering) B's arrest or prosecution was done without lawful authority or reasonable excuse.

NOTE.

- (1) The concept of "an arrestable offence" has been replaced by that of "a relevant offence" from 1 March 2007.
- (2) R v Brindley 55 Cr. App. R. 258 states that each of these four elements has to be proved, thereby inferring that in (4) the burden is on the prosecution to disprove that A has lawful authority or reasonable excuse. Blackstone suggests that the prosecution need not do so unless there is evidence before the court sufficient to raise the issue.

ARCHBOLD 2010: 18-37

BLACKSTONE 2010: B14.48 to 58.

NEW 13 OCTOBER 2008

(Based on English 10)

2.10A ATTEMPTS

Before you can convict the defendant you must be satisfied beyond reasonable doubt of two things: first that he intended to commit [the offence in question] and second, that, with that intention, he did something which was more than mere preparation for committing that offence. In other words, did he actually try to commit the offence in question, in which case he is guilty of attempting to commit [the offence in question], or had he only got ready, or put himself in a position, or equipped himself, to do so, in which case he is not guilty. The prosecution say that (specify the evidence) amounted to more than mere preparation for the offence. If you accept that the defendant did this, it is for you to decide whether what he did went beyond mere preparation.

NOTE.

1. It is inappropriate to refer to any of the tests for an attempt that were in use before the Criminal Attempts Act 1981. See Jones (KH) 91 Cr. App. R. 351, CA and Campbell 93 Cr. App. R. 350.
2. It is for the judge to determine whether there is evidence from which a reasonable jury properly directed could conclude that the defendant had done acts which were more than merely preparatory to the commission of the full offence: see e.g. Geddes [1996] Crim LR 894 and Tosti and Another [1997] Crim LR 746. It is for the jury to decide, having regard to the burden and standard of proof, where the line has to be drawn, but you can help them in an appropriate case by indicating by way of example one circumstance well on each side of the line.

ATTEMPTING THE IMPOSSIBLE.

(Where the issue arises first give the direction above and continue:) Here, the commission of the offence of [handling] was impossible because [the goods which the defendant is alleged to have attempted to handle were not in fact stolen goods]. But that does not prevent him from being guilty of attempting [to handle them]. You may convict the defendant of attempting [to handle the goods] if you are satisfied beyond reasonable doubt (1) [that he believed them to be stolen goods] and (2) that, with that belief, he [dishonestly handled or attempted to handle them.]

NOTE.

- (1) See Shivpuri 83 Cr. App. R.178
- (2) See Note (2) above.

ARCHBOLD 2010: 33-119 to 137.

BLACKSTONE 2010: A 6.55-64.

UPDATED 3 MARCH 2009

2.11 PLEA OF GUILTY/CONVICTION OF ONE DEFENDANT - EFFECT ON DEFENDANT ON TRIAL

1. JOINT CHARGE WHERE ONE OR MORE DEFENDANTS HAVE PLEADED GUILTY BUT NO REFERENCE TO THIS HAS BEEN MADE TO JURY.

"The defendant whom you are trying is alleged to have committed the offence together with B. That is why you see B's name in the indictment. You are not trying B. Do not concern yourselves in any way with that has happened in his case. Do not speculate about that. You must concentrate upon the case of this defendant alone and decide whether the evidence before you makes you satisfied beyond reasonable doubt of his guilt."

2. JOINT CHARGE WHERE JURY IS INFORMED OF PLEA OF OTHER DEFENDANT FOR PURPOSES OF 'INFORMATION ONLY'.

"You have heard that B, who is named in the same count of the indictment as the defendant, has pleaded guilty. The only reason why you have been told this is to remove any question in your minds as to why you are not also trying him. The fact that he has pleaded guilty is now known to you, but it can have no bearing on your decision in the case of this defendant. The prosecution has to prove its case against this defendant so that you are satisfied beyond reasonable doubt of his guilt, just as it would have to if B had not pleaded guilty."

3. JOINT CHARGE WHERE ONE OF THE DEFENDANTS HAD PLEADED GUILTY (OR HAS BEEN CONVICTED) AND IT IS EITHER ADMITTED BY THE DEFENCE THAT HE COMMITTED THE OFFENCE OR THE FACT OF HIS CONVICTION IS ADMITTED IN EVIDENCE BY THE JUDGE PURSUANT TO ARTICLES 72 AND 73 OF THE POLICE AND CRIMINAL EVIDENCE (NI) ORDER 1989

"You have heard that B, who is named in the same count of the indictment, has pleaded guilty to/been convicted of this offence. The only reason why you have been given this information is to enable the prosecution to prove that (eg the offence itself was committed/and that B committed it.) (Here it is essential to identify the precise relevance of the conviction). That is the only purpose of this evidence, and it is for you to decide whether it assists you in this case. It cannot prove anything else, and apart from its relevance to this matter it can have no bearing on your decision as to whether the prosecution has satisfied you beyond reasonable doubt of the defendant's guilt."

ARCHBOLD 2010: 9-80 et seq.

BLACKSTONE 2010: F11.5 et seq.

UPDATED 11 MARCH 2009

2.13 INTENTION

"You must be satisfied beyond reasonable doubt that, when the defendant did the act, he intended (X)"

NOTE:

- (1) It is generally unwise to elaborate on a simple direction on intent.
- (2) However, if you do consider it necessary, it could be along the following lines:

"You can decide intent by deciding what the defendant did or did not do and by what he said or did not say. You should look at his actions before, at the time of and after (the alleged offence). All these things may shed light on his intention at the critical time."

- (3) Where the charge is murder, and the defendant's foresight of death or serious bodily harm is in issue, the following may be appropriate. See R v Woolin [1999] 1 Cr. App. R. 8.

"You are not entitled to find that the defendant had the necessary intent to commit murder unless you are satisfied beyond reasonable doubt that death or serious bodily harm was a virtual certainty (barring some un-foreseen intervention) as result of the defendant's actions, and that the defendant appreciated that such was the case.

- (4) The following example might prove helpful in certain circumstances

"If I throw a large stone at point blank range at a plate glass window, it is only too easy and you may think that it will almost invariably be correct to infer that I intend to break the window. The lawyer's way of expressing this rather obvious proposition is to say that a man is presumed to intend the natural and probable consequences of his acts. But while the quest for truth will take account of this presumption it does not end there. You are looking for the actual intention and the actual state of knowledge and in order to discover them it is right to consider all the available evidence."

- (5) If the evidence is that the defendant's wish may have been something other than to cause the result in question, see Nedrick 83 Cr.App.R. 267 and Walker and Halyes 90 Cr.App.R. 226.

- (6) It may be necessary to tell the jury that the prosecution only has to prove that the defendant had the necessary intention at the time of the alleged offence, that it need not have been a long-standing intent and that it is sufficient for it to have been formed in a matter of seconds, say in a sudden flash of temper.

ARCHBOLD 2010: 17-34 et seq.

BLACKSTONE 2010: A 2.2

2.13A INTENT/INTENTION - THE RELEVANCE OF DRINK/DRUGS

1. WHEN VOLUNTARILY (KNOWINGLY) CONSUMED

If, in order to establish the defendant's guilt, the prosecution has to prove he had a particular intention (for example to cause grievous bodily harm) at the time of the relevant conduct, and there is evidence that the defendant had been consuming alcohol at or about the material time, that is a factor to which the jury must have regard when considering whether the prosecution has proved the necessary intent. The classic statement of the principle is to be found in Lord Lane's judgment in *R v Sheehan and Moore* 60 Cr.App.R. 308 at 312. The relevant passage from the judgment serves as an excellent basis for a direction upon this topic:

"... in cases where drunkenness and its possible effect on the defendant's mens rea is in issue, we think that the proper direction to a jury is, first, to warn them that the mere fact that the defendant's mind was affected by drink so that he acted in a way in which he would not have done had he been sober does not assist him at all, provided that the necessary intention was there. A drunken intent is nevertheless an intent. Secondly, and subject to this, the jury should merely be instructed to have regard to all the evidence, including that relating to drink, to draw such inferences as they think proper from the evidence, and on that basis to ask themselves whether they feel satisfied beyond reasonable doubt that at the material time the defendant had the requisite intent."

2. WHEN INVOLUNTARILY (UNWITTINGLY) CONSUMED

See *R v Kingston* 97 Cr.App.R.401, HL

1. Involuntary intoxication (or a drugged state resulting from the involuntary ingestion of drugs), is not a defence to a criminal charge if the prosecution proves that the defendant had the necessary intent albeit that intention arose as a result of circumstances for which the defendant was not responsible.

2. The decision in *Kingston* (a case of indecent assault requiring a direction upon intention) proceeded on that basis that "the ingestion of the drug ... brought about a temporary change in the mentality or personality of the respondent which lowered his ability to resist temptation so far that his desires overrode his ability to control them. Thus we are concerned here with a case of disinhibition. The drug is not alleged to have created the desire to which the respondent gave way but rather to have enabled it to be released."

ARCHBOLD 2010: 17-106

BLACKSTONE 2010: A 3.8 to 12

3.1 RECKLESSNESS - CRIMINAL DAMAGE

This direction has been re-drafted in the light of the decision of the House of Lords in R v G [2004] 1 Cr. App. R. 21. Direction 1 relates to the basic offence of criminal damage. Direction 2 concerns the question of recklessness as to whether the life of another would be endangered.

1. Criminal Damage (NI) Order 1977, Article 3(1):

The prosecution will have proved that the defendant was reckless if, having regard to all the available evidence, you are satisfied beyond reasonable doubt:

- (i) that he was aware of a risk that property would be [destroyed][damaged]; and
- (ii) that in the circumstances which were known to him it was unreasonable for him to take that risk.

2. Criminal Damage (NI) Order 1977, Article 3 (2):

The prosecution will have proved that the defendant was reckless as to whether the life of [insert name] would be endangered if, having regard to all the evidence, you are satisfied beyond reasonable doubt:

- (i) that he was aware of a risk that the [destruction][damage] would endanger the life of [insert name]; and
- (ii) that in the circumstances that were known to him it was unreasonable to take that risk.

3. If it is alleged that the defendant knowingly disregarded, or deliberately closed his mind to, an appreciated and unacceptable risk of causing an injurious result, (1) then it may be appropriate to add:

- (iii) if the defendant knowingly disregarded, or closed his mind to, that risk, then you may decide that he was aware of that risk. If, on the other hand, you decided that he was not, or may not have been, aware of that risk because he was stupid, or lacking in imagination, then you should find him not guilty. (1).

4. If the defendant's awareness of risk may have been affected by the voluntary consumption of drink or drugs, then it may be appropriate to add:

- (iv) The defendant says that he was unaware of the risk because of the drink (or drugs) that he had consumed. If you are satisfied beyond reasonable doubt that he would have been aware of the risk if he had not consumed drink (or drugs), then it is not a defence for him to say he was not aware of the risk. (1)

NOTE.

- (1) See Lord Bingham in R v G at [32].

ARCHBOLD 2010: 23-9 and 10

BLACKSTONE 2010: B8.

3.1A CRIMINAL DAMAGE (NI) ORDER 1977, Article 3(2)

(Allegation upon which the following direction is based: '... intending or being reckless as to the destruction/damage of the property **and being reckless as to whether the life of ... would thereby be endangered**'.)

- (a) As to the direction for recklessness in relation to the destruction/damage of the property see the direction under Criminal Damage (NI) Order 1977, Article 3(1) above. As to 'intention' see the Direction on 'INTENTION' ante;
- (b) As to the direction relating to the **endangering life** element of the offence, this may be as follows:

"The prosecution will have proved that the defendant was reckless as to whether the life (of another) would be endangered if having regard to all the circumstances you are satisfied beyond reasonable doubt:

- (1) That the destruction of/damage to the property thereby created a serious risk that the life of (another) would be endangered;

(See *R v Steer* 85 Cr.App.R.352, HL; *R v Dudley* [1989] Crim.LR.57, CA)

and

- (2) That the risk so created would have been an obvious risk to any reasonably prudent person;

(See *R v Sangha* 87 Cr.App.R.88)

and

- (3) That the defendant when doing what he did:

either had not given any thought to the possibility of there being any such risk;

or having recognised that there was some risk of that nature nonetheless went on and did the act."

3.1A

* Alcohol/Drugs

NOTE: (1) Self-induced intoxication is no answer to an allegation of criminal damage whether simple, aggravated or by fire if the mental element relied upon is recklessness: See *R v Caldwell* 73 Cr.App.R.13 at 26. In other words, if due to self-induced intoxication the defendant was or may have been unaware of a risk which would have been obvious to a sober and reasonable person in the defendant's position that constitutes no defence. The position is the same if the defendant voluntarily consumed

dangerous drugs: See *R v Majewski* 62 Cr.App.R.262 HL. Aliter where the drug does not fall into that class: See *R v Hardie* 80 Cr.App.R.15. (In relation to involuntary intoxication, see *R v Kingston* 97 Cr.App.R.401, HL.

- (2) As to the position when the mental element relied upon is 'intention', see the Direction on 'INTENTION' ante.

ARCHBOLD: 17-105 et seq; 23-19/21

BLACKSTONE: A 1.6; A 3.8/11

UPDATED 5 MAY 2009

3.3A RECKLESSNESS - ASSAULT/Offences Against the Person Act, 1861

NOTE:

In most cases of assault it will **NOT** be necessary to leave the issue of recklessness to the jury. This should normally be done only when the word appears in the count or the circumstances of the particular case plainly call for such a direction. In many cases a direction on recklessness will only serve to confuse the jury, and in the event of a conviction will create a potential for difficulty in sentencing. Naturally, it is preferable that the position be clear before the case is opened to the jury; but in any event if the judge is of the view that such a direction is appropriate, or in case of any doubt, it is desirable that the matter be broached with counsel before closing speeches.

COMMON ASSAULT; ASSAULT OCCASIONING ACTUAL BODILY HARM

(a) In the (unusual) case where no physical force is actually applied.

NOTE:

The mental element in the offence of assault is established where it is proved that the defendant intentionally or recklessly caused another to **fear** that he would be subjected to immediate and unlawful violence. It is therefore sufficient to prove that the defendant was reckless as to whether the complainant might fear that he was to be subjected to immediate and unlawful violence. R v Ireland [1998] 1 Cr. App. R. 177.

"Before the ingredient of recklessness can be said to have been proved you must be satisfied beyond reasonable doubt, having regard to all the evidence, that the defendant foreseeing, that is realising, that X might **fear** the possibility of immediate personal violence, nonetheless went on and ignored the risk that such a **fear** might arise. The prosecution say that if that was not the case, what was X terrified about? It is for you, taking a commonsense view of all of the evidence, to decide whether that was the case."
(1).

(1) In R v Ireland the House of Lords accepted that whilst the maker of silent telephone calls may be guilty of an assault, this all depends upon the facts, and in particular on the impact of the caller's potentially menacing call or calls on the victim.

(b) In the case where physical force is actually applied.

NOTE.

The mental element in the offence of common assault is established where it is proved that the defendant intentionally or recklessly applied unlawful force to another person. The mental element in the offence of assault occasioning actual bodily harm is precisely the same. Whether actual bodily harm was 'occasioned' (caused) is simply a question of causation and does not involve any consideration of recklessness, see R v Savage and DPP v Parmenter 94 Cr. App. R. 627.

"Before the ingredient of recklessness can be said to have been proved you must be satisfied beyond reasonable doubt, having regard to all the evidence, that the defendant foresaw, that is realised, that X might be subjected to unlawful force (however slight) in consequence of what he was about to do and yet he went on and ignored the risk that that might happen."

ARCHBOLD 2010: 19-167, 19-211 and 17-50 et seq.

BLACKSTONE 2010: B 2.5 to 16

4.1 CIRCUMSTANTIAL EVIDENCE

"The prosecution case depends (to a great extent) on circumstantial evidence rather than direct evidence. Direct evidence can take many forms, for example if there was a video recording of the defendant committing the crime, that would be direct evidence. Circumstantial evidence on the other hand simply means that the prosecution relies upon evidence of various circumstances relating to the crime which, when taken together, establish the guilt of the defendant because the only conclusion to be drawn from that evidence is that it was the defendant who committed the crime.

It is not necessary for the evidence to provide an answer to all of the questions raised in a case. You may think that it would be an unusual case indeed in which a jury can say "We now know everything there is to know about this case", nor is it necessary that each fact upon which the prosecution relies, taken individually, prove that the defendant is guilty. You must decide whether all of the evidence has proved the case against him. A very distinguished judge expressed the test in this way over one hundred years ago. (1)

"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link breaks, the chain would fall. It is more like the case of a rope comprised of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence- there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a mere suspicion; but the three taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of."

However, circumstantial evidence must be examined with great care for a number of reasons. First of all, such evidence could be fabricated. Secondly, to see whether or not there exists one or more circumstances which are not merely neutral in character but are inconsistent with any other conclusion than that the defendant is guilty. This is particularly important because of the tendency of the human mind to look for (and often to slightly distort) facts in order to establish a proposition, whereas a single circumstance which is inconsistent with the defendant's guilt is more important than all the others because it destroys the conclusion of guilt on the part of the defendant." (2)

NOTE.

(1) Pollock CB in *R v Exall* [1866] 4 F & F 922 at 929.

(2) See *R v McGreevy* [1972] NI 125 where the leading authorities on circumstantial evidence are reviewed by Lowry LCJ and Lord Morris of Borth-y-Gest. Where there are circumstances which could be inconsistent with the guilt of the defendant, the trial judge must be careful to sum up the evidence in such a way as to bring this home to the jury with sufficient emphasis. See Hutton LCJ in *R v Anderson* pp 36-37 (NICA 21/9/1995 unreported).

ARCHBOLD 2010: 10-3.

BLACKSTONE 2010: F1.16

4.2 CORROBORATION - WHAT CONSTITUTES

"Corroboration is independent evidence, that is evidence which does not come from (X) (the accomplice/complainant) which confirms in some important respect not only the evidence that the crime has been committed but also that the defendant committed it.

I say 'confirms in some important respect' because it is not necessary that there should be independent evidence of everything that (X) has told you.

(It is for me to point out to you the evidence which, if you accept it, is capable of independently confirmed (X's) evidence. I shall do that later in this summing-up. But it is for you to decide whether it does in fact provide independent confirmation of (X's) evidence.)

(It would be for me to point out to you the evidence which, if you accepted it, would be capable of independently confirming (X's) evidence. But there is none.)"

- NOTE:**
- (1) Once Articles 45 and 46 of the Criminal Justice (NI) Order 1996 come into effect, the law in respect of the necessity for corroboration warnings in the cases of accomplices, children and where sexual and certain other offences are alleged will be significantly different. Until then the following notes continue to be relevant.
 - (2) It is highly desirable to hear submissions from counsel at the end of the evidence as to what matters require corroboration and what evidence could amount to corroboration: *Ensor* 89 Cr.App.R.139, 147 per Lord Lane CJ; *Nagy* [1990] Crim.L.R. 187.
 - (3) Where, as in many sexual cases, there is a danger that the jury will treat as corroboration something which is incapable of being corroboration, eg "recent complaint", you must tell them that that is not corroboration and explain why not.
 - (4) If you are in doubt about allegedly corroborative material it is better to say that it is not capable of constituting corroboration (but see note (a) above).
 - (5) "... if you accept it ...": evidence rejected by the jury cannot corroborate.
 - (6) Corroboration may not always be direct independent evidence; it may take the form of a combination of pieces of circumstantial evidence (*Hills* 86 Cr.App.R.26; *McInnes* 90 Cr.App.R.99: complainant's knowledge of inside of defendant's car).
 - (7) The unsworn evidence of a child (under Children and Young Persons Act (NI) 1968, s.57) can corroborate evidence (sworn or unsworn) of another witness: The Criminal Justice (Evidence, etc) (NI) Order 1988, Article 13(3).

- (8) Similar fact evidence can provide corroboration. An appropriate direction can be derived from Lanford v G.M.C. [1990] 1 AC 13, [1989] 2 AER 921.
- (9) Note that the "two-stage" approach referred to in Archbold, 1-64, has been rejected by the Privy Council in A G of Hong Kong v Wong Muk Ping 85 Cr.App.R.167. The credibility of the witness whose evidence requires corroboration is not to be decided independently of the corroborative evidence.
- (10) A failure to say something after caution or to give evidence may be capable of amounting to corroboration under Article 3(2)(c)(ii) and Article 4(4)(b) of The Criminal Evidence (NI) Order, 1988.

ARCHBOLD: 16-11/21

BLACKSTONE: F5

4.3 CORROBORATION - LIES AS

"To be capable of being independent confirmation a lie told in (1) or out of court must fulfil four tests;

- (1) It must have been deliberate.
- (2) It must be clearly shown to be a lie, either by an admission by the defendant or by evidence from an independent witness.
- (3) The defendant must have lied because he realised that he was guilty and feared the truth coming out. People tell lies for all sorts of reasons, other than out of guilt; for example, to bolster a true case or out of shame or to conceal disgraceful behaviour.
- (4) It must relate to a relevant issue." (2)

- NOTE:**
- (1) As to lies out of court generally, see Specimen Direction 4.11
 - (2) *R v Lucas* 73 Cr.App.R. 159.
 - (3) *R v Burge and Pegg* [1996]1 Cr.App.R.163. A "Lucas" direction is not required in every case, even if the jury might conclude that the defendant has told lies. It is not, for example, required in the run of the mill case in which the defence case is contradicted by the evidence of prosecution witnesses in such a way as to make it necessary for the prosecution to say that in so far as the two sides are in conflict, the defendant's account is untrue and indeed deliberately and knowingly false. Such a warning should only be given where there was a danger that the jury might regard their conclusion that the defendant had lied as probative of his guilt. (Nevertheless, if the police or prosecuting counsel suggested to the defendant or implied that the lie was important, it may be safer to give this direction.) It will usually be required in the following cases.
 - (a) Where the defence is one of alibi.
 - (b) Where the judge suggests that the jury should look for corroboration or support of one piece of evidence from other evidence, and draws attention to lies told or allegedly told by the defendant.
 - (c) Where the prosecution seeks to show that something said in or out of court in relation to a separate and distinct issue was a lie, and to rely upon that lie as evidence of the guilt of the defendant.

(d) Even though the prosecution has not adopted (c), the judge reasonably envisages that there is a real danger that the jury might do so. In this case in particular, it might be wise for the judge, before the closing speeches and summing up, to consider with counsel whether such a direction was required and if so how it should be formulated.

ARCHBOLD: 4-402

BLACKSTONE: F1.12 and F5

4.4 CORROBORATION – ACCOMPLICE (UPDATED 20.10.2008)

The implementation of the Criminal Justice (Northern Ireland) Order 1996 means that corroboration warnings are no longer required in these categories of case. Where judges feel that a jury should be exercised then the guidance contained in Makanjuola [1995] 2 Cr. App. R 469 should be followed.

4.4 CORROBORATION – ACCOMPLICE

“It is clear from the evidence of ... that ... was an accomplice.”)

“There is evidence upon which you can find that (X) was an accomplice.”)

“An accomplice is one who is a party to the crime, here of (...) charged against the defendant. There may be all sorts of reasons for an accomplice to tell lies and to implicate other people. It is therefore dangerous to convict in reliance on the evidence of ... unless that evidence is corroborated, that is, independently confirmed, by other evidence.

Corroboration is independent evidence, that is evidence which does not come from (X) (the accomplice) which confirms in some important respect not only the evidence that the crime has been committed but also that the defendant committed it.

I say ‘confirms in some important respect’ because it is not necessary that there should be independent evidence of everything that (X) has told you.

(It is for me to point out to you the evidence which, if you accept it, is capable of independently confirming (X’s) evidence. I shall do that later in this summing-up. But it is for you to decide whether it does, in fact, provide independent confirmation of (X’s) evidence.)

(It would be for me to point out to you the evidence which, if you accepted it, would be capable of independently confirming (X’s) evidence. But there is none.)

Nevertheless, (even if your view is that ...’s evidence is not independently confirmed) (despite the absence of independent confirmation) and providing you bear in mind the danger of convicting without it, you may rely upon ...’s evidence if you are satisfied beyond reasonable doubt that (he)(she) is telling the truth.’

- NOTE:**
- (1) Once Articles 45 and 46 of the Criminal Justice (NI) Order 1996 come into effect, the law in respect of the necessity for corroboration warnings in the case of an accomplice will be significantly different. Until then the following notes continue to be relevant.
 - (2) It is always desirable to give some indication of the reasons lying behind the danger. This must obviously be tailored to the circumstances of the case (cf. sexual offences, Specimen Direction 4.5).
 - (3) Use the word “dangerous” rather than any other word or expression: see Prince 52 Cr.App.R.295; Vincent & Taylor [1983] Crim.L.R. 173; Holland & Smith [1983] Crim.L.R. 545; Stewart 83 Cr.App.R. 327.

- (4) In some cases it is necessary for the jury to determine whether or not a particular person is an accomplice, in which case an appropriate direction must be given.
- (5) This direction applies to a prosecution witness (where he is a codefendant see Specimen Direction 4.10 “Defendant’s Evidence: Effect On Other Defendants”).
- (6) There is no obligation to give a corroboration direction in respect of a witness who is not an accomplice or a complainant in a sexual case. However, there is a duty, independently of any such obligation, to warn the jury about any evidence that may be unreliable, for instance the evidence of a co-accused or of some other person who, whilst not an accomplice, may have some purpose of his own to serve, or of a child or an elderly or infirm person. The form of the warning in any such case is in the judge’s discretion. The full corroboration direction is not necessary. See Beck 74 Cr.App.R.221.
- (7) The evidence of an accomplice is capable of amounting to corroboration provided that it is credible, and when assessing its credibility regard must be had to the character of the accomplice at the end of the case in the context of the evidence as a whole. R.v McCormick [1984] NJ 50.

ARCHBOLD: 16-11/22

BLACKSTONE: F5

4.7 BAD CHARACTER (1)

“Members of the jury. In the old days juries were usually not told about a defendant’s previous convictions. This was because of the fear that such information would prejudice the jury against the defendant and that they would give it more weight than it deserved. Today such evidence is often admitted because a jury understandably want to know whether what the defendant is alleged to have done is out of character, or whether he has behaved in a similar way before. Of course a defendant’s previous convictions are only background. They do not tell you whether he has committed the offence with which he is charged in this case. What really matters is the evidence that you have heard in relation to that offence. So be careful not to be unfairly prejudiced against the defendant by what you have heard about his previous convictions.”

The allegation against the defendant is that (summarise the allegations against the defendant). (2)

The defendant says that (summarise the defendant’s response).

In order to convict the defendant you must be satisfied beyond reasonable doubt that he (allegation). When considering that you may consider it relevant that the defendant has been convicted of (e.g. using violence on previous occasions) in the manner that you have heard. The prosecution say that the defendant has a tendency to (e.g. use violence) and that this supports the prosecution case that he (used violence) on this occasion. The defendant says that whatever he did in the past, these allegations are untrue.

It is for you to decide the extent to which, if at all, the defendant’s previous convictions assist you in deciding whether the defendant committed this offence.”

NOTE.

(1) In *R v Campbell* [2007] 2 Cr. App. R. 28 Lord Phillips CJ questioned the relevance of much of the guidance contained in the previous specimen direction on bad character formulated by the English JSB. The first paragraph of this direction reproduces the direction suggested in *Campbell* at [44] although Lord Philips emphasised this was not an attempt to provide a specimen direction to be used in future cases. Nevertheless it has the virtue of providing a useful starting point for a direction to the jury as it contains a concise yet comprehensive statement of the relevant directions.

(2) “In the rare case where evidence of bad character has been admitted because the question of whether the defendant has a propensity to be untruthful is an important matter in issue between the defendant and the prosecution, the direction should always explain the relevance of the evidence with reference to the particular facts which make that matter important.” Lord Phillips in *Campbell* at [39].

ARCHBOLD 2010: 13-68.

BLACKSTONE 2010: F12.14

4.8 DEFENDANT'S CHARACTER – GOOD (1)

"You have heard that the defendant is a man/young man of good character [not just in the sense that he has no convictions recorded against him, but witnesses have spoken of his positive qualities.] Of course, good character cannot by itself provide a defence to a criminal charge; but when deciding whether the prosecution has proved the charge(s) against him beyond reasonable doubt you should take it into account in his favour in the following way/s:" (2)

(If a defendant does not give evidence **and** he has not made any statement to the police, or other authority or person which is admitted in evidence, ignore (A) below)

First Limb

(A) (If a defendant has given evidence). "In the first place, the defendant has given evidence, and as with any man of good character it supports his credibility. This means that it is a factor which you should take into account when deciding whether you believe his evidence."

(If a defendant has not given evidence, but has e.g. made a statement to the police, or has answered questions in interview (3)). "In the first place, although the defendant has chosen not to give evidence before you, he did, as you know give (an explanation to the police). In considering (that explanation) and what weight you should attach to it you should bear in mind that it was made by a person of good character, and take that into account when deciding whether you can believe it."

Second Limb

(B) "In the second place, the fact that he is of good character may mean that he is less likely than otherwise might be the case to commit this crime now."

"I have said that these are matters to which you should have regard in the defendant's favour. It is for you to decide what weight you should give to them in this case. In doing this you are entitled to take into account everything you have heard about the defendant, including his age, (...) and (...)." (Obviously the importance of good character will vary from case to case, and becomes stronger if the defendant is a person of unblemished character of mature years, or has a positively good character. At this stage it may be appropriate to point out to the jury the benefit of this to a defendant, with words such as:) "Having regard to what you know about this defendant you may think that he is entitled to ask you to give (considerable) weight to his good character when deciding whether the prosecution has proved his guilt beyond reasonable doubt." (4)

(C) "Although the defendant has no previous convictions and might therefore be thought to be a person of good character for the reasons I have just explained, the defendant has admitted that he has (you have heard that the defendant) has been

guilty of serious criminal behaviour similar to the offence(s) with which he is now charged. You must not assume that the defendant is guilty of the offences with which he is now charged because he has admitted (you have heard that) he has been guilty of that serious criminal behaviour. That serious criminal behaviour is not relevant at all to the likelihood of his having committed the offences with which he is now charged, it is relevant only as to whether you can believe him. It is for you to decide the extent to which, if at all, his serious criminal behaviour helps you about that." (5)

NOTE.

(1) The primary rule is that a person of previous good character must be given a full direction covering both credibility and propensity. Where there are no further facts to complicate the position, such a direction is mandatory and should be unqualified. *R v Gray* [2004] 2 Cr. App. R. at 515 [56] where the principles governing when, and in what terms, a good character direction should be given are restated.

(2) Wherever there is any doubt as to whether both limbs of the character direction apply, or wherever it is thought that it may be necessary in the particular circumstances to modify a 'character direction', it is desirable to discuss the matter with counsel before their closing speeches. See *R v Durbin* [1995] 2 Cr. App. R. 84 where guidelines were laid down for a number of situations in which a modified direction should be given.

(3) The defendant is entitled to such a direction only where the out of court statement is a 'mixed' statement, that is it contains an admission of fact which is capable of adding some degree of weight to the prosecution case on an issue which is relevant to guilt. *R v Aziz* [1995] 2 Cr. App. R. 478, *R v Garrod* [1997] Crim. L. R. 445.

(4) *R v Vye, Wyse and Stephenson* [1997] Cr.App.R.134.

(5) If the defendant has admitted or such serious criminal behaviour has been proved, the judge may qualify or, if he considers that it would be an insult to commonsense to give direction in accordance with *R v Vye*, omit completely such directions. Lord Steyn in *R v Aziz*. If a *Vye* direction is to be qualified, the above adaptation of the bad character direction may be appropriate. When bad character evidence has been admitted it is no longer appropriate to give a good character direction.

ARCHBOLD 2010: 4-406 to 409.

BLACKSTONE 2010: F13.3 to 14.

4.8 DEFENDANT'S CHARACTER - GOOD

“In deciding whether the prosecution has satisfied you beyond reasonable doubt of the defendant's guilt, you should have regard to the fact that he is a man/young man of good character. Of course, good character cannot by itself provide a defence to a criminal charge: but you should take it into account in his favour in the following way/s:”

(If a defendant does not give evidence **and** he has not made any statement to the police, or other authority or person which is admitted in evidence, ignore (1) below)

- (1) (If a defendant has given evidence). “In the first place, the defendant has given evidence, and as with any man of good character it supports his credibility. Credibility simply relates to the confidence which you may have in the truthfulness of his evidence, that is whether you can believe him.”

(If a defendant has not given evidence, but has eg made a statement to the police). “In the first place, although the defendant has chosen not to give evidence before you, he did, as you know give (an explanation to the police). In considering (that explanation) and what weight you should attach to it you should bear in mind that it was made by a person of good character. That supports its credibility and relates to the confidence which you may have in the truthfulness of (the explanation), that is whether you can believe it.”

- (2) “In the second place, the fact that he has not previously committed any offence/reached the age of (...) without committing an offence may mean that he is less likely than otherwise might be the case to commit this crime now.”

“I have said that these are matters to which you should have regard in the defendant's favour. It is for you to decide what weight you should give to them in this case. In doing this you are entitled to take into account everything you have heard about the defendant, including his age, (...) and (...).” (Obviously the importance of good character will vary from case to case, and becomes stronger if the defendant is a person of unblemished character of mature years, or has a positively good character. At this stage it may be appropriate to point out to the jury the benefit of this to a defendant, with words such as:) “Having regard to what you know about this defendant you may think that he is entitled to ask you to give (considerable) weight to his good character when deciding whether the prosecution has satisfied you of his guilt.”(1)

- (3) “Although the defendant has no previous convictions and might therefore be thought to be a person of good character for the reasons I have just explained, the defendant has admitted that he has (you have heard that the defendant) has been guilty of serious criminal behaviour similar to the offence(s) with which he is now charged. You must not assume that the defendant is guilty of the offences with which he is now charged because he has admitted (you have heard that) he has been guilty of that serious criminal behaviour. That serious criminal behaviour is not relevant at all to the likelihood of his having committed the offences with which he is now charged, it is relevant only as to

whether you can believe him. It is for you to decide the extent to which, if at all, his serious criminal behaviour helps you about that.”(2)

NOTE: (1) R v Vye, Wyse and Stephenson 97 Cr.App.R.134.

(2) If the defendant has admitted or such serious criminal behaviour has been proved, the judge may qualify or, if he considers that it would be an insult to commonsense to give direction in accordance with R v Vye, omit completely such directions. Lord Steyn in R v Aziz [1995] 2 Cr.App.R.478. If a Vye direction is to be qualified, the above adaptation of the bad character direction may be appropriate.

ARCHBOLD: 4-406/9

BLACKSTONE: F13

4.9 DEFENDANT'S CONFESSION (1)

EITHER:

1. The prosecution say that the defendant made a confession on which you may rely. The defendant says that he did not make the confession and that it has been fabricated. (*Summarise the parties' evidence and/or arguments on the matter.*) You must consider whether the defendant did in fact make the confession. If you are satisfied beyond reasonable doubt that he did make it and that it was true, you may take it into account when considering your verdict. If, however, you are not satisfied beyond reasonable doubt that he did, you must disregard it completely.

OR:

2. The prosecution say that the defendant made a confession on which you can rely. The defendant says that although he made the confession it was obtained by [oppression][something said or done which was likely to render it unreliable] [and that it is untrue]. (*Summarise the parties' evidence and/or arguments on the matter.*) If you are satisfied beyond reasonable doubt that the confession was not obtained in this way, and that it was true, you may take it into account when considering your verdict. If, however, you think that the confession was or might have been obtained by [something said or done which was likely to render it unreliable] you must disregard it completely. (2)

OR:

3. The prosecution say that the defendant made a confession on which you can rely. The defendant says that although he made the confession voluntarily, it was not true. (*Summarise the parties' evidence and/or arguments on the matter.*) If you are satisfied beyond reasonable doubt that it was true, you may take it into account when considering your verdict. If, however, you think that the confession was or may have been untrue, you must disregard it completely.

NOTE.

(1) This direction has been re-written in the light of R v Mushtaq [2005] 2 Cr. App.R. p. 485 HL.

(2) In R v Mushtaq at [55] Lord Rodger said: '...there is often no dispute that, if what the defendant said happened did indeed happen, the confession should be excluded under...[Art. 74(2)] of PACE....In such a clear-cut case it may well be enough for the judge to indicate that, if the jury consider that the confession was, or may have been, obtained in the way described by the defendant, they must disregard it.' Lord Rodger also pointed out (at [58]) that in the instant case, where the officers denied any wrongdoing and the defendant did not give evidence, there was actually no evidence of oppression or of other improper means before the jury, so that no direction on the matter was necessary.

(3) As to the definition of ‘confession’, see Art. 70 of the Police and Criminal Evidence (NI) Order, 1989.

(4) Where the confession is by a **mentally handicapped defendant**, see Art. 75 of the 1989 Order and the test laid down in *R v Campbell* [1995] 1 Cr.App.R. 552 and *R v Bailey* [1995] 2 Cr.App.R. 262. See also *R v Qayyum* [2007] Crim. L. R. 160. In *R v Bailey* the court said: ‘What is required of a judge in summing up in such cases...is a full and proper statement of the mentally handicapped defendant’s case against the confessions being accepted by the jury as being accurate.’ If the circumstances stated there apply, **add**:

‘In this case you should approach the evidence of the defendant’s confession with special caution before convicting him on it. I say this for three reasons. Firstly, because the case against him depends [wholly/substantially] on that confession. Secondly, because he is a mentally handicapped person. Thirdly, because no independent person was present when he made it – that is, someone other than the investigator or other person to whom it was made.’

(5) See *R v O’Brien, Hall and Sherwood* [2000] Crim. L.R. 676, in which the Court of Appeal considered the admissibility of expert evidence in relation to allegedly false confessions, and the appropriate direction to the jury where such evidence was admitted.

(6) For confessions said to have been made by a defendant’s adoption of an accusation or statement made in his presence, and a suggested direction to the jury in such a case, see **Archbold 2010 15-409** *et seq*, **Blackstone 2009 F17.49** *et seq*, the cases there cited, and *R v Collins and Keep* [2004] 2 Cr.App.R. p. 199 and *R v Osborne* [2005], *The Times*, 17 November.

ARCHBOLD 2010: 15-385

BLACKSTONE 2010: F.17.49.

4.10 DEFENDANT'S EVIDENCE: EFFECT ON OTHER DEFENDANTS

Where a defendant gives evidence in his own defence which damages a co-defendant's case or tends to implicate a co-defendant in the commission of the offence(s) for which he is being tried, the jury should be warned about that evidence in some such terms as the following:

"The defendant Y has given evidence which (damaged X's case) (tended to show that the defendant X was involved in some way in the commission of the offence(s) which you are trying). Examine that evidence with particular care for Y, in saying what he did, may have been more concerned about protecting himself than about speaking the truth. Bear in mind that risk before deciding whether or not you feel able to accept what Y has told you about X."

NOTE.

(1) Even where it is obvious that the co-defendant is an accomplice there is no rule of practice and certainly none of law which obliges a judge to give the jury the warning about corroboration which must be given when an accomplice gives evidence for the prosecution. Such a warning may nevertheless be given at the discretion of the judge if he thinks it should be, having regard to the nature and severity of the attack made upon a co-defendant. *R v Knowlden and Knowlden* 77 Cr.App.R.94; *R v Hare and Halliday* (NICA 1/6/1995 (unreported)).

(2) Where co-defendants give evidence against each other, the jury should be warned to: (1) consider the case for and against each defendant separately; (2) decide the case of each on all the evidence including that of the co-defendant; (3) bear in mind when considering the evidence of each co-defendant that he may have an interest to serve; and (4) assess the evidence of the co-defendant in the same way as any other witness in the case. No principle can be derived from *R v Burrow* [2000] Crim.L.R. 48 that a warning should not be given where co-defendants give evidence against each other. That case turned on its own facts: *R v WJ and MJ*, unreported, CACD, 9 June 2003.

ARCHBOLD 2010: 4-404n

BLACKSTONE 2010: F5.11.

4.11 DEFENDANT'S LIES TO POLICE OR OTHERS

"The defendant has admitted that he lied to the police. You must consider why he lied."
("The prosecution has alleged that the defendant lied to the police. If you are satisfied beyond reasonable doubt that he did, you must consider why he lied.")

"The mere fact that a defendant tells a lie is not in itself evidence of guilt.

A defendant may lie for many reasons, for example: to bolster a true defence, to protect someone else, to conceal disgraceful conduct of his, short of the commission of the offence, or out of panic or confusion. If you think that there is, or may be, some innocent explanation for his lies then you should take no notice of them. But if you are satisfied beyond reasonable doubt that he did not lie for some such or other innocent reason, then his lie(s) can (be evidence going to prove guilt) (support the prosecution case)." (1)

NOTE.

(1) R v Lucas 73 Cr. App. R.159. Such directions need to be modified to fit the particular case. The point is that the jury should be alerted to the effect that, before they can treat lies as tending before the proof of guilt of the offence charged, they must be satisfied beyond reasonable doubt that there is not some possible explanation for the lies which destroys their potentially probative effect. R v Richens 98 Cr. App. R. 43.

(2) R v Burge and Pegg [1996] 1 Cr.App.R.163. A "Lucas" direction is not required in every case, even if the jury might conclude that the defendant has told lies. It may be more misleading than helpful to give it in every case and care and discrimination should be exercised in deciding whether to give one. R v McMoran [1999] NIJB 50. It is not, for example, required in the run of the mill case in which the defence case is contradicted by the evidence of prosecution witnesses in such a way as to make it necessary for the prosecution to say that in so far as the two sides are in conflict, the defendant's account is untrue and indeed deliberately and knowingly false. Such a warning should only be given where there was a danger that the jury might regard their conclusion that the defendant had lied as probative of his guilt. (Nevertheless, if the police or prosecuting counsel suggested to the defendant or implied that the lie was important, it may be safer to give this direction). It will usually be required in the following cases.

(a) Where the defence is one of alibi.

(b) Where the judge suggests that the jury should look for corroboration or support of one piece of evidence from other evidence, and draws attention to lies told or allegedly told by the defendant.

(c) Where the prosecution seeks to show that something said in or out of court in relation to a separate and distinct issue was a lie, and to rely upon that lie as evidence of the guilt of the defendant.

(d) Even though the prosecution has not adopted (c), the judge reasonably envisages that there is a real danger that the jury might do so. In this case in particular, it might be wise for the judge, before the closing speeches and summing up, to consider with counsel whether such a direction was required and if so how it should be formulated.

ARCHBOLD 2010: 4-402 to 4-402a

BLACKSTONE 2010: F1.18 to 1.20.

UPDATED 21 MAY 2009

**4.12 DEFENDANT' STATEMENT, PARTLY SELF-SERVING:
DEFENDANT NOT GIVING EVIDENCE**

This will only be relevant when Article 4.(1) of the Criminal Evidence (NI) Order 1988 (as amended) applies and the defendant need not give evidence. In such circumstances this direction should be preceded by Direction 4.23 B.

"The defendant's statement to the police contains both incriminating parts and (excuses) (explanations). You must consider the whole of the statement in deciding where the truth lies. You may feel that the incriminating parts are likely to be true - for why else would he have made them? You may feel that there is less weight to be attached to his (excuses) (explanations). They were not made on oath, have not been repeated on oath and have not been tested by cross-examination."

NOTE.

(1) See Duncan 73 Cr.App.R.359, approved by the House of Lords in Sharp 86 Cr.App.R.274.

(2) The direction "You may feel that the incriminating parts are likely to be true -for why else would he have made them?" should be modified if there is an issue as to whether the statement was made or made freely.

ARCHBOLD 2010:15-402

BLACKSTONE 2010: F17.61 to 66

4.13 HOSTILE WITNESS

1. X was called by the [prosecution/defence] but gave evidence which did not support the [prosecution's/defence's] case. The [prosecution/defence] was therefore allowed to treat him as a 'hostile' witness – a witness who had in effect 'changed sides' – and to cross-examine him to show that he had given an account on a previous occasion which was inconsistent with the account which he gave in court. [*Identify the inconsistency.*]
2. You may take into account any inconsistency [and X's explanation for it] when considering X's reliability as a witness. It is for you to judge the extent and importance of any inconsistency. If you conclude that there is a serious conflict between the account he gave in court and his previous account, you may think that you should reject his evidence altogether and not rely on anything said by him either on the previous occasion or when giving evidence.(1-3)
3. However if, after careful consideration, you are sure that you can rely on [all or part of] what he said on the previous occasion or when giving evidence, you may take it into consideration in reaching your verdict[s].

NOTE.

1. Under Art. 23 of the Criminal Justice (NI) Order 2004, the previous inconsistent statement becomes evidence of the truth of its contents. If it was made in a document which becomes an exhibit, it must not accompany the jury when they retire to consider their verdict, unless the court considers it appropriate or all the parties agree that it should: see Art. 26.
2. The provisions of Art.25 (additional requirement for admissibility of multiple hearsay) and 27 (capability to make statement) may also have to be considered on the facts of an individual case.
3. If the jury is permitted to take a copy of a previous inconsistent statement with them when they retire, a further direction will be necessary.

“You will have with you in the jury room the written statement made by X because [either “the prosecution and defence have agreed that you should” or “because it may help you to place in context the inconsistencies between that statement and what X has said in court”] When considering whether you should reject X's evidence altogether or can rely upon it I must warn you not to give too much significance to the contents of that statement simply because you have it in front of you at the expense of considering what X said in evidence and his explanation for the inconsistencies.”

See R v Hulme [2007] 1 Cr.App.R at p. 341.

ARCHBOLD 2010: 8-94 to 8-101.

BLACKSTONE 2010: F6.33 to 35.

4.14 IDENTIFICATION, APPROACH TO EVIDENCE OF

"This is a trial where the case against the defendant depends wholly or to a large extent on the correctness of one or more identifications of him which the defence allege to be mistaken. I must therefore warn you of the special need for caution before convicting the defendant in reliance on the evidence of identification. That is because it is possible for an honest witness to make a mistaken identification. There have been wrongful convictions (1) in the past as a result of such mistakes. An apparently convincing witness can be mistaken. So can a number of apparently convincing witnesses.

Examine carefully the circumstances in which the identification by each witness was made. How long did he have the person he says was the defendant under observation? At what distance? In what light? Did anything interfere with that observation? Had the witness ever seen the person he observed before? If so, how often? If only occasionally, had he any special reason for remembering him? How long was it between the original observation and the identification to the police? Is there any marked difference between the description given by the witness to the police when he was first seen by them and the appearance of the defendant?

I must remind you of the following specific weaknesses which appeared in the identification evidence ...".

See *R v Turnbull* 63 Cr.App.R.132.

NOTE.

(1) The importance of the rules laid down in *R v Turnbull* was emphasised by Lord Lane, CJ, in *Clifton* (14.1.86) [1986] Crim.L.R.399. As Lord Woolf CJ observed in *Barry George v R* [2002] EWCA Crim 1923 "We fully recognise the dangers involved of wrong convictions occurring in identification cases. This is the reason for the requirement that in all identification cases clear *Turnbull* directions must be given."

The basic principle is the special need for caution when the issue turns on evidence of visual identification. The summing-up in such cases must not only contain a warning but expose to the jury the weaknesses and dangers of identification evidence both in general and in the circumstances of the particular case. *Turnbull* is intended, primarily, to deal with the "ghastly risk" in cases of fleeting encounters; see per Lord Widgery CJ in *R v Oakwell* 66 Cr.App.R.174. The rule is equally applicable to police witnesses. *R v Reid* 90 Cr.App.R.121.

(2) When the quality of the identifying evidence is poor the judge should withdraw the case from the jury and direct an acquittal unless there is other evidence which goes to support the correctness of the identification. The identification evidence can be poor, even though given by a number of witnesses. They may all have had only the opportunity of a fleeting glance or a longer observation made in difficult conditions. Where, however, the quality is such that the jury can safely be left to assess its value, even though there is no other evidence to support it, the trial judge is entitled (if so minded) to direct the jury that an identification by one witness

can constitute support for the identification by another, provided that he warns them in clear terms that even a number of honest witnesses can all be mistaken. *R v Weeder* 71 Cr.App.R.228 and *R v Breslin* 80 Cr.App.R.226. The judge should identify the evidence he regards as capable of supporting the evidence of identification.

(3) In *R v Etienne* (The Times 16.2.90) the Court was not at all sure that previous sightings of the suspect could render the identification more reliable if the identification was, on any view, an identification amounting to no more than a fleeting glimpse recognition. The Court was left with a lurking doubt as to the safety of the conviction.

(4) Such a direction is not required in every case eg where the identification is not challenged or where it is not regarded by the judge as requiring supportive evidence. See *R v Deeble* (unreported) (3.5.83; 6461B82) and *R v Penman* 82 Cr.App.R.44.

(5) Where identification involves recognition, remind the jury that mistakes in recognition, even of close friends and relatives, are sometimes made.

(6) Care should be taken in directing about support to be derived from the jury's rejection of an alibi. There may be many reasons for putting forward a false alibi. Alibi witnesses may be genuinely mistaken as to dates etc. Only if satisfied that the sole reason for the fabrication was to deceive them, may the jury find support for poor identification evidence. The mere fact that the defendant has lied about his whereabouts does not of itself prove that he was where the identifying witness said he was.

(7) *R v Galbraith* 73 Cr.App.R.124 was not intended to affect in any way the Turnbull guidelines as to the withdrawal of a case dependant upon poor identifying evidence. *R v Fisher* (unreported) (8.7.83; 5923C82).

(8) As to the obligation to hold an identity parade where a suspect has already been identified (for example, in the street) by the witness, but the suspect disputes the offence, see *R v Forbes* [2001] 1 Cr.App.R.31

ARCHBOLD 2010: 14-2 to 26

BLACKSTONE 2010: F.19 to 26

4.14A IDENTIFICATION BY DNA.

“Members of the jury, if you accept the scientific evidence called by the prosecution, this indicates that there are probably only (four or five) males in Northern Ireland from whom that semen stain could have come. The defendant is one of them. If that is the position, you have to consider whether, on all the evidence, you are satisfied beyond reasonable doubt that it was the defendant who left that semen stain, or whether it is possible that it was one of that other small group of men who share the same DNA characteristics.” (1)

NOTE.

In *R v Doheny and Adams* [1997] 1 Cr.App.R. 369 at 375, Phillips LJ gave the following guidance on summing-up in a DNA case.

“The judge should explain to the jury the relevance of the random occurrence ratio in arriving at their verdict, and draw attention to the extraneous evidence which provides the context which gives that ratio its significance, and that which conflicts with the conclusion that the defendant was responsible for the crime stain. In so far as the random occurrence ratio is concerned, a direction along these lines may be appropriate, although any direction must always be tailored to the facts of the particular case.”

The above specimen direction is based upon his suggested direction.

ARCHBOLD 2010: 14. 58

BLACKSTONE 2010: F18 31 to 32

4.14B IDENTIFICATION BY VOICE

In *R v Hersey* [1998] Crim L.R. 281 and *R v Gummerson and Steadman* [1999] Crim L.R. 680, The Court of Appeal held that in cases of identification by voice, the judge should direct the jury by the careful application of a suitably adapted Turnbull direction (see Direction 14). For an example of such a case see *R v Mullan* [1980] NI 212 at pp.213-214.

In *R v Roberts* [2000] Crim L.R. 183, the Court of Appeal referred to academic research indicating that voice identification was more difficult than visual identification, and concluding that the warning given to jurors should be even more stringent than that given in relation to visual identification.

It is clear from these authorities that it is not necessary to hold a voice identification parade to render admissible evidence of identification by voice.

In giving the judgment of the Court of Appeal in *R v O'Doherty* [2002] NI 263, [2003] 1 Cr.App.R.5 Nicholson LJ emphasised the need for a suitable warning to the jury in cases where evidence was given purporting to be identification of the voice of the defendant.

“We are satisfied that if the jury is entitled to engage in this exercise in identification on which expert evidence is admissible, as we have held, there should be a specific warning given to the jurors of the dangers of relying on their own untrained ears, when they do not have the training or equipment of an auditory phonetician or the training or equipment of an acoustic phonetician, in conditions which may be far from ideal, in circumstances in which they are asked to compare the voice of one person, the defendant, with the voice on tape, in conditions in which they may have been listening to the defendant giving his evidence and concentrating on what he was saying, not comparing it with the voice on the tape at that time and in circumstances in which they may have a subconscious bias because the defendant is in the dock. We do not seek to lay down precise guidelines as to the appropriate warning. Each case will be governed by its own set of circumstances. But the authorities to which we have referred emphasise the need to give a specific warning to the jurors themselves.”

ARCHBOLD 2010:14.52 to 52c.

BLACKSTONE 2010: F 18.30

4. 14C IDENTIFICATION FROM A VIDEO RECORDING AND/OR A STILL PHOTOGRAPH

In R –v- Richard Kieran Stevens [2002] NI 361 the Court of Appeal reviewed the authorities relating to the need for a Turnbull direction in cases where the jury has before it a video tape and/or still photographs. The following propositions can be extracted from the judgment of Carswell LCJ.

1. In most, if not all, cases the judge should give the jury a warning on the dangers of identification from photographic evidence.
2. "... the type of direction to be given depends on the circumstances. The trial judge should ordinarily give a general warning that mistakes in identification are always possible, even with photographs available, because they are capable of giving a misleading impression. The better the photographs and the more opportunity the jury may have to view the perpetrator on a film, the less detailed and emphatic such a warning need be. If there are factors such as a change in appearance or the need to pick out a person from some feature other than facial appearance, as in the heli-tele pictures in R –v- Murphy and Maguire [1990] NI 306B, a more detailed warning on Turnbull lines would ordinarily be required. In the absence of such factors, we consider that in principle such a direction would be superfluous."

In R –v- Stevens the court considered R –v- Dodson and Williams (1984) 79 Cr.App. R. 220. In that case the following passage from the trial judge's summing up was described as "admirable" by the Court of Appeal, and may provide a useful example of how to direct the jury's attention to the sort of issues which may arise.

"Now considering those two issues, the same issue for each defendant, you are considering the question involving the identification of the human face. Now that is not a precise consideration. It is not like comparing, for instance, the index numbers of two cars or two sets of fingerprints or something of that sort. And there are dangers where witnesses have an opportunity of seeing, for instance, someone raiding a bank and they see a suspect some time later and they may genuinely think that that suspect is the same person. You are not here asked to assess the reliability of such a witness. You are making the identification in each case yourselves. You will bear in mind the dangers and difficulties of identification by one human being, in your case twelve human beings, of the features of another. Bear in mind that photographs may give different impressions of the same person. There are photographs that you may know really do not resemble the person that you know them to be of at all. You probably have all taken photographs or seen photographs of some member of your family and you say: "That does not look like him at all. What a rotten photograph." There are photographs that catch a characteristic, an attitude, a gesture, an expression absolutely right and you say: 'There is old so and so, I have often seen him looking like that'. It may not be a very good portrait of the man or the woman, but it catches something about the look of his or her face. Well, members of the jury, I cautioned you more than once at the outset of this case against jumping to conclusions, and you clearly have resisted that temptation, if temptation it ever was. You have the

photographs of the two people who were undoubtedly in the bank – you may be satisfied of that – and your concern is with the man who had the handgun, said to be

Williams, and the man who had no gun at all, said to be Dodson. You also have some descriptions of those two characters given by the people inside the bank, and you should put those together with the photographs, because they relate to the two people in the bank, whoever they were, and I will remind you shortly of such evidence as there is about that.”

ARCHBOLD 2010:14-45 to 50.

BLACKSTONE 2010: F18.29

REVISED 26 MAY 2009

4.15 PREVIOUS CONSISTENT STATEMENT (1)

1. In this case you have heard both evidence from X, and a statement [said to have been] made by X on a previous occasion. [When appropriate “When considering what weight to give to the previous statement you should bear in mind that it comes from the same person who is making the allegation in the witness box and not from an independent source” (3)]

2.

(Only when Art. 24(2) applies:)

You have heard that X made a statement about this on a previous occasion because it had been suggested to X that his evidence in court had been made up. The previous statement is evidence you may take into account, if you think fit, when considering X’s reliability as a witness, and when considering your verdict[s].

(Only when Art. 24(3) applies:)

You have heard that X made a statement about this on a previous occasion because X had used the previous statement to refresh his memory when giving evidence, and had then been asked questions about it in cross-examination. The previous statement is evidence you may take into account, if you think fit, when considering your verdict[s].

(Only when Art. 24 (4) and (5) apply:)

You have heard that X made a statement about this on a previous occasion because X said he believed that [he made] the previous statement [and that it] was true, and because it [identified/described] a [person/object/place]. If you accept X’s evidence that he believed this, the previous statement is evidence you may take into account, if you think fit, when considering your verdict[s].

(Only when Art. 24 (4) and (6) apply:)

You have heard that X made a statement about this on a previous occasion because X said he believed that [he made] the previous statement [and that it] was true, and was made when matters which he did not now remember were fresh in his memory. If you accept X’s evidence in this regard, the previous statement is evidence you may take into account, if you think fit, when considering your verdict[s]. *(If the issue arises:)* When deciding whether or not to take it into account, consider whether or not X could reasonably be expected to remember now the matters referred to in his previous statement.

(Only when Art. 24 (4) and (7) apply:)

You have heard that X made a statement about this on a previous occasion because X said he believed that [he made] the previous statement [and that it] was true, and because it consisted of a complaint of [part of] the offence now being tried, made by X [to Y] shortly afterwards. If you accept the evidence of X [and Y] about the complaint, the complaint itself is evidence you may take into account, if you think fit, when considering X’s reliability as a witness and when considering your verdict[s]. *(If the issue(s) arise(s):)* When deciding whether or not to take the complaint into account, consider whether or not it was [made as soon as could reasonably be

expected] [made as a result of a threat or promise] [drawn from X rather than being volunteered by him].

NOTE.

(1). These directions, which are based on Article 24 of the Criminal Justice (Evidence) (NI) Order 2004, supersede the previous direction which dealt only with recent complaints of sexual offences. Under Article. 24 a written or oral complaint of *any* offence is now admissible as evidence of the matters complained of if the conditions set out in Article 24(4) and (7) are met, this being a decision of law for the judge. The new provisions are not limited to sexual cases. Moreover, other kinds of previous consistent statements are also available as evidence of the truth of their contents if any of the conditions set out in Article 24(2), (3), (4) (5) or (6) are met. These provisions are free standing and provide their own criteria. A statement is now admitted to prove the truth of the matter stated therein. R v O [2006] 2 Cr.App.R. 27.

(2). If the previous statement was made in a document which becomes an exhibit it must not accompany the jury when they retire to consider their verdict unless the court considers it appropriate or all the parties agree that it should: see Article 26 and R v Hulme [2007] 1 Cr.App.R. at p. 341, and Specimen Direction 4.13.

(3). R v AA [2007] EWCA Crim at [16].

ARCHBOLD 2010:11-36 to 40.

BLACKSTONE 2010: F6.21.

4.16 STATEMENT, PREVIOUS INCONSISTENT: (WITNESS NOT HAVING BEEN TREATED AS HOSTILE)

"(X has admitted that he) (You may be satisfied that X) had previously made a statement which conflicted with his evidence. You may take into account the fact that he made such a statement when you consider whether he is believable as a witness. However, the contents of the statement are not part of the evidence in the trial, except for those parts of it which he has told you are true."

- NOTE:**
- (1) Where the witness has been treated as hostile, see Specimen Direction 4.13 "Hostile Witness".
 - (2) Where the inconsistency is neither serious nor central to the case, it is normally sufficient to do no more than draw attention to it.
 - (3) Take care to explain what is and what is not evidence and the relevance of a previous inconsistent statement to the credibility of the witness. If there are several witnesses concerned, give the main direction before you deal with the first of them and then refer briefly to that direction when you deal with each of the others.

ARCHBOLD: 8-130

BLACKSTONE: F 6.22

4.17 STATEMENT TO POLICE BY CO-DEFENDANT, NOT EVIDENCE AGAINST DEFENDANT

"A statement implicating defendant A made by defendant B (or by any other person) out of court and not in the presence of defendant A is not evidence against defendant A. Disregard it when you consider the case against defendant A. (However, what defendant B has told you from the witness box is evidence against defendant A.")

Where there is more than one defendant and each defendant has made a written statement, tell the jury when considering the evidence against each defendant, to consider only the statement made by that defendant.

NOTE.

(1) Even if A and B are together when co-defendant B makes a statement implicating A, B's statement may only be taken into account as evidence against A if A says or does something which constitutes a positive acceptance or acknowledgement of the truth of B's statement insofar as it affects A. The fact that A remains silent when confronted with that statement cannot be an acceptance by him of the truth of B's statement.

(2) In a joint trial in the rare circumstances where the prosecution has to prove A's guilt before the jury can convict B, and A has made an out of court confession of his guilt, the prosecution may rely upon A's confession as part of the case against B. *R v Hayter* [2005] 2 Cr.App.R. 3 per Lord Brown, p.68 at [86]. In such circumstances the following may provide a useful starting point.

"The prosecution concede that before you can convict B of (offence) you have to be satisfied beyond reasonable doubt that A was guilty of (offence). The prosecution case is that A confessed to that offence. If you are satisfied that A's confession is true and therefore that A committed that offence, then you may take A's guilt into account when deciding whether B is guilty. However, you may only take into account against B that A confessed to his own guilt. You cannot take into account, and so must completely disregard, (anything else that) A said which might be thought to incriminate B."

ARCHBOLD 2010: 9-85 and 15-388.

BLACKSTONE 2010: F17.50

4.18 EXPERT EVIDENCE

"In this case you have heard the evidence of (X), who has been called as an expert on behalf of the prosecution/defendant. Expert evidence is permitted in a criminal trial to provide you with scientific (or e.g. accountancy) information and opinion, which is within the witness' expertise, but which is likely to be outside your experience and knowledge. It is by no means unusual for evidence of this nature to be called; and it is important that you should see it in its proper perspective, which is that it is before you as part of the evidence as a whole to assist you with regard to one particular aspect of the evidence, namely (...).

(In a case where e.g. handwriting (2) is in issue or there might otherwise be a danger of the jury coming to its own 'scientific' conclusions, add: "With regard to this particular aspect of the evidence you are not experts; and it would be quite wrong for you as Jurors to attempt to (compare specimens of handwriting/perform any tests/experiments of your own) and to come to any conclusions on the basis of your own observations. However you are entitled to come to a conclusion based on the whole of the evidence which you have heard, and that of course includes the expert evidence.")

A witness called as an expert is entitled to express an opinion in respect of his findings/the matters which are put to him; and you are entitled and would no doubt wish to have regard to this evidence and to the opinion(s) expressed by the expert(s) when coming to your own conclusions about this aspect of the case.

You should bear in mind that if, having given the matter careful consideration, you do not accept the evidence of the expert(s), you do not have to act upon it. Indeed, you do not have to accept even the unchallenged evidence of an expert.

(In a case where two or more experts have given conflicting evidence: "It is for you to decide whose evidence, and whose opinions you accept, if any").

You should remember that this evidence relates only to part of the case, and that whilst it may be of assistance to you in reaching a verdict, you must reach your verdict having considered the whole of the evidence."

NOTE.

(1) In relation to a matter such as handwriting, it is desirable to give the jury (in addition to any directions in the summing up) an early direction when the matter arises in evidence that they should not embark upon a comparison exercise on their own. They may e.g. be told, if the issue is likely to be of importance, that they must decide it on the evidence only (which may legitimately take the form of agreed facts, the evidence of the maker or alleged maker of the document, the evidence of a person proved to be familiar with the maker's handwriting, expert evidence and circumstantial evidence); but they must not decide it on the basis of any comparison carried out privately by them.

(2) See R v Stockwell 97 Cr.App.R. 266, R v Fitzpatrick [1999] Crim. L.R. 832, R v O'Brien and others (2000) *The Times*, 16 February (in relation to confessions); R v

Buckley (1999) *The Times*, 12 May [1999] 6 *Archbold News* 4 (in relation to fingerprints), and *R v Dallagher* [2002] Crim. LR 821 (in relation to ear-prints, and the test of admissibility of expert evidence in a novel area).

ARCHBOLD 2010: 10-64 TO 68a.

BLACKSTONE 2010: F10.3 to 6.

REVISED 15 DECEMBER 2008

4.19 DEFENDANT'S FAILURE TO MENTION FACTS WHEN QUESTIONED OR CHARGED

Article 3 Criminal Evidence (NI) Order 1988 (as amended)

(1) “When arrested, and at the beginning of each of his interview(s), the defendant was cautioned. He was told that he need not say anything, and it was therefore his right to remain silent. However, he was also told that it may harm his defence if he did not mention something when questioned which he later relied on in court; and that anything he did say may be given in evidence.

(2) As part of his defence the defendant has relied upon ... (specify precisely the fact(s) to which this direction applies). (The prosecution case is/he admits) that he did not mention the fact (s) when he was questioned under caution about the offence(s).

(3) The prosecution case is that, in the circumstances when he was questioned and having regard to the warning he had been given by the caution, he could reasonably have been expected to mention (it/them) at that stage, and so you may decide that the reason why it was not mentioned was because (e.g. it has since been invented/tailored to fit the prosecution case/he believed that it would not stand up to scrutiny at that time).

((If you are satisfied beyond reasonable doubt that the defendant did fail to mention (...) (when he was questioned), then it is for you to decide whether, in the circumstances, it was something which he could reasonably have been expected to mention at that time. If it was not, then that is the end of the matter and you should not hold the defendant's failure to mention the fact(s) against him in any way.

(4) If it was something which the defendant could reasonably have been expected to mention at that time, the law is that you may draw such inferences-that is conclusions-as appear proper from his failure to mention it at that time. You do not have to hold it against him. It is for you to decide whether it is proper to do so. Failure to mention (it/them) at that time cannot, on its own, prove the defendant's guilt, but depending upon the circumstances, you may hold that failure against him when deciding whether he is guilty. (Here set out any circumstances relevant to the particular case, for example the age of the defendant, the nature of and/or reasons for the advice given, and the complexity or otherwise of the facts upon which the defendant has relied at the trial(1)).

You should hold the defendant's failure to mention the fact(s) during interview against him only if you are satisfied beyond reasonable doubt that his failure could sensibly be attributed to his having no answer to the questions being put to him, or none that could stand up to questioning or investigation by the police at that time. (2) You must not find him guilty only, or mainly, because he failed to mention the fact(s) (3). But you may take it into account as some additional support for the prosecution's case and when deciding whether his (evidence/case) about (the/these) fact(s) is true.

(He has given no explanation for his failure, and none has been suggested for which there is any support in the evidence (4)

Consider (his explanation e.g. that), and consider what the prosecution say about that.

(5) (Where legal advice to remain silent is relied upon, substitute the following for paragraph (4))

“If it was something which the defendant could reasonably have been expected to mention at that time, the law is that you may draw such inferences—that is conclusions—as appear proper from his failure to mention it at that time. You do not have to hold it against him. It is for you to decide whether it is proper to do so.

The defendant says that the reason why he did answer (any/those) questions was because his solicitor advised him not to answer (any/those) questions and he followed that advice. This is obviously an important consideration, but it does not automatically prevent you from holding his silence against him, because the defendant had the choice whether to accept his solicitor’s advice or to reject it, and he had been warned that any failure to mention facts which he relied upon at his trial might harm his defence.

You should also take into account (here set out any circumstances relevant to the particular case, for example the age of the defendant, the nature of and/or reasons for the advice given, and the complexity or otherwise of the facts upon which the defendant has relied at the trial (1)).

If he genuinely and reasonably relied on the legal advice to remain silent, you should not draw any conclusion against him.

If you are satisfied beyond reasonable doubt that the true explanation for the defendant’s failure to mention the fact(s) is because he had no answer, or no satisfactory answer, (5) to the questions being put to him, and that the advice of the solicitor did no more than provide the defendant with a convenient shield behind which to hide, then, and only then, can you hold his failure to mention the fact(s) against him and draw such conclusions as you think proper from that failure. However, you must not find him guilty only, or mainly, because he failed to mention the fact(s). But you may take it into account as some additional support for the prosecution’s case and when deciding whether his (evidence/case) about (the/these) facts is true.”

NOTE.

1. See Lord Bingham C.J. in *R v Argent* [1997] 2 Cr. App. R. 27 as to examples of the types of circumstances that may be relevant.
2. The words “sensibly be attributed to” were used by Lord Taylor CJ in *R v Cowan* [1996] 1 Cr. App. R 1 and by the European Court of Human Rights at para. 61 of *Condron v UK* [2000] Crim. L.R. 676.
3. The words “only or mainly” are included to reflect the views of the European Court in *Condron*.

4. There must be evidence. In *R v Cowan* Lord Taylor CJ said “it cannot be proper for a defence advocate to give the jury reasons for his client’s silence at trial in the absence of evidence to support such reasons”.
5. See Auld LJ in *R v Hoare & Pierce* [2005] 1 Cr. App. R.22 at pp.372-73.

ARCHBOLD 2010: 15-414 to 432.

BLACKSTONE 2010: F19.4 to 15

4.20 DEFENDANT'S FAILURE OR REFUSAL TO ACCOUNT FOR OBJECTS, SUBSTANCES OR MARKS

Article 5 Criminal Evidence (NI) Order 1988 (as amended)

"The prosecution case is that:

(1) When the police officer arrested the defendant at ... the defendant had (on him/in or on his clothing or shoes/in his possession/at that place) a

(2) The officer reasonably believed that (e.g. he may have used it to commit the burglary for which he is now being tried).

(3) The officer told him of his belief, asked him to account for the presence of the object/substance/mark) and told him that if he failed or refused to account for (the object/substance/mark) then a court may treat his failure or refusal as supporting any relevant evidence against him.

(4) The defendant (did not answer him/refused to do so).

(5) If you find those facts to be proved beyond reasonable doubt, the law is that you may draw such inferences-that is conclusions- as appear proper from that failure/refusal to account for its presence at that time. You do not have to hold that against him. It is for you to decide whether it is proper to do so. That failure/refusal to account for the presence of (the object etc) cannot, on its own, prove the defendant's guilt, but, depending upon the circumstances, you may hold it against him when deciding whether he is guilty. You should hold that failure/refusal against him only if you are satisfied beyond reasonable doubt that it could be sensibly attributed to his having (no innocent account to give at that time/no account that he believed would stand up to scrutiny at that time/invented his account since that time (1) /tailored his account to fit the prosecution case). You must not find him guilty only, or mainly, because of his failure/refusal to account for the presence of the (object/substance/mark). But you may take that failure into account as some additional support for the prosecution's case and when deciding whether his (evidence/case) about the (object/substance/mark) is true.

(6) (He has given no explanation for his failure/refusal, and none has been suggested on his behalf for which there is any support in the evidence). (Consider his explanation (his counsel's submission based on the evidence of ...) for his failure/refusal, and consider what the prosecution say about that)."

(7) (Where legal advice not to give an account is relied upon, substitute the following for paragraph (6).

"If it was something for which the defendant could have been expected to give an account at that time, the law is that you may draw such inferences-that is conclusions-as appear proper from his failure to give that account at that time. You do not have to hold it against him. It is for you to decide whether it is proper to do so.

The defendant says that the reason why he did not give that account was because his solicitor advised him to remain silent and not give an account and he followed that

advice. This is obviously an important consideration, but it does not automatically prevent you from holding his failure to give an account against him, because the defendant had the choice whether to accept his solicitor's advice or to reject it, and he had been warned that any failure to give an account might harm his defence.

If you are satisfied beyond reasonable doubt that the true explanation for the defendant's failure to give an account is because he had no account, or no satisfactory account, to give at that time (no account that he believed would stand up to scrutiny at that time/invented his account/tailored his account to fit the prosecution case); and that the advice of the solicitor did no more than provide the defendant with a convenient shield behind which to hide, then, and only then, can you hold his failure to account for (the object) against him and draw such conclusions as you think proper from that failure. However, you must not find him guilty only, or mainly, because he failed to give an account. But you may take that failure into account as some additional support for the prosecution's case and when deciding whether his (evidence/case) about (the/these) facts is true.")

NOTE:

This direction is modelled on Direction 4.19, many of the notes to which apply equally to this direction.

If it is decided that no direction under Article 5 is appropriate, an adapted version of Direction 4. 23 should be given. R v McGarry [1999] 1 Cr. App. R .377

(1) R v Campbell, NI Court of Appeal 29/3/1993 (unreported).

ARCHBOLD 2010: 15-433 to 34

BLACKSTONE 2010: F 19.16 to 18

REVISED 15 DECEMBER 2008

4.21 DEFENDANT'S FAILURE OR REFUSAL TO ACCOUNT FOR PRESENCE AT A PARTICULAR PLACE

Article 6 Criminal Evidence (NI) Order 1988 (as amended)

"The prosecution case is that:

- (1) The arresting police officer found the defendant (e.g. outside the warehouse while it was being burgled).
- (2) The officer reasonably believed that the defendant was or might have been there at that time (e.g. as a lookout).
- (3) The officer told the defendant of his belief, and asked him to account for his presence there.
- (4) The defendant failed/refused to do so.
- (5) If you find those facts to be proved beyond reasonable doubt, the law is that you may draw such inferences as appear proper from that failure/refusal to account for his presence at that time. You do not have to hold that against him. It is for you to decide whether it is proper to do so. That failure/refusal to account for his presence cannot, on its own, prove the defendant's guilt, but, depending upon the circumstances, you may hold it against him when deciding whether he is guilty. You should hold that failure/refusal against him only if you are satisfied beyond reasonable doubt that it could be sensibly attributed to his having (no innocent account to give at that time/no account that he believed would stand up to scrutiny at that time/invented his account since that time/tailored his account to fit the prosecution case). You must not find him guilty only, or mainly, because of his failure/refusal to account for his presence. But you may take it into account as some additional support for the prosecution's case and when deciding whether his (evidence/case) about his presence is true."
- (6) (He has given no explanation for his failure/refusal, and none has been suggested on his behalf for which there is any support in the evidence) Consider his explanation/his counsel's submission based on the evidence of (...) for his failure/refusal, and consider what the prosecution say about that.
- (7) (Where legal advice not to give an account is relied upon, substitute the following for paragraph (6).

"If it was an account for his presence which the defendant could have been expected to give at that time, the law is that you may draw such inferences-that is conclusions-as appear proper from his failure to give that account at that time. You do not have to hold it against him. It is for you to decide whether it is proper to do so.

The defendant says that the reason why he did not give that account was because his solicitor advised him to remain silent and not give an account and he followed that

advice. This is obviously an important consideration, but it does not automatically prevent you from holding his failure to give an account for his presence against him, because the defendant had the choice whether to accept his solicitor's advice or to reject it, and he had been warned that any failure to give an account for his presence might harm his defence.

If you are satisfied beyond reasonable doubt that the true explanation for the defendant's failure to give an account for his presence is because he had no account, or no satisfactory account, to give for his presence at that time (no account that he believed would stand up to scrutiny at that time/invented his account/tailored his account to fit the prosecution case); and that the advice of the solicitor did no more than provide the defendant with a convenient shield behind which to hide, then, and only then, can you hold his failure to account for his presence against him and draw such conclusions as you think proper from that failure. However, you must not find him guilty only, or mainly, because he failed to account for his presence. But you may take that failure into account as some additional support for the prosecution's case and when deciding whether his (evidence/case) about (the/these) facts is true.")

NOTE.

This Direction is modelled on Direction 4.19, many of the notes to which apply equally to this Direction.

If it is decided that no Direction under Article 6 is appropriate, an adapted version of Direction 4.23 should be given. *R v McGarry* [1999] 1 Cr. App. R. 377.

ARCHBOLD 2010: 15-435 to 437.

BLACKSTONE 2010: F 19.16 to 18.

REVISED 18 JANUARY 2010

4.22 DEFENDANT'S TOTAL OR PARTIAL SILENCE AT TRIAL

Article 4 Criminal Evidence (NI) Order 1988 (as amended)

Directions to jury where defendant has not given evidence or refused to answer questions when sworn.

(When the defendant was questioned by the police he admitted a number of matters which the prosecution say incriminate him in the charge(s). (Identify the relevant matters). (However, the defendant's explanation to the police about those matters was (specify his explanation), and he denied the offence(s)). Those explanations and denials are relied upon by him and you must consider the whole of what he said to the police in deciding where the truth lies.

You may feel that the incriminating parts of what he said are likely to be true because why else would he have said them? You may feel that less significance should be given to his explanations and denials because they were not made on oath, have not been repeated on oath and have not been tested by cross-examination, as they would have been had the defendant given evidence." (1))

"The defendant has not given evidence. That is his right. He is entitled not to give evidence, to remain silent and to make the prosecution prove his guilt beyond reasonable doubt. Two matters arise from his not giving evidence. The first is that you try this case according to the evidence, and you will appreciate that the defendant has not given evidence at this trial to undermine, contradict or explain the evidence put before you by the prosecution. The second is, as you heard him being told, the law is that you may draw such inferences as appear proper from his failure to do so. It is for you to decide whether it is proper to hold the defendant's failure to give evidence (to answer certain questions having decided to give evidence (2)) against him when deciding whether he is guilty.

(There is evidence before you on the basis of which the defendant's counsel invites you not to hold it against the defendant that he has not given evidence before you namely ... (3)

If you think that because of this evidence you should not hold it against the defendant that he has not given evidence, do not do so. But if you are satisfied beyond reasonable doubt that the evidence he relies on presents no adequate explanation for his absence from the witness box then you may hold his failure to give evidence against him.)

What proper inferences-in other words what conclusions-can you draw from the defendant's decision not to give evidence before you/refusal to answer certain questions when he was giving evidence? You may think that the defendant would have gone into the witness box to give you an explanation for or an answer to the case against him. However, you may draw such a conclusion against him only if you think it is a fair and proper conclusion, and you are satisfied about two things: first, that the prosecution's case is such that it clearly calls for an answer by him; and second, that

the only sensible explanation for his silence is that he has no answer, or none that would bear examination. (4) It is for you to decide whether it is fair to do so.

However, you should not find the defendant guilty only, or mainly, because he did not give evidence (answer those questions when he did give evidence.) But you may take it into account as some additional support for the prosecution's case and when deciding whether his (evidence/case) about the/these charge(s) is true.

(You may also treat his failure to give evidence as or as capable of amounting to corroboration).

NOTE:

(1) Where the defendant has said things, whether in interview to the police or elsewhere, which contain both incriminating and exculpatory material, it may be convenient to incorporate this passage in the directions to the jury at this stage.

(2) Where the defendant has been sworn and refuses to give evidence, or refuses to answer relevant questions having been sworn, then the jury should be directed that the defendant, having decided to give evidence, could not refuse to answer relevant questions. *R v Bingham, R v Cooke* [1999] NI 118.

(3) The words in brackets should only be used in cases where there is **evidence**.

(4) In *R v Matthew O'Donnell* [2010] NICA 1 the Court of Appeal directed judges in this jurisdiction to apply *R v Cowan and others* [1996] 1 Cr. App. R. 1. The judge should, if he considers it necessary, discuss with counsel the form of his direction in the absence of the jury.

(5) If it is contended that the physical or mental condition of the accused makes it undesirable for him to give evidence that question has to be decided by the court (see Article 4(1)(b) of the Order). If the court decides in his favour, then the jury must be directed not to draw any adverse inference.

ARCHBOLD 2010: 4-398 to 399.

BLACKSTONE 2010: F 19.23 to 26.

4.23 DEFENDANT'S RIGHT TO SILENCE WHERE JUDGE DIRECTS JURY THAT NO ADVERSE INFERENCE SHOULD BE DRAWN.

A. Failure to answer questions (1).

“The defendant said nothing when he was asked questions about these matters. I direct you that in this case you must not hold his silence/refusal to answer questions against him. This means that you cannot take this into account when considering whether the prosecution has proved the case against him.”

B. Failure to give evidence.

“The defendant has not given evidence in this case. That means that there is no evidence from him to undermine, contradict or explain the prosecution case and that is something you are entitled to take into account when considering the prosecution evidence. However, in this case, I direct you not to hold his failure to give evidence against him. This means that when considering whether the prosecution has proved its case against him beyond reasonable doubt, his failure to give evidence cannot provide any additional support for the prosecution case.”

NOTE:

(1) Where the trial judge decides that, as a matter of law, the requirements of Article 3 of the Criminal Evidence (NI) Order 1988 (as amended) have not been satisfied and it is not open to the jury to draw an adverse inference under Article 3(2)(c), the trial judge cannot merely remain silent, but must positively direct the jury not to draw an adverse inference. R v McGarry [1999] 1 Cr.App.R. 377.

ARCHBOLD 2010: 15-428.

BLACKSTONE 2010: F19.15.

4.24 DEFENDANT'S EVIDENCE AT VARIANCE WITH HIS DEFENCE STATEMENT.

The defendant is obliged by law to furnish the prosecution and the court with a statement which sets out in general terms the nature of his defence, (1) indicating various (2) matters on which he takes issue with the prosecution, and why he does so. This has to be done after the prosecution has served on the defendant the statements of the witnesses upon which the prosecution relies as proving the charge(s) against the defendant.

Part of the prosecution case is that you should not believe the defendant's evidence because he has given evidence which is significantly different from the case set out in his defence statement (2) in the following respects (set out the difference(s)).(3))

If you are satisfied beyond reasonable doubt that the defendant's evidence is significantly different from the case set out in his defence statement, (4) then you may draw from the difference(s) such conclusions as appear proper to you. You do not have to hold the difference(s) against him. It is entirely for you to decide whether or not you should so, and if you do decide to hold the difference(s) against him, what importance you attach to (it /them).

Making (an) inconsistent statement(s) in his Defence Statement cannot, on its own, prove the defendant's guilt, but, depending upon the circumstances, you may hold that inconsistency against him when deciding whether or not the prosecution have proved his guilt. However, you should not find the defendant guilty only, or mainly, because you are satisfied beyond reasonable doubt that he has now put forward a significantly different version. It is only one of the matters you can take into account when considering whether the prosecution has proved his guilt. But you may take it into account as some additional support for the prosecution's case and when deciding whether his evidence about these inconsistencies is true." (5)

NOTES.

(1) S. 6A of the Criminal Investigations and Procedure Act (as amended) only applies to investigations begun after 15 July 2005. If the investigation began on or after 1 January 1998 the original (and more limited) requirements of s. 6 applied. For these see McGrory & ors [2005] NICC 37; [2006] NIJB 219. Where the investigation began between 1 January 1998 and before 15 July 2005 reference should be made to the 2nd ed of Specimen Direction 4.24.

(2) The jury is only entitled to see the Defence Statement if it has been put in evidence. King & Foster [2005] NICA 20. If it has not been put in evidence and its contents referred to, the judge must ensure that the jury are given a complete picture of the case made by the Defendant in his Defence Statement. King & Foster at [24].

(3) Where the Defence Statement does not cover allegations made by a defendant the judge has a duty to draw attention to that. King & Foster at [24].

(4) The judge should be careful to identify those parts of the Defence Statement that are relevant, and explain why they are relevant, giving the jury a specific direction as to how they are to approach any inconsistency. Wheeler (2000) 164 JP 565.

(5) If the defendant has admitted lying in his Defence Statement, or it is alleged that he lied, a Lucas direction may be necessary, in which case this direction may require modification.

ARCHBOLD 2010: 12-57 to 12-62.

BLACKSTONE 2010: D9.18 to 24.

NEW 13 OCTOBER 2008

4.25 DELAY (1)

“The charges in this case relate to matters that are alleged to have occurred a long time ago. It is essential when considering whether the prosecution has proved beyond a reasonable doubt that the defendant is guilty of (this/these) charge(s) you take into account that because of the passage of time the defendant may now be prejudiced in defending himself for a number of reasons.

1. Why did these matters not come to light sooner? You have heard the explanation given by the complainant why she/he did not tell anybody about these matters before. What do you think of that explanation? Is it one that you consider understandable (in the light of her/his age, family circumstances etc) at the time, or does it cause you to doubt the truthfulness or reliability of the complainant’s explanation, and so of her/his evidence as a whole?

2. You should make due allowance for the way in which the passage of time may have created difficulties for the defendant in remembering things that may have been important when responding to the allegations. You will be aware from your own experience that memories can fade with the passage of time, and that recollections may change, or may become confused, as to what did or did not happen at a particular time.

3. You should also bear in mind that the passage of time since these events are alleged to have occurred may have created particular difficulty for the defendant because it is no longer possible for him to rely on evidence he says would have been available to disprove these allegations if they had been made sooner. (If there are allegations that particular witnesses, e.g. a colleague, a family doctor or a teacher has died, or the physical layout of premises has changed, these should be referred to.)

If you consider that some, or all, of these matters have placed the defendant at a real disadvantage in defending himself on (this/these) charge(s), then you should take them into account in his favour when deciding whether the prosecution had proved his guilt beyond reasonable doubt.

NOTE:

(1) Whilst the Court of Appeal in England has cautioned against prescribing a particular formula in which juries are to be directed on the importance of delay, it remains the position that in many such cases, and in particular cases where very old allegations of sexual abuse are made, it is necessary to point out to the jury the possible prejudice to the defendant brought about by the passage of time. In *R v M* [2000] 1 Cr. App. R. 49 Rose LJ said:

"It is apparent that the judgment in *Percival* was directed to the summing-up in that particular case. We find in the judgment no attempt by the Court to lay down principles of general application in relation to how judges should sum up in cases of delay and we accordingly would wish to discourage the attempts being made, with apparently increasing frequency, in applications and appeals to this Court to rely on

Percival as affording some sort of blueprint for summings-up in cases of delay. It affords no such blueprint. Indeed in this area, as in so many others, prescription by this Court as to the precise terms of a summing-up is best avoided. Trial judges should tailor their directions to the circumstances of the particular case. In a case where there have been many years of delay between the alleged offences and trial, a clear warning will usually be desirable as to the impact which this may have had on the memories of witnesses and as to the difficulties which may have resulted for the defence. The precise terms of that warning and its relationship to the burden and standard of proof can be left to the good sense of trial judges with appropriate help and guidance from the Judicial Studies Board."

ARCHBOLD 2010: 4-71 and 4-403a

BLACKSTONE 2010: D 3.61 to 62.

5.1 ALIBI

"The defence is one of alibi. The defendant says that he was not at the scene of the crime when it was committed. As the prosecution has to prove his guilt beyond reasonable doubt, he does not have to prove that he was elsewhere at the time. On the contrary, the prosecution must disprove the alibi. And even if you conclude that the alibi was false, that does not of itself entitle you to convict the defendant. The prosecution must still satisfy you beyond reasonable doubt of his guilt. An alibi is sometimes invented to bolster a genuine defence." (3)

NOTE.

- (1) As to false alibis in identification cases see Specimen Direction 4.14 "Identification", note (6).
- (2) Be sure to spell out, as in this Specimen Direction, that the prosecution must disprove the alibi. Do this, even in a short summing-up, in addition to the general direction on the burden of proof. *R v Preece* 96 Cr.App.R.264.
- (3) *R v Lesley* [1996], Cr.App.R. 39.

ARCHBOLD 2010: 4-402 to 402a

BLACKSTONE 2010: F1.19.

5.2 AUTOMATISM

"If because of (the concussion) (the anaesthesia) (etc) the defendant's state of mind was such that, at the time of the (act in question), his ability to exercise voluntary control was totally destroyed, he is not guilty of the offence. The defence has raised this issue for you to consider, but the defendant does not have to prove that this was his condition, it is for the prosecution to prove beyond reasonable doubt that it was not."

NOTE.

(1) "...the defence of automatism requires that there was a total destruction of voluntary control on the defendant's part. Impaired, reduced or partial control is not enough." Attorney General's Reference (No 2 of 1992) 97 Cr. App. R. 429 at 434.

(2) Malfunctioning of the mind caused by a disease cannot found a defence of automatism. Temporary impairment of the mind, resulting from an external factor, may found the defence e.g. concussion from a blow, therapeutic anaesthesia but not self-induced by consumption of alcohol/or drugs (see below). R v Sullivan 77 Cr.App.R.176.

(3) The evidential burden is on the defence and it is for the judge to decide whether the medical evidence supports a disease or an "external factor". (If the former, the jury may require a direction as to the defence of insanity).

(4) The prosecution must disprove automatism.

(5) Malfunctioning of the mind which does not amount in law to insanity or automatism and does not cause total loss of control is not a defence. R v Isitt [1977] 67 Cr.App.R.44.

(6) Automatism due to self-induced intoxication by alcohol and/or dangerous drugs:

- is not a defence to offences of basic intent, since the conduct of the defendant was reckless and recklessness constituted the necessary mens rea;
- may be raised where the offence is one of specific intent.

(7) Automatism not due to alcohol, but caused by the defendant's action or inaction in relation to drugs (eg failure by a diabetic to eat properly after insulin) may be a defence to offences of basic intent unless the prosecution prove that the defendant's conduct was reckless. For example, in assault cases the prosecution must prove that the defendant realised that his failure was likely to make him aggressive, unpredictable or uncontrolled. R v Bailey 77 Cr.App.R.76.

ARCHBOLD 2010: 17-84 to 96

BLACKSTONE 2010: A3.7

5.4 Duress by Threats or Circumstances

- (a) Both forms of the defence arise out of the exertion of force on D to commit the crime concerned – by human threats in the former (*R v Hasan* [2005] 2 Cr.App.R. 22 (314)), and by extraneous circumstances in the latter form (*R v Martin* (1989) 88 Cr.App.R. 343). (There is a debate - which we do not attempt to join - as to whether ‘duress of circumstances’ is a form of, or is to be equated with, necessity. See, e.g., the commentary to *R v Quayle and Ors.* [2006] Crim. L.R. at p151.)
- (b) Although both forms of the defence share some characteristics, there are two limitations which apply only to duress by threats. Briefly, these arise when D: (i) failed to escape from the threats when he could and should have done so; and/or (ii) put himself in a position in which he was likely to be subjected to threats.
- (c) In a case of duress by threats in which neither of these limitations is in issue, or in a case of duress of circumstances, only paras 1 to 5(a) of the following direction are relevant. In a case of duress by threats in which either or both of these limitations is in issue, the relevant paras are 1 to 4, 5(b), 6 and/or 7.
- (d) This direction has been re-written in the light of *R v Hasan* (supra) and *R v Safi and Ors.* [2004] 1 Cr.App.R.14 (157). It does not seek to encompass recent case law rejecting a defence of necessity, e.g., in relation to drug offences – *R v Quayle and Ors.* [2005] 2 Cr.App.R. 34 (519).
- (e) Given the complexity of the law on duress, some judges find it helpful to give the jury a series of written questions, and expand upon this when giving directions.

“1.D raises the defence of duress. He says that he was driven to do what he did by [threats, namely...] [the circumstances in which he found himself, namely...]

2. Because it is for the prosecution to prove D’s guilt, it is for them to prove that the defence of duress does not apply in this case. It is not for D to prove that it does apply.

3. Firstly, you must ask whether D was driven (*see Note 1*) to act as he did because he genuinely and reasonably (*see Note 2*) believed that if he did not do so [he][a member of his immediate family][a person for whose safety he would reasonably regard himself as responsible] (*see Note 3*) would be killed or seriously injured either immediately or almost immediately. If you are sure that this was not the case the defence of duress does not apply [and D is guilty].

4. However, if you think that this was or may have been the case you must next consider whether a reasonable person, in D’s situation and believing what D did, would have been driven to do what D did. By ‘a reasonable person’ I mean a sober person of reasonable firmness and of D’s age and sex (*here refer to any other relevant characteristics – see Note 4*). The reactions of a reasonable person may or may not be the same as those of D himself. If you are sure that a reasonable person would not have been driven to do what D did, the defence of duress does not arise [and D is guilty].

5. *Either*

a) However, if you think that a reasonable person would or might have been driven to do what D did, the defence of duress does apply, and you must find D not guilty.

Or

b) However, if you think that a reasonable person would or might have been driven to do what D did, you will have to consider [one] [two] further question[s].

6. The [final][next] question is this: did D fail to take an opportunity to escape from the threats without injury to [himself][the person threatened] by (*here refer to any escape route canvassed during the trial, e.g., going to the police*), which a reasonable person in D's situation would have taken but which D did not take. If you are sure that he had such an opportunity, the defence of duress does not apply [and D is guilty]. However, if you are not sure of this [*if this is the only limitation relied upon by the prosecution*] the defence of duress does apply and you must find D not guilty[[*or, if the prosecution rely upon both limitations*] there is a final question for you.]

7. Did D voluntarily put himself in a position in which he foresaw or ought reasonably to have foreseen the risk of being subjected to any compulsion by threats of violence (*see Note 5*)? The prosecution say that he did, by [joining a criminal group the members of which might make such threats] [getting involved with crime and thus with other criminals who might make such threats if he let them down or came to owe them money]. But it is for you to decide. If you are sure that D did voluntarily put himself in such a position, the defence of duress does not apply [and D is guilty]. However, if you are not sure that he did so, the defence of duress does apply and you must find D not guilty.

NOTE.

(1) The fact that D's will to resist had been affected by his **voluntary** consumption of drink and/or drugs is irrelevant.

(2) See R v Hasan, para 23.

(3) See R v Hasan, para 21(3).

(4) See R v Bowen [1996] 2 Cr App R 157; also R v Rogers [1999] 9 *Archbold News* 1 and R v Moseley [1999] 7 *Archbold News* 2; R v Sewell [2004] EWCA Crim 2322.

(5) See R v Hasan, paras 37 & 39, disapproving R v Baker [1999] 2 Cr App R 335. It is **not** necessary that D foresaw or ought reasonably to have foreseen that he might be the subject of compulsion **to commit any particular type of criminal offence, or indeed any criminal offence at all.**

(6) For the circumstances in which it is permissible to withdraw the defence of duress from the jury, see R v Harmer [2002] Crim. L.R. 401 and R v Bianco [2002] 1 *Archbold News* 2.

ARCHBOLD 2010: 17-119 to 126.

BLACKSTONE 2010: A3.20 to 29.

5.5 DURESS OF CIRCUMSTANCES OF NECESSITY

Recent cases show the existence of a defence of duress of circumstances (necessity). The following specimen direction is taken from the judgment of Simon Brown J, in Martin 88 Cr. App. R. 343:

“The defendant is entitled to be acquitted:

(1) if he was, or may have been, impelled to act as he did because, as a result of what he reasonably believed to be the circumstances, he had good cause to fear that otherwise death or serious physical injury would result

and

(2) if a sober person of reasonable firmness, sharing the characteristics of the accused might have responded to the circumstances as the defendant did.”

The following simplified form is suggested in a case where there is no question of drink and the defendant has no particular characteristics to consider.

“You must find the defendant not guilty if he did or may have done what is alleged because he reasonably believed that, if he did not, death or serious physical injury would result, and if other men of reasonable firmness might have done the same. The prosecution must satisfy you beyond reasonable doubt that he was not acting under that compulsion before you can convict him.”

ARCHBOLD: 17-124 and 127/132

BLACKSTONE: a 3.27/28

5.6 INTOXICATION - SELF-INDUCED OR VOLUNTARY

OFFENCES REQUIRING A SPECIFIC INTENT

Refer to the specific intent and continue:

"You must not convict unless you are satisfied beyond reasonable doubt that the defendant, when he did the act, intended ...; in deciding whether he intended ... you must take into account the evidence that he was (drunk)(affected by drugs). If you think that, because he was so (drunk)(affected by drugs), he did not intend or may not have intended ... then you must acquit him. But if you are satisfied beyond reasonable doubt that, despite his (drunkenness)(the effect of the drugs), he intended ... then this part of the case is proved against him. A (drunken)(drugged) intent is still an intent." What is more, it is not a defence for the defendant to say that he would not have behaved in this way had he not been (drunk/affected by drugs) (1 and 2)

OFFENCES NOT REQUIRING SPECIFIC INTENT

Offences requiring "malice" (e.g. Sections 20 and 23 Offences Against the Person Act 1861)

"You must be satisfied beyond reasonable doubt that the defendant, when he did that act, either:

- (1) realised that it might cause some injury (not necessarily serious injury or wounding), to some person or
- (2) would have realised that that act might cause such injury had he not been (drinking)(taking drugs).

It is not a defence for the defendant to say that he would not have behaved in this way had he not been (drunk)(affected by drugs) or that he failed to foresee the consequences of his act because he was (drunk)(affected by drugs)."

OFFENCES OF BASIC INTENT.

"Caldwell recklessness" (e.g. criminal damage, manslaughter). (After directing the jury about "obvious" or "obvious and serious" risk):

"You must be satisfied beyond reasonable doubt that, when he did the act, either:

- (1) he had given no thought to the possibility of there being any such risk (of damage to property)
- or
- (2) he realised that there was some risk (of damage to property) and still went on to do the act.

It does not matter that the reason why he gave no thought to the possibility of there being a risk was that he was (drunk) (affected by drugs)”

Where the defendant alleges that he did give thought to the possibility of risk and decided there was none:

"The defendant says that he was not reckless in the sense I have described to you because he did think about the question whether there was any risk and decided there was none. If you think this may be so, it is a good answer to the charge and you must acquit him, unless you are satisfied beyond reasonable doubt that it was only because he was (drunk)(affected by drugs) that he was unaware of the risk. If you are satisfied beyond reasonable doubt that, but for his (drunkenness)(the effect of drugs), he would have been aware of this risk, he was reckless."

NOTE.

(1) For guidance on what to do in a specific intent case when the defendant says that he had consumed a lot of alcohol but knew what he was doing, see *R v Groarke* [1999] Crim. L. R.669.

(2) In *R v McKnight* (2000) *The Times* 5 May it was said that this direction need not be given in every specific intent case in which alcohol played a part. It need only be given where the evidence, taken at its highest, justified the conclusion that the defendant might not have been able to form the necessary intention because of drink.

(3) Self-induced intoxication by drink or drugs is no defence. Note *R v Allen* [1988] Crim L R 698- where the defendant knew that he was drinking alcohol, the drinking of it did not become involuntary merely because he did not know or may not have known the precise nature or strength of the alcohol.

(4) For self-induced intoxication and the defence of honest belief within Article 7(2) of the Criminal Damage (NI) Order 1977, see *Jaggard v Dickinson* 72 Cr.App.R.33.

(5) Concerning drugs see *R v Bailey* 77 Cr.App.R.76; *R v Hardie* 80 Cr.App.R.157. In *Hardie* the defendant had taken valium and it was stated: "It may well be that the taking of a sedative or soporific drug will, in certain circumstances, be no answer, for example in a case of reckless driving, but if the effect of a drug is merely soporific or sedative the taking of it, even in some excessive quantity, cannot in the ordinary way raise a *conclusive* presumption against the admission of proof of intoxication for the purpose of disproving *mens rea* in ordinary crimes, such as would be the case with alcoholic intoxication or incapacity or automatism resulting from the self-administration of dangerous drugs."

(6) In *R v Heard* [2007] 1 Cr.App.R. 37 the Court of Appeal held that sexual assault [under Art. 7 of the Sexual Offences (NI) Order 2008] is not a crime of specific intent, and so a drunken intent is still an intent, although a drunken accident is still an accident.

ARCHBOLD 2010: 17-104 to 116.

BLACKSTONE 2010: A3.8 to 12.

5.8 SELF-DEFENCE

"As you are aware the defence case is that the assault/killing which is the subject of this charge took place in circumstances in which it was necessary for the defendant to defend himself, that is it happened in **lawful self-defence**.

The law is that if a man assaults/kills another whilst acting in **lawful self-defence** against an attack (or threatened attack) he commits no criminal offence; and so if you find that were the case here the defendant would be entitled to a verdict of 'Not Guilty'. A man acts in lawful self-defence if it is **necessary** for him to defend himself, and the amount of force used in self defence is **reasonable**.

When considering this aspect of the case you must have in mind three important matters of law:

- (1) This defence only comes into play when you have come to the conclusion that the defendant was in fact defending himself. That would only be the case if he was being attacked (or threatened with attack(1)) and it was in your judgment **necessary** for him to **defend** himself against that attack (or threatened attack). If the injuries etc inflicted upon B were not caused when the defendant was defending himself, but were caused, for example when he was himself the aggressor and attacking B or he was retaliating against B or acting in revenge against him, then he would not be acting in **self-defence**. (Even if the defendant was the initial aggressor, if the response by the victim was so out of proportion that it was necessary for the defendant to defend himself then the defendant may still be acting in self-defence. (2)

(Also there are circumstances in which a man may be attacked or threatened with attack, but it is not necessary for him to fend off his attacker with force because he could, for example, very easily get away from his attacker (3), or he is a much stronger person than his attacker and could quite easily deal with the situation without resort to violence).

You must therefore consider all the circumstances of this case and decide whether, at the time he inflicted injury on/killed B, it was or may have been **necessary** for him to use some force against him to **defend** himself (or he honestly believed that it was (4)).

- (2) If you do decide that the defendant was in fact entitled to defend himself by using some force against B, you must bear in mind that the law provides that he is entitled to be found 'Not Guilty' only if the amount of force used in self-defence was **reasonable**. If the amount of force used was unreasonable it would not be lawful. Force used in self-defence would be unreasonable if it was out of proportion to the nature of the attack or if it was in excess of what was really required of the defendant to defend himself.

It is for you to decide whether this defendant was or may have been acting in lawful self-defence and your judgment about that must depend upon your view

of the facts of this case. In considering these matters you should have regard to all the circumstances of the case; but the sort of considerations which you may well have in mind are these: What was the nature of the attack (by B)? Was a weapon used by the attacker; if so what kind of weapon was it, and how was it used? Was the attacker on his own, or was the defendant being attacked, or in fear of, a concerted attack by two or more persons?

Every case which comes before the courts is different. There are so many possibilities that the law does not attempt to provide a scale of answers to juries. All of these matters are left to your good sense, experience, knowledge of human nature and, of course, assessment of what actually happened in this case. Having said that when considering whether the defendant's conduct was reasonable do bear in mind that a person who is defending himself cannot be expected in the heat of the moment to weigh precisely (5) the exact amount of defensive action which is necessary; and in this regard the more serious the attack (or threatened attack) upon him the more difficult his situation will be. If, in your judgment the defendant was or may have been in a situation in which he found it necessary to defend himself and he did no more than what he honestly and instinctively thought was necessary to defend himself that would be very strong evidence that the amount of force used by him was reasonable. (5) and (6)

- (3) Because the prosecution must prove that the defendant is guilty, it is not for him to prove that he was acting in lawful self-defence; it is **for the prosecution to satisfy you beyond reasonable doubt that he was not**. If you come to the conclusion that the defendant was or may have been acting in lawful self-defence (when he inflicted these injuries upon/killed B) you must find him 'Not Guilty'."

NOTE.

- (1) A man is not obliged to wait until he is attacked before acting in self defence and he is entitled to get his blow in first if it is reasonably necessary to do so in self-defence. R v Deana 2 Cr. App. R. 75.

- (2) R v Rashford [2006] Crim. L. R. 547.

- (3) Failure to retreat when attacked and when it is possible and safe to do so, is not conclusive. It is simply a factor to be taken into account in deciding whether it was necessary for the defendant to use force and whether the force used was reasonable. It is not necessary that the defendant should demonstrate by his actions that he does not want to fight (see Bird 81 Cr.App.R.110). When necessary, an appropriate direction should be given.

- (4) Whether the plea is self-defence or defence of another, if the defendant may have been honestly mistaken as to the facts, he must be judged according to his mistaken belief of the facts, whether the mistake was, on an objective view a reasonable mistake or not (Williams 78 Cr.App.R.276; Beckford 85 Cr.App.R.378 and Oatridge 94 Cr.App.R.367). This rule has now received statutory confirmation, see s. 76(4) of the Criminal Justice and Immigration Act, 2008 (CJIA 2008). In Oatridge the court emphasised that in cases where a defendant was not under actual or threatened attack,

but honestly believed that he was, then the jury should be directed to consider whether the degree of force used by the defendant was commensurate with the degree of risk which he believed to be created by the attack under which he believed himself to be.

(5) This rule has been confirmed by s. 76 (7) of CIJA 2008.

(6) A defendant is not entitled to rely, in a defence of self defence, upon a mistake of fact induced by voluntary intoxication, R v Hatton [2006] 1 Cr. App. R. 247. This rule has also been confirmed by s. 76 (5) of CJIA 2008)

ARCHBOLD 2010: 19-41 to 49.

BLACKSTONE 2010: A 3.31-38

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Foreword

Society, through Parliament, for many centuries has assigned the task of deciding the correct sentence for an offence to the judges in criminal courts. This responsibility is not to be exercised in an arbitrary way, but exists within a complex framework of restraints. Parliament lays down the maximum, and in some cases the minimum, sentence available for each offence and the common law has developed the principles of sentencing; requiring the judge to carefully analyse the individual facts of the individual offence, taking into consideration the gravity of the crime within the scale of all crimes, the consequences of the offence to the victim and to society, and the mitigating circumstances relating to the defendant. The purpose of sentencing guidelines is to increase the transparency and consistency of these judicial decisions and to help members of the public to understand more about the sentencing process.

This first ever set of Sentencing Guidelines for the Magistrates' Courts in Northern Ireland is merely the beginning of what shall become a compendium of guidance on the offences which come before the Magistrates' Courts on a daily basis.

I commend these Sentencing Guidelines to the judiciary, the legal professions and the public.

*The Rt. Hon. Sir Declan Morgan
Lord Chief Justice of Northern Ireland*

MAGISTRATES' COURTS SENTENCING GUIDELINES

INTRODUCTION AND GENERAL PRINCIPLES

This compendium of sentencing guidelines for the Magistrates' Courts is an outcome of the Report of the Lord Chief Justice's Sentencing Group ("the Sentencing Group") which recommended that sentencing guidelines should be developed for offences triable summarily as well as those triable on indictment. The purpose of the guidelines is to enhance both transparency of justice and consistency in decision-making by the courts. They have been drafted by a District Judges' subcommittee of the Sentencing Group, agreed by the District Judges (Magistrates' Courts) as a body, and approved by the Sentencing Group. They represent current sentencing practice by the Magistrates' Courts in Northern Ireland.² Although the guidelines do not have the force of law, they are relevant to the decision-making exercise undertaken by a Magistrates' Court when sentencing an offender and should, therefore, be taken into consideration by the court. They are also applicable where a County Court is sentencing an offender on appeal from a Magistrates' Court, or where the Crown Court is sentencing an offender for a summary offence joined on indictment. A court may depart from the guidelines where, in the individual circumstances of the offence or the offender, the interests of justice require and will give reasons for so doing. As Lord Lane CJ emphasised in reference to the traditional form of sentencing guidelines produced by the Court of Appeal:

"I say again – we have said it frequently in the past – guidelines are guidelines and they are not meant to be measuring rods to be applied rigidly to every case. They are there for assistance only and not to be used as rulers to every case."³

General Principles of Sentencing⁴

The sentence for an individual offender in court is set by the judge hearing the case. The judge will take into account the law, guidelines, expert reports and all the circumstances, to decide what will be the correct sentence for that offender, who committed that offence against that victim, in that situation. The purpose of the sentence is to satisfy retribution and deterrence. That is to say, its aim is to meet the legitimate public desire to punish wrongdoing and also discourage the offender and other members of the public from committing similar offences in the future. In certain circumstances part of the sentence may also be aimed at protecting the public from future offending by the offender.

Where the offence and/or the offences associated with it are serious enough to warrant either a community sentence or a custodial sentence, the court must, save in exceptional circumstances, obtain and consider a report on the offender compiled by

² These guidelines are not applicable to the Youth Court.

³ R v Nicholas (The Times, 23 April 1986) cited with approval by Hutton LCJ in R v Orr [1990] NI 287

⁴ See further B.J.A.C. Valentine, *Criminal Procedure in Northern Ireland*, (2 Ed., SLS, 2010), 18.15-18.36; and Robert Banks, 'Banks on Sentencing' (5 Ed., Banks, 2010), 1.1-1.16

the Probation Board of Northern Ireland.⁵ The probation report will outline the offender's life history including any previous offending behaviour, give an assessment of the offender's present attitude to having committed the offence(s) in question, and give an assessment of the offender's likelihood of re-offending and what, if any, risk he poses to the public.⁶ The report will also advise as to the suitability of the offender being placed under Probation Board supervision or undertake community service.

The overall sentence imposed by the court will be commensurate with the overall seriousness of offence(s) which the offender has been convicted of, taking into consideration all the circumstances of the offence and the offender.

(a) The Starting Point:

The initial starting point in determining the 'seriousness' of a given offence requires assessment of two elements: culpability and harm.

(i) Culpability

This is the degree of fault or responsibility to be attributed to the offender in committing the offence and will fall into one of four descending categories:

- (a) Intention to cause to harm;
- (b) Reckless as to whether harm is caused;
- (c) Knowledge of specific risk but no intention to cause the harm;
- (d) Negligence

The higher the culpability the more serious the offence.

(ii) Harm

This is the effect or intended effect of the offending. The nature of harm will depend on the personal characteristics and circumstances of the victim(s) and includes the physical, psychological and financial effects of the offending. In some cases the offending may also (or instead) cause harm to the wider community. The greater the harm the more serious the offence.

This initial assessment of culpability and harm will allow the judge to determine the basic 'nature' or 'category' of the offence committed: this is the judge's starting point for assessing the commensurate sentence to be imposed for the offence.

(b) Aggravating Factors:

Having made the initial assessment of the basic seriousness of the offence, a judge will then identify the specific aggravating factors of the offence and the offender (i.e. the individual circumstances of the offence or the offender which cause the offence to be more serious than the basic offence used in calculating the starting point).

⁵ Article 8 of the Criminal Justice (NI) Order 1996

⁶ Furthermore, before passing a custodial sentence on an offender suffering from a mental disorder the court must obtain and consider a medical report [Article 10 of the Criminal Justice (NI) Order 2008].

Aggravating features which may occur in any offence may include:

- *The offence was committed in the context of 'hostility'*

Article 2 of the Criminal Justice (No.2) (NI) Order 2004 provides that 'hostility' shall be treated as an aggravating factor in relation to the seriousness of the offence. 'Hostility' in this context is defined as:

- (i) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on-
 - (a) the victim's membership (or presumed membership) of a racial group;
 - (b) the victim's membership (or presumed membership) of a religious group;
 - (c) the victim's membership (or presumed membership) of a sexual orientation group;
 - (d) a disability or presumed disability of the victim; or
- (ii) the offence is motivated (wholly or partly) by hostility towards-
 - (a) members of a racial group based on their membership of that group;
 - (b) members of a religious group based on their membership of that group;
 - (c) members of a sexual orientation group based on their membership of that group;
 - (d) persons who have a disability or a particular disability.

- *The offence was committed while the offender was on bail for another offence*

If the offence was committed while the offender was on bail for another offence it shall be treated as an aggravating factor when determining the seriousness of the offence.⁷

- *The offence was committed in the context of domestic violence*

Where an offence is committed in the context of domestic violence it shall be treated as a very grave aggravating factor. Sir Brian Kerr, when Lord Chief Justice of Northern Ireland, said in relation to sentencing in domestic violence cases:

“Often it is only in the context of court proceedings that public expression can be given to the abhorrence of society to this species of despicable crime... Violence in any form is an aberration, but to be assaulted or intimidated in one's own home, where we should feel most safe, by someone close to us, with

⁷ Article 37(2) of the Criminal Justice (NI) Order 1996

whom we should be most secure, represents an appalling breach of trust and warrants the gravest and most condign punishment. Therefore, so far from being a mitigating feature, the fact that violence occurs in the home should be recognised as a substantial aggravating factor ...”⁸

- *The victim was engaged in providing a service to the public*

Persons who are providing a public service can often be in vulnerable positions by the nature of their job. Where an offence is committed against such a person the courts will treat this as a substantial aggravating factor when determining the seriousness of the offence.⁹ Persons considered to be providing a public service include, but not limited to:

- (i) Emergency services personnel¹⁰
- (ii) Doctors, nurses and other hospital staff
- (iii) Teachers and other school staff
- (iv) Taxi drivers and bus drivers
- (v) Traffic wardens
- (vi) Shop staff

- *The offender’s character*

In 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. The existence of previous convictions for the same or similar offences may increase the seriousness of the index offence.¹¹ Moreover, an offender’s previous good character and lack of criminal record should properly be regarded not so much as a mitigating factor but rather the absence of an aggravating factor.¹²

- *The impact on the victim:*

The impact of the offence on the victim, and on society as a whole, will always be a relevant factor in the sentencing process. In R v Turley [2008] NICC 18, Hart J commented:

“When a court comes to sentence an accused for an offence of a violent or sexual nature it is extremely important that the court be provided by the prosecution with as much up to date information as possible about the effect of the offence upon the victim so that

⁸ Speech by The Rt. Hon. Sir Brian Kerr, Lord Chief Justice of Northern Ireland, to the Belfast and Lisburn Women’s Aid Conference, 24 November 2004.

⁹ See, for example, R v Alan Jones [2001] NICA 55 and Blackstone’s Criminal Practice (2011) paragraph B2.25

¹⁰ Where the offence is committed against a police officer in the execution of his duty there may be a specific offence which carries a higher maximum sentence. The sentence imposed in such a case will reflect Parliament’s intention that the offence be considered as more serious.

¹¹ Article 37(1) of the Criminal Justice (NI) Order 1996 and see further R v Larmour [2001] NICA 21.

¹² R v C [2002] NIJB 254

the sentence can properly reflect this. [...] This often takes the form of a statement from the victim, or it may consist of reports from the relevant medical or allied professionals. These are referred to generically as Victim Impact Reports. On some occasions for a variety of reasons such reports cannot be obtained, or they may be incomplete, perhaps because the effect upon the victim of the events in question cannot yet be finally determined, or because the victim may not wish to undergo further examinations. In such circumstances the court has to rely on such evidence as is available to it, its experience of similar injuries and the facts of the case, and then make the best assessment it can of the effect of the crime upon the victim. If there are reasonable grounds for doubt about the nature and extent of the effect of any injuries then the defendant should be given the benefit of any such doubt.”

Further aggravating factors of general application may include:

- Any additional degradation of the victim (e.g. taking photographs of victim while the offence is being committed)
- Any attempt to conceal or dispose of evidence
- The deliberate targeting of vulnerable victim(s)
- The location of the offence (e.g. in an isolated area)
- The offence caused a physical or psychological effect on the victim even if unintended
- The offence was committed for financial gain (where this is not inherent in the offence itself)
- The offence was committed in connection with, or in support of, terrorism
- The offence was committed while under the influence of alcohol or drugs
- The offence was planned in advance
- The offence yielded a high level of profit
- The offender abused a position of power, a position of trust or a domestic relationship
- The offender had an intention to cause more serious harm than actually resulted from the offence
- The offender was operating as part of a group or gang
- The presence of others during the offence (e.g. the victim’s partner or children)
- The use of a weapon to commit the offence
- The use of deliberate and gratuitous violence or damage to property
- The victim was particularly vulnerable
- There were multiple victims

The weight to be attributed to any such factor, or possibly others, varies depending on the individual circumstances of each case.

(c) Mitigating Factors:

Having identified the aggravating factors of the offence and the offender, the judge will then identify the mitigating factors which exist in relation to the offence or the offender (i.e. the individual circumstances of the offence or the offender which reduces the overall seriousness of the offence).

Mitigating features which may occur in any offence may include:

- The offender's age

It is generally considered that an offender's youth shall be viewed as a mitigating factor in any offence. However, in Attorney-General's Reference (No. 3 of 2006) (Gilbert) [2006] NICA 16 the Court of Appeal stated:

"...one may observe that this court has not given significant discount on the basis that the offender was young ... It appears to us that the youth of the offender will have a variable effect on the sentence according to the nature of the crime and the awareness of the individual defendant of the nature of the offending behaviour"

- The offender has assisted the police with the investigation of related or other unrelated offences

The courts have long recognised the public interest in giving credit to those offenders who have assisted the police in the investigation of crime, whether by giving information relating to other offences or by giving evidence during his own trial which assisted in the conviction of the co-accused, by viewing the assistance as a form of mitigation when it comes to his sentencing. In the leading case on the subject¹³ Roskill LJ said:

"It must therefore be in the public interest that persons who have become involved in gang activities of this kind should be encouraged to give information to the police in order that others may be brought to justice and that, when such information is given and can be acted upon and, as here, has already been in part successfully acted upon, substantial credit should be given upon pleas of guilty especially in cases where there is no other evidence against the accused than the accused's own confession. Unless credit is given in such cases there is no encouragement for others to come forward and give information of invaluable assistance to society and the police which enables these criminals--and these crimes are all too prevalent, not only in East London but throughout the country--to be brought to book. Those are the considerations this Court has to have in mind."¹⁴

- The offender has pleaded guilty to the offence:

¹³ R v Lowe (1978) 66 Cr.App.R. 122

¹⁴ See also Sections 73 to 76 of the Serious Organised Crime and Police Act 2005

Article 33 of the Criminal Justice (NI) Order 1996 provides that, when sentencing an offender who has pleaded guilty to the offence, the court must take into account the fact the offender has pleaded guilty. However, to benefit from the maximum discount on the penalty appropriate to any specific offence a defendant must have admitted his guilt of that offence at the earliest opportunity. The greatest discount is reserved for those cases where a defendant admits his guilt at the outset.¹⁵

Further mitigating factors of general application may include:

- The offender has shown genuine remorse in relation to committing the offence
- The offender played only a minor role in the offence
- The offender suffers from chronic ill health
- The offender suffers from mental illness or a mental or physical disability
- The offender was induced to commit the crime by pressure (e.g. from a criminal organisation to which he adhered) but which does not amount to a defence in law
- The offender was provoked into committing the offence
- There has been unreasonable delay in the prosecution process amounting to a breach of the offender's Article 6 ECHR rights

The weight to be attributed to any such factor, or possibly others, varies depending on the individual circumstances of each case.

(d) Sentencing Options

For any given offence there is a range of possible sentencing options which may be imposed by the court, subject to the maximum sentence and any conditions-precedent or thresholds laid down by Parliament. Normally a Magistrates' Court will impose one or more of the following sentences:

- Absolute or Conditional Discharge
- Fine
- Community Order¹⁶
- Suspended Determinate Custodial Sentence or Suspended Detention in the Young Offenders' Centre
- Determinate Custodial Sentence or Detention in the Young Offenders' Centre

The above sentences are listed in order of progressive seriousness. The sentence imposed by the court will be commensurate with the overall seriousness of offence(s).

Details of the above sentencing orders, including conditions-precedent and thresholds, can be found in Appendix A.

¹⁵ See further Attorney General's Reference (No.1 of 2006) (McDonald and Others) [2006] NICA 4 and Attorney General's Reference (No.10 and 11 of 2009) (Vokes) [2009] NICA 63.

¹⁶ This is the collective term for Probation Orders, Community Service Orders and Combination Orders

(e) The Principle of Totality:

Where a court is sentencing an offender for several offences which have been tried together, the over-riding concern must be that the total global sentence, whether made up of concurrent or consecutive sentences, is appropriate. In some cases a judge may achieve this result more satisfactorily by imposing consecutive sentences. In other cases he may achieve it more satisfactorily by imposing concurrent sentences. Whether the sentences are concurrent or consecutive, the over-riding and important consideration is that the total global sentence should be just and appropriate.¹⁷

(f) Ancillary Orders

In addition to the sentence imposed the court may (or in some cases, must) impose further obligations on the offender. This may take the form of paying the victim compensation or restitution for injury, loss or damage suffered as a result of the offender committing the offence; in driving offences it may take the form of imposing penalty points on the offender's driving licence or, alternatively, disqualifying him from driving; and in sexual offences it may mean imposing a Sexual Offences Prevention Order or the offender may be made subject to the sexual offences notification requirements (the "sex offenders' register"). The following is a non-exhaustive list of the most common ancillary orders made¹⁸:

- Anti-social behaviour orders upon conviction
- Children and Vulnerable Adults Barring Lists notification
- Compensation or Restitution orders
- Deportation recommendations
- Driving licence penalty points or disqualification from driving
- Forfeiture orders
- Restitution orders
- Restraining orders
- Sexual offences notification
- Sexual offences prevention orders

Format of Guidelines:

Each guideline in this compendium sets out examples of the nature of the activity which may constitute the offence and provides a 'Starting Point' for determining the sentence for a first time adult offender convicted after a contested hearing. The guideline also identifies the 'Sentencing Range' within which, subject to the interests of justice, the sentence should normally fall. There are also lists of examples of aggravating and mitigating factors which may be relevant to the particular offence (although it must be stressed that these lists are merely examples and are not intended to be exhaustive). Examples of aggravating and mitigating factors which are generic to all offences can be found above.

¹⁷ See further Attorney General's Reference (No. 1 of 1991) [1991] NI 218 and Attorney General's Reference (No. of 2006) (McGonigle) [2007] NICA 16.

¹⁸ See further B.J.A.C. Valentine, *Criminal Procedure in Northern Ireland*, (2 Ed., SLS, 2010), 18.125-18.158

When taking a relevant guideline into consideration as part of the sentencing process, the judge should:

1. Identify the category of seriousness for the individual offence and the relevant starting point;
2. Identify the general sentencing principles which are relevant;
3. Identify the aggravating and mitigating factors relating to the individual circumstances of the offence (omitting any factor already relied upon to determine the category of seriousness, to avoid “double counting”);
4. Identify the aggravating and mitigating factors relating to the individual circumstances of the offender (omitting any factor already relied upon to determine the category of seriousness to avoid “double counting”);
5. If appropriate, determine, having regard to all the factors, whether the offence is serious enough to warrant the imposition of a community sentence or, as the case may be, is serious enough to justify the imposition of a custodial sentence;
6. If appropriate, determine the financial means of the offender and ability to pay a fine;
7. If appropriate, have regard to the principle of totality;
8. Identify any ancillary orders to be imposed and, if appropriate, determine the financial means of the offender to pay a compensation order or a restitution order;
9. If appropriate, give reasons why the interests of justice require the imposition of a sentence falling outside the ‘sentencing range’ identified in the guideline.

BREEDING / SELLING / GIFTING / ADVERTISING / NOT MUZZLING / ABANDONING

A 'DANGEROUS' DOG:

Dogs (NI) Order 1983 (as amended)

25A. - (1) This Article applies to-

- (a) any dog of the type known as the pit bull terrier;
- (b) any dog of the type known as the Japanese tosa; and
- (c) any dog of any type designated for the purposes of this Article by an order of the Department, being a type appearing to the Department to be bred for fighting or to have the characteristics of a type bred for that purpose.

(2) No person shall-

- (a) breed, or breed from, a dog to which this Article applies;
- (b) sell or exchange such a dog or offer, advertise or expose such a dog for sale or exchange;
- (c) make or offer to make a gift of such a dog or advertise or expose such a dog as a gift;
- (d) cause or permit such a dog of which he is the keeper or of which he is for the time being in charge to be in a public place unless the dog is muzzled and kept on a lead; or
- (e) abandon such a dog of which he is the keeper or, being the keeper or for the time being in charge of such a dog, permit it to stray.

...

(7) Any person who contravenes this Article shall be guilty of an offence ...

Maximum Sentence:

Dogs (NI) Order 1983, Art.25A(7)

Summarily Only: 6 months imprisonment and/or the Level 5 fine (£5,000) (except that a person convicted under Art.25A(2)(b) or (c) shall not be liable to imprisonment if he shows that he published the advertisement to the order of someone else and did not himself devise it)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Offence under Article 25A(2)(a), (b) or (c)	Fine + Destruction Order	Fine to Community Order + Destruction Order + Disqualification Order
Offence under Article 25A(2)(d) or (e)	Community Order + Destruction Order + Disqualification Order	Community Order to 3 months Custody + Destruction Order + Disqualification Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Offence committed for financial gain 2. Dog trained for fighting 3. Dog used to threaten or intimidate others	1. Offender had taken all steps reasonable to ensure the dog was not a 'dangerous' dog.

Relevant Cases:

NI Cases:

Barnes v Belfast City Council [2011] NICty 3
Barnes v Belfast City Council [2012] NICA 19

English Cases

R. v Holland [2003] 1 Cr.App.R.(S.) 60
R. v Haynes [2004] 2 Cr.App.R.(S.) 9
R. v Flack [2008] 2 Cr.App.R.(S.) 70
R. v Harry [2010] 2 Cr.App.R.(S.) 95
R. v Baballa [2011] 1 Cr.App.R.(S.) 50

Notes:

1. Where a person is convicted of an offence under Article 25A the court may order the dog to be destroyed and shall do so unless the court is satisfied that the dog will not be a danger to the public; but if

- (a) the dog is one to which Article 25A applies,
- (b) the court does not order the destruction of the dog under paragraph (1A), and
- (c) the dog is subject to the prohibition in Article 25A(3).

the court shall order that, unless the dog is exempted from the prohibition in Article 25A(3) within the period of two months beginning with the date of the order, the dog shall be destroyed. – Article 33(1A)-(1B) of the 1983 Order

2. Where a person is convicted of an offence under Article 25A the court may order that person to be disqualified from keeping a dog for such period as the court thinks fit. – Article 33A(1) of the 1983 Order

CAUSING / ATTENDING ANIMAL FIGHTING

Welfare of Animals Act (NI) 2011

8. - (1) A person commits an offence if that person—
- (a) causes an animal fight to take place, or attempts to do so;
 - (b) knowingly receives money for admission to an animal fight;
 - (c) knowingly publicises a proposed animal fight;
 - (d) provides information about an animal fight to another with the intention of enabling or encouraging attendance at the fight;
 - (e) makes or accepts a bet on the outcome of an animal fight or on the likelihood of anything occurring or not occurring in the course of an animal fight;
 - (f) takes part in an animal fight;
 - (g) owns or has in his or her possession anything designed or adapted for use in connection with an animal fight with the intention of its being so used;
 - (h) keeps or trains an animal for use in connection with an animal fight;
 - (i) keeps, uses or manages, or permits or assists in the keeping or use or management of, any premises for use for an animal fight.
- (2) A person commits an offence if, without lawful authority or reasonable excuse, that person is present at an animal fight.

Maximum Sentence:

Welfare of Animals Act (NI) 2011, s.31(2)

Indictment: 2 years imprisonment and/or an unlimited fine

Summarily: 12 months imprisonment and/or £20,000 fine [for offences committed on/after 1 August 2016]

6 months imprisonment and/or the statutory maximum fine (£5,000) [for offences committed before 1 August 2016]

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Offence under section 8(1)	6 months Custody + Deprivation Order + Disqualification Order	3 -12 months Custody + Deprivation Order + Disqualification Order
Offence under section 8(2)	3 months Custody + Deprivation Order + Disqualification Order	Community Order to 6 months Custody + Deprivation Order + Disqualification Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 4. Offence committed in respect of more than two animals 5. Serious or long term injury caused to the animals 6. Offender involves children in the offending 7. Offence committed for commercial gain 8. Offender in a position of special responsibility towards the animal (other than ownership simpliciter) 	N/A

Relevant Cases:

NI Cases:

R v Kirkwood and others [2014] NICC 5

English Cases

R (RSPCA) v Chester Crown Court (2006) 170 JP 725

Notes:

1. If the offender owns the animal which was the subject of the offence, the court may order the offender be deprived of ownership of the animal and any of the animal's offspring – s.32 of the 2011 Act
2. The court may make 'Disqualification Order' against the offender for such period as it thinks fit and in relation to animals generally, or in relation to animals of one or more kinds. Such an order disqualifies the offender from:
 - (a) from owning animals,
 - (b) from keeping animals,
 - (c) from participating in the keeping of animals, and
 - (d) from being party to an arrangement under which that person is entitled to control or influence the way in which animals are kept.
 - (e) from dealing in animals.
 - (f) from transporting animals, and
 - (g) from arranging for the transport of animals.

Where a court decides not to make a Disqualification Order, it must state its reasons for the decision. - s.33 of the 2011 Act
3. Where the holder of a dog licence or a block licence is convicted of the offence in relation to a dog, the court may suspend that licence for such period as the court thinks fit. Where such a suspension is ordered, the court shall order the holder of the licence to deliver it to the clerk of the court within a period specified in the order and may also make such order as it thinks fit for the disposal or destruction of any dog or dogs kept by the holder of the licence. – Article 34 of the Dogs (NI) Order 1983

CRUELTY TO ANIMALS

Welfare of Animals Act (NI) 2011

4. - (1) A person commits an offence if—
- (a) an act of that person, or a failure of that person to act, causes an animal to suffer,
 - (b) that person knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so, and
 - (c) the suffering is unnecessary.
- (2) A person commits an offence if—
- (a) that person is responsible for an animal,
 - (b) an act, or failure to act, of another person causes the animal to suffer,
 - (c) the first-mentioned person permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening, and
 - (d) the suffering is unnecessary.

Maximum Sentence:

Welfare of Animals Act (NI) 2011, s.31(1)

Indictment: 2 years imprisonment and/or an unlimited fine

Summarily: 12 months imprisonment and/or £20,000 fine [for offences committed on/after 1 August 2016]

6 months imprisonment and/or the statutory maximum fine (£5,000) [for offences committed before 1 August 2016]

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
The animal survived the mistreatment	The offence was committed by passive mistreatment (e.g. malnutrition)	Community Order + Deprivation Order + Disqualification Order	Fine to Community Order + Deprivation Order + Disqualification Order
	The offence was committed by active mistreatment (e.g. hitting)	3 months Custody + Deprivation Order + Disqualification Order	Community Order to 6 months Custody + Deprivation Order + Disqualification Order
The animal died from the mistreatment or had to be humanely 'put-down' due to the mistreatment	The offence was committed by passive mistreatment (e.g. malnutrition)	3 months Custody + Disqualification Order	Community Order to 6 months Custody + Disqualification Order
	The offence was committed by active mistreatment (e.g. hitting)	6 months Custody + Disqualification Order	3 - 12 months Custody + Disqualification Order

Examples of Possible Aggravating Factors of Offence

9. Offence committed in respect of multiple animals
10. Animal survived but serious or long term injury caused
11. Gratuitous violence towards the animal (e.g. setting animal on fire, drowning, swinging by the tail)
12. Use of weapon
13. Offence committed as a form of revenge against the owner of the animal or in the context of an ongoing dispute with the owner
14. Offender in a position of special responsibility towards the animal (other than ownership simpliciter)
15. Offender involves children in the offending
16. Offence committed for commercial gain
17. Offender ignored previous advice/warnings regarding the treatment of the animal
18. Mistreatment over prolonged period of time
11. Offence motivated by, or demonstrating, hostility to the victim

Examples of Possible Mitigating Factor of Offence

1. Ignorance of appropriate care

(animal's owner) on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*	
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Relevant Cases:

NI Cases:

R v Kirkwood and others [2014] NICC 5
R v Downey and Stewart [2014] NICC 19

English Cases

R (RSPCA) v Chester Crown Court (2006) 170 JP 725

Notes:

1. If the offender owns the animal which was the subject of the offence, the court may order the offender be deprived of ownership of the animal and any of the animal's offspring – Art.32 of the 2011 Act

2. The court may make 'Disqualification Order' against the offender for such period as it thinks fit and in relation to animals generally, or in relation to animals of one or more kinds . Such an order disqualifies the offender from:

- (a) from owning animals,
- (b) from keeping animals,
- (c) from participating in the keeping of animals, and
- (d) from being party to an arrangement under which that person is entitled to control or influence the way in which animals are kept.
- (e) from dealing in animals.
- (f) from transporting animals, and
- (g) from arranging for the transport of animals.

Where a court decides not to make a Disqualification Order, it must state its reasons for the decision. - Art.33 of the 2011 Act

3. Where the holder of a dog licence or a block licence is convicted of the offence in relation to a dog, the court may suspend that licence for such period as the court thinks fit. Where such a suspension is ordered, the court shall order the holder of the licence to deliver it to the clerk of the court within a period specified in the order and may also make such order as it thinks fit for the disposal or destruction of any dog or dogs kept by the holder of the licence. – Article 34 of the Dogs (NI) Order 1983

4. In E&W the offence of 'Animal Cruelty' is a summary only offence but the maximum sentence that can be imposed by the Magistrates' Court for the offence is £20,000 fine and/or 6 months imprisonment. – see s.4 of the Animal Welfare Act 2006

1. *Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2).

DOCKING DOG'S TAIL

Welfare of Animals Act (NI) 2011

6. - (1) A person commits an offence if that person—
 (a) removes the whole or any part of a dog's tail; or
 (b) causes the whole or any part of a dog's tail to be removed by another person.
- (2) A person commits an offence if—
 (a) that person is responsible for a dog,
 (b) another person removes the whole or any part of the dog's tail, and
 (c) the first-mentioned person permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening.
- (3) A person does not commit an offence under subsection (1) or (2) if the whole or any part of a dog's tail is removed—
 (a) by a veterinary surgeon for the purpose of medical treatment; or
 (b) in order to prevent or remove an immediate danger to the life of the dog in circumstances where it is not reasonably practicable to have the tail, or, as the case may be, any part of the tail, removed by a veterinary surgeon.

Maximum Sentence:

Welfare of Animals Act (NI) 2011, s.31(1)

Indictment: 5 years imprisonment and/or an unlimited fine

Summarily: 6 months imprisonment and/or the statutory maximum fine (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	2 months Custody + Deprivation Order + Disqualification Order	Community Order to 3 months Custody + Deprivation Order + Disqualification Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
19. Offence committed in respect of multiple dogs 20. Serious or long term health problems caused to dog 21. Dog was not anaesthetised when tail was cut docked 22. Docking was performed by deliberately cutting off circulation to the tail 23. Docking was performed for purely aesthetic reasons 24. Offender involves children in the offending 25. Offence committed for commercial gain	N/A

Relevant Cases:

NI Cases:
N/A

English Cases
R (RSPCA) v Chester Crown Court (2006) 170 JP 725

Notes:

1. Section 6 (other than subsections (16) and (17)) in force from 1 January 2013 – SRNI 2012 No.386
2. Section 6(1) and (2) do not apply if the dog is a certified working dog that is not more than 5 days old. – s.6(4) of the 2011 Act
3. If the offender owns the animal which was the subject of the offence, the court may order the offender be deprived of ownership of the animal and any of the animal's offspring – s.32 of the 2011 Act
4. The court may make 'Disqualification Order' against the offender for such period as it thinks fit and in relation to animals generally, or in relation to animals of one or more kinds. Such an order disqualifies the offender from:
 - (a) from owning animals,
 - (b) from keeping animals,
 - (c) from participating in the keeping of animals, and
 - (d) from being party to an arrangement under which that person is entitled to control or influence the way in which animals are kept.
 - (e) from dealing in animals.
 - (f) from transporting animals, and
 - (g) from arranging for the transport of animals.

Where a court decides not to make a Disqualification Order, it must state its reasons for the decision. - s.33 of the 2011 Act

DOG ATTACK ON OTHER ANIMAL / WORRYING LIVESTOCK

Dogs (NI) Order 1983 (as amended)

28. - (1) Any person who sets a dog on—
 (a) any livestock, or
 (b) any other animal owned by another person,
 is guilty of an offence ...
- (2) If a dog—
 (a) worries livestock, or
 (b) attacks and injures any other animal owned by another person,
 the keeper of the dog and, if it is in the charge of a person other than its keeper, that person is guilty of an offence ...

Maximum Sentence:

1. Offence under Article 28(1):
Dogs (NI) Order 1983, Art.28(1)
Summarily Only: Level 4 fine (£2,500)
2. Offence under 28(2):
Dogs (NI) Order 1983, Art.28(2)
Summarily Only: Level 3 fine (£1,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Offence under Article 28(1)	£750 Fine + Destruction Order + Compensation Order	£500 - £1,500 Fine + Destruction Order + Compensation Order
Offence under Article 28(2)	£350 Fine + Destruction Order + Compensation Order	£150 - £750 Fine + Destruction Order + Compensation Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
26. Sustained or repeated attack 27. Failing to respond to warnings or concerns expressed by others about the dog's behaviour 28. Goading, or allowing goading, of the dog 29. Dog used as a weapon or to intimidate other animal owners 30. Severity of injury caused by the attack	1. Offender made attempts to regain control or intervene 2. Provocation of dog by owner of other animal 3. Offender had taken all reasonable safety or control measures in relation to the dog

Relevant Cases:

<u>NI Cases:</u> Barnes v Belfast City Council [2011] NICty 3 Barnes v Belfast City Council [2012] NICA 19	<u>English Cases</u> R. v Flack [2008] 2 Cr.App.R.(S.) 70 R. v Harry [2010] 2 Cr.App.R.(S.) 95 R. v Baballa [2011] 1 Cr.App.R.(S.) 50
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Notes:

1. Where it appears to a court that a dog has attacked any person or has worried livestock, the court shall, unless exceptional mitigating factors exist—
 (a) make an order directing the dog to be destroyed; or
 (b) make an order directing the dog to be destroyed unless such measures as are specified in the order are taken to prevent the dog being a danger to the public or to livestock. Such an order may include provision requiring the dog to be—
 (i) securely fitted with a muzzle sufficient to prevent the dog biting any person;
 (ii) kept confined in a building, shed, yard or other enclosure from which it cannot escape;
 (iii) excluded from places specified in the order;
 (iv) neutered (if it appears to the court that the dog is a male).
- [Article 33 of the 1983 Order]
2. Article 33A of the 1983 Order (Disqualification Order) does not apply to offences under Article 28.

DOG ATTACK ON PERSON

Dogs (NI) Order 1983 (as amended)

29. - (1) Any person who sets a dog on any other person is guilty of an offence or, if the dog injures the person attacked, an aggravated offence under this paragraph.

(2) If a dog attacks any person, then—

(a) the keeper of the dog; and

(b) if it is in the charge of a person other than its keeper, that person,

is guilty of an offence or, if the dog injures the person attacked, an aggravated offence under this paragraph.

Maximum Sentence:

Dogs (NI) Order 1983, Art.29(3)

Indictment: 2 years imprisonment and/or an unlimited fine

Summary: 6 months imprisonment and/or the statutory maximum fine (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Offence under Article 29(1)	Non-‘aggravated’ Offence (i.e. the dog does not injure the person attacked)	Community Order + Destruction Order + Compensation Order	Fine to 3 months Custody + Destruction Order + Disqualification Order + Compensation Order
	‘Aggravated’ Offence (i.e. the dog injures the person attacked)	2 months Custody + Destruction Order + Disqualification Order + Compensation Order	Community Order to 6 months Custody + Destruction Order + Disqualification Order + Compensation Order
Offence under Article 29(2)	Non-‘aggravated’ Offence (i.e. the dog does not injure the person attacked)	Fine + Destruction Order + Disqualification Order + Compensation Order	Fine to Community Order + Destruction Order + Disqualification Order + Compensation Order
	‘Aggravated’ Offence (i.e. the dog injures the person attacked)	Fine + Destruction Order + Disqualification Order + Compensation Order	Fine to 3 months Custody + Destruction Order + Disqualification Order + Compensation Order

Examples of Possible Aggravating Factors of Offence

31. Victim was engaged in providing a service to the public at time of attack (e.g. Postal worker, Dog Warden)
32. Sustained or repeated attack
33. Victim was a child or vulnerable person
34. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.**
35. Further degradation of the victim (e.g. the dog urinating on the

Examples of Possible Mitigating Factor of Offence

1. Offender made attempts to regain control or intervene
2. Provocation of dog by victim
3. Offender had taken all reasonable safety or control measures in relation to the dog

<p>victim)</p> <p>36. Failing to respond to warnings or concerns expressed by others about the dog's behaviour</p> <p>37. Goaded, or allowing goading, of the dog</p> <p>38. Dog used as a weapon or to intimidate victim</p> <p>39. Nature of injuries (including scarring)</p> <p>40. The dog is a 'dangerous' dog as defined by Articles 25A and 25B of the 1983 Order</p>	
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Relevant Cases:

NI Cases:

Barnes v Belfast City Council [2011] NICty 3
 Barnes v Belfast City Council [2012] NICA 19

English Cases

R. v Holland [2003] 1 Cr.App.R.(S.) 60
 R. v Haynes [2004] 2 Cr.App.R.(S.) 9
 R. v Cox [2004] 2 Cr.App.R.(S.) 54
 R. v Flack [2008] 2 Cr.App.R.(S.) 70
 R. v Richards [2009] 1 Cr.App.R.(S.) 48
 R. v Lee [2010] 1 Cr.App.R.(S.) 94
 R. v Harry [2010] 2 Cr.App.R.(S.) 95
 R. v Baballa [2011] 1 Cr.App.R.(S.) 50
 R. v Shallow [2012] 1 Cr. App. R. (S.) 33

Notes:

1. **Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2
2. Where it appears to a court that a dog has attacked any person or has worried livestock, the court shall, unless exceptional mitigating factors exist-
 - (a) make an order directing the dog to be destroyed; or
 - (b) make an order directing the dog to be destroyed unless such measures as are specified in the order are taken to prevent the dog being a danger to the public or to livestock. Such an order may include provision requiring the dog to be-
 - (i) securely fitted with a muzzle sufficient to prevent the dog biting any person;
 - (ii) kept confined in a building, shed, yard or other enclosure from which it cannot escape;
 - (iii) excluded from places specified in the order;
 - (iv) neutered (if it appears to the court that the dog is a male).

[Article 33 of the 1983 Order]
3. Where a person is convicted of an offence under Article 29 the court may order that person to be disqualified from keeping a dog for such period as the court thinks fit. – Article 33A(1) of the 1983 Order

POSSESSING A 'DANGEROUS' DOG:

Dogs (NI) Order 1983 (as amended)

25A. - ...

- (3) After 30th November 1991 no person shall have any dog to which this Article applies in his possession or custody except-
- (a) in pursuance of a power of seizure conferred by this Order; or
 - (b) in accordance with an order for its destruction made under this Order;

but the Department shall by order make a scheme for the payment to the keepers of such dogs who arrange for them to be destroyed before that date of sums specified in or determined under the scheme in respect of those dogs and the cost of their destruction.

...

- (7) Any person who contravenes this Article shall be guilty of an offence ...

Maximum Sentence:

Dogs (NI) Order 1983, Art.25A(7)

Summarily Only: 6 months imprisonment and/or the Level 5 fine (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	Fine + Destruction Order	Fine to 3 months Custody + Destruction Order + Disqualification Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ul style="list-style-type: none"> 41. Offence committed for financial gain 42. Dog trained for fighting 43. Dog used to threaten or intimidate others 44. Dog has attacked or injured a person or other animal 	<ul style="list-style-type: none"> 1. Offender had taken all steps reasonable to ensure the dog was not a 'dangerous' dog.

Relevant Cases:

NI Cases:

Barnes v Belfast City Council [2011] NICty 3
Barnes v Belfast City Council [2012] NICA 19

English Cases

R. v Holland [2003] 1 Cr.App.R.(S.) 60
R. v Haynes [2004] 2 Cr.App.R.(S.) 9
R. v Cox [2004] 2 Cr.App.R.(S.) 54
R. v Flack [2008] 2 Cr.App.R.(S.) 70
R. v Richards [2009] 1 Cr.App.R.(S.) 48
R. v Lee [2010] 1 Cr.App.R.(S.) 94
R. v Harry [2010] 2 Cr.App.R.(S.) 95
R. v Baballa [2011] 1 Cr.App.R.(S.) 50
R. v Shallow [2012] 1 Cr. App. R. (S.) 33

Notes:

1. Where a person is convicted of an offence under Article 25A the court may order the dog to be destroyed and shall do so unless the court is satisfied that the dog will not be a danger to the public; but if

- (a) the dog is one to which Article 25A applies,
- (b) the court does not order the destruction of the dog under paragraph (1A), and
- (c) the dog is subject to the prohibition in Article 25A(3).

the court shall order that, unless the dog is exempted from the prohibition in Article 25A(3) within the period of two months beginning with the date of the order, the dog shall be destroyed. – Article 33(1A)-(1B) of the 1983 Order

2. Where a person is convicted of an offence under Article 25A the court may order that person to be disqualified from keeping a dog for such period as the court thinks fit. – Article 33A(1) of the 1983 Order

ASSAULT OCCASIONING ACTUAL BODILY HARM

Offences Against the Person Act 1861

47. - Whosoever shall be convicted ... of any assault occasioning actual bodily harm shall be liable to imprisonment ...

Maximum Sentence:

Offences Against the Person Act 1861, s.47

Indictment: 5 years imprisonment or an unlimited fine or both (for offences committed before 28 September 2004)

7 years imprisonment or an unlimited fine or both (for offences committed on or after 28 September 2004)

Magistrates' Court (NI) Order 1981, Art.46(4)

Summary: 12 months imprisonment or a fine not exceeding the prescribed sum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Assault resulting in relatively minor injury but amounting to actual bodily harm	3 months Custody* + Compensation Order	Community Order to 6 months Custody** + Compensation Order
Assault resulting in relatively serious injury OR Assault involving the use of a weapon	4 months Custody* + Compensation Order	Community Order to 9 months Custody** + Compensation Order
Assault involving gratuitous violence (e.g. kicking or stamping victim when on the ground) OR Assault was motiveless	6 months Custody* + Compensation Order	Community Order to 12 months Custody + Compensation Order

* Where a court finds the offence was 'committed in the context of domestic violence' or where 'the victim was engaged in providing a service to the public' it shall use a starting point higher than that prescribed.

** Where a court finds the offence was 'committed in the context of domestic violence' or where 'the victim was engaged in providing a service to the public' it may impose a sentence outside the prescribed sentencing range.

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Head-butting, biting, attempted strangulation or spitting 2. Offence was premeditated 3. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*** 4. Abuse of position of trust 5. Offender was member of a group committing the offence 6. Victim is particularly vulnerable 7. Additional degradation of the victim 8. Offence committed in the presence of a child 9. Offence committed in victim's home or workplace 10. Offender prevented victim from seeking or obtaining help 11. Victim forced to leave home 12. Offence took place in an isolated area 13. Assault committed in the context of 'road rage' 	<ol style="list-style-type: none"> 1. Provocation

Relevant Cases:

NI Cases:

1. R v McCullough (19 December 1997)(Unreported)
2. R v D [2002] NICA 10
3. R v PH [2011] NICA 64
4. R v Balmer and Wilson [2015] NICA 40

English Cases:

1. R v Graham [1993] Crim LR 628
2. R v Barnes (1993) 14 Cr App R(S) 547
3. R v Audit (1994) Cr App R(S) 36
4. R v Marples [1998] 1 Cr App R (S) 335
5. R v Sharpe [2000] 1 Cr App R(S) 1

Notes:

1. ***Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)
2. 'Reasonable punishment' of the child is not a defence to an offence under s.47 (Law Reform (Miscellaneous Provisions) (NI) Order 2006, Article 2).

3. Indictable offence triable summarily with consent of the accused (Art.45 of, and Sch.2 to, the Magistrate's Court (NI) Order 1981).
4. The maximum summary sentence in E&W is only 6 months imprisonment compared to 12 months in NI.
5. Can be an offence of 'violence' for the purposes of a 'Regulated Match Banning Order' – Section 44 of the Justice Act (NI) 2011
6. A 'specified offence' for the purposes of a 'Violent Offender Prevention Order' where the offence is committed against a vulnerable adult (within the meaning of Article 2(2) of the Safeguarding Vulnerable Groups (NI) Order 2007), a person under the age of 18, or a person living in the same household as the offender. – Section 55 of the Justice Act (NI) 2015

ASSAULT ON POLICE

Police (NI) Act 1998

66. - (1) Any person who assaults ... a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence.

Maximum Sentence:

Police (NI) Order 1998, s.66(2)

Indictment: 2 years imprisonment or Level 3 fine (£1,000) or both

Summary: 6 months or the statutory maximum fine (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Assault where no injury is caused or where injury is minor and non-permanent (e.g. bruising)	Community Order + Compensation Order	Fine to Community Order + Compensation Order
Assault resulting in more serious injury but not amounting to actual bodily harm	2 months Custody + Compensation Order	Community Order to 6 months Custody + Compensation Order
Assault involving gratuitous violence (e.g. kicking or stamping victim when on the ground) OR Assault was motiveless	4 month Custody + Compensation Order	Community Order to 6 month Custody + Compensation Order

Examples of Possible Aggravating Factors of Offence

1. Head-butting, biting, or attempted strangulation
2. Offence was premeditated
3. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*
4. Abuse of position of trust
5. Offender was member of a group committing the offence
6. Victim is particularly vulnerable
7. Additional degradation of the victim
8. Offence committed in the presence of a child
9. Use of weapon

Examples of Possible Mitigating Factor of Offence

1. Provocation

Relevant Cases:

NI Cases:

1. AG's Ref. (No.1 of 1991)(Gallagher) [1991] NI 218
2. R v Robinson [2001] 8 BNIL 85

English Cases:

1. R v Stosiek (1982) 4 Cr App R(S) 205
2. R v Broyd [2002] 1 Cr App R(S) 197
3. R v Casey [2000] 1 Cr App R(S) 221

Notes:

1. *Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)
2. Can be an offence of 'violence' for the purposes of a 'Regulated Match Banning Order' – Section 44 of the Justice Act (NI) 2011
3. A 'specified offence' for the purposes of a 'Violent Offender Prevention Order' – Section 55 of the Justice Act (NI) 2015

1. COMMON ASSAULT

Offences Against the Person Act 1861

42. - Any person who unlawfully assaults or beats any other person shall be guilty of an offence under this section ...

Maximum Sentence:

Offences Against the Person Act 1861, s.42 (Common Assault)

*Summary only: 3 months imprisonment or Level 3 fine (£1,000) or both (for offences committed before 4 July 2011)
6 months imprisonment or Level 3 fine (£1,000) or both (for offences committed on or after 4 July 2011)*

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Assault where no injury is caused or where injury is minor and non-permanent (e.g. bruising)	Community Order* + Compensation Order	Fine to Community Order** + Compensation Order
Assault resulting in more serious injury but not amounting to actual bodily harm	2 months Custody* + Compensation Order	Community Order to 6 months Custody + Compensation Order
Assault involving gratuitous violence (e.g. kicking or stamping victim when on the ground) OR Assault was motiveless	4 month Custody* + Compensation Order	Community Order to 6 month Custody + Compensation Order

* Where a court finds the offence was 'committed in the context of domestic violence' or where 'the victim was engaged in providing a service to the public' it shall use a starting point higher than that prescribed.

** Where a court finds the offence was 'committed in the context of domestic violence' or where 'the victim was engaged in providing a service to the public' it may impose a sentence outside the prescribed sentencing range.

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Use of weapon to frighten or harm victim 2. Head-butting, biting, attempted strangulation or spitting 3. Offence was premeditated 4. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*** 5. Abuse of position of trust 6. Offender was member of a group committing the offence 7. Victim is particularly vulnerable 8. Additional degradation of the victim 9. Offence committed in the presence of a child 10. Offence committed in victim's home or workplace 11. Offender prevented victim from seeking or obtaining help 12. Victim forced to leave home 13. Offence took place in an isolated area 14. Assault committed in the context of 'road rage' 	<ol style="list-style-type: none"> 1. Provocation

Relevant Cases:

NI Cases:

1. R v Savage [2008] NICC 30
2. R v McCullough (19 December 1997)(Unreported)
3. R v Kennedy and Kennedy [2011] NICA 42

English Cases:

1. R v Fenton (1994) 15 Cr App R(S) 682

Notes:

1. *** Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)
2. Can be an offence of 'violence' for the purposes of a 'Regulated Match Banning Order' – Section 44 of the Justice Act (NI) 2011

THREATS TO KILL

Offences Against the Person Act 1861

16. - A person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out, to kill that other or a third person shall be guilty of an offence ...

Maximum Sentence:

Offences Against the Person Act 1861, s.47

Indictment: 10 years imprisonment or an unlimited fine or both

Magistrates' Court (NI) Order 1981, Art.46(4)

Summary: 12 months imprisonment or a fine not exceeding the prescribed sum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Single threat uttered in the heat of the moment and no more than a fleeting impact on victim	Community Order*	Fine to 3 months Custody**
Single calculated threat OR Victim has genuine fear that threat may be carried out	3 months Custody*	Community Order to 6 months Custody**
Repeated threats OR Offender had visible weapon when making threat	6 months Custody*	3 - 12 months Custody

* Where a court finds the offence was 'committed in the context of domestic violence' or where 'the victim was engaged in providing a service to the public' it shall use a starting point higher than that prescribed.

** Where a court finds the offence was 'committed in the context of domestic violence' or where 'the victim was engaged in providing a service to the public' it may impose a sentence outside the prescribed sentencing range.

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Vulnerable victim 2. As a result of the threat the victim needed medical help or counselling 3. Offender deliberately isolated victim 4. Group action 5. Threat directed at victim because of job 6. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*** 	<ol style="list-style-type: none"> 1. Provocation

Relevant Cases:

NI Cases:

1. AG's Ref. (No.6 of 2008) (Haggan) [2009] NICA 42

English Cases:

1. R v Gaskin (1996) The Times, 15 August 1996

Notes:

1. ***Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)

2. Indictable offence triable summarily with consent of the accused (Art.45 of, and Sch.2 to, the Magistrate's Court (NI) Order 1981).

3. The maximum summary sentence in E&W is only 6 months imprisonment compared to 12 months in NI.

4. Can be an offence of 'violence' for the purposes of a 'Regulated Match Banning Order' – Section 44 of the Justice Act (NI) 2011

5. A 'specified offence' for the purposes of a 'Violent Offender Prevention Order' – Section 55 of the Justice Act (NI) 2015

WOUNDING / INFLICTING GRIEVOUS BODILY HARM (Section 20)

Offences Against the Person Act 1861

20. - Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanour ...

Maximum Sentence:

Offences Against the Person Act 1861, s.20

Indictment: 5 years imprisonment or an unlimited fine or both (for offences committed before 28 September 2004)

7 years imprisonment or an unlimited fine or both (for offences committed on or after 28 September 2004)

Magistrates' Court (NI) Order 1981, Art.46(4)

Summary: 12 months imprisonment or a fine not exceeding the prescribed sum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Non-premeditated brief assault	4 months Custody* + Compensation Order	Community Order to 8 months Custody** + Compensation Order
Premeditated assault OR Sustained assault OR Assault involving gratuitous violence (e.g. kicking or stamping victim when on the ground) OR Assault was motiveless	8 months Custody* + Compensation Order	4 - 12 months Custody + Compensation Order

* Where a court finds the offence was 'committed in the context of domestic violence' or where 'the victim was engaged in providing a service to the public' it shall use a starting point higher than that prescribed.

** Where a court finds the offence was 'committed in the context of domestic violence' or where 'the victim was engaged in providing a service to the public' it may impose a sentence outside the prescribed sentencing range.

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Head-butting, biting, attempted strangulation or spitting 2. Use of weapon 3. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*** 4. Abuse of position of trust 5. Offender was member of a group committing the offence 6. Victim is particularly vulnerable 7. Additional degradation of the victim 8. Offence committed in the presence of a child 9. Offence committed in victim's home or workplace 10. Offender prevented victim from seeking or obtaining help 11. Victim forced to leave home 12. Offence took place in an isolated area 13. Assault committed in the context of 'road rage' 	<ol style="list-style-type: none"> 1. Provocation

Relevant Cases:

NI Cases:

1. R v Wright and Hall (10 June 1994)(Unreported)
2. AG's Ref. (No.1 and 2 of 1996)(Kennedy and Clarke) [1996] NI 456
3. R v D [2002] NICA 10

English Cases:

Notes:

1. ***Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)
2. **A court may find the aggravating factor of 'the victim was engaged in providing a service to the public' to be sufficiently grave to warrant imposing a sentence outside the prescribed sentencing range.
3. 'Reasonable punishment' of the child is not a defence to an offence under s.20 (Law Reform (Miscellaneous Provisions) (NI) Order 2006).
4. Indictable offence triable summarily with consent of the accused (Art.45 of, and Sch.2 to, the Magistrate's Court (NI) Order 1981).

5. The maximum summary sentence in E&W is only 6 months imprisonment compared to 12 months in NI.
6. Can be an offence of 'violence' for the purposes of a 'Regulated Match Banning Order' – Section 44 of the Justice Act (NI) 2011
7. A 'specified offence' for the purposes of a 'Violent Offender Prevention Order' – Section 55 of the Justice Act (NI) 2015

BREACH OF ANTI-SOCIAL BEHAVIOUR ORDER

Anti-Social Behaviour (NI) Order 2004

7.- (1) If without reasonable excuse a person does anything which he is prohibited from doing by an anti-social behaviour order, he shall be guilty of an offence ...

Maximum Sentence:

Anti-Social Behaviour (NI) Order 2004, Article 7(1)

Indictment: 5 years imprisonment or an unlimited fine or both

Summary: 6 months imprisonment or a fine not exceeding the statutory maximum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Breach of a technical nature		Fine	Fine to Community Order
Breach of a fundamental nature	Not causing harassment, alarm or distress to the public	Community Order	Community Order to 3 months Custody
	Causing harassment, alarm or distress to the public	3 months Custody	Community Order to 6 months Custody

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Planning or pre-meditation 2. Offender involves other persons to assist in the offence 3. Offence caused children to be distressed/frightened 4. Targeting of a specific victim or group 5. Victim or group is particularly vulnerable 	N/A

Relevant Cases:

NI Cases:
N/A

English Cases:
 1. R v Braxton [2005] 1 Cr App R (S) 36
 2. R v Dickinson [2005] 2 Cr App R (S) 78
 3. R v Lamb [2005] EWCA Crim 3000
 4. R v H, Stevens and Lovegrove [2006] Cr App R(S) 68

Notes:

1. The court cannot impose a Condition Discharge for this offence – Article 7(4) of the 2004 Order

BREACH OF BAIL (Failure to Surrender)

Criminal Justice (NI) Order 2003

4. – (1) A person released on bail shall be under a duty to surrender to custody.
 (2) In this Part-
 "surrender to custody" means, in relation to a person released on bail, surrendering himself (according to the requirements of the grant of bail)-
 (a) into the custody of the court at the time and place for the time being appointed for him to do so; or
 (b) at the police station and at the time appointed for him to do so; or
 (c) into the custody of the governor of a prison at the time and place for the time being appointed for him to do so.
5. – (1) If a person who has been released on bail fails without reasonable cause to surrender to custody, he shall be guilty of an offence.
 (2) If a person who-
 (a) has been released on bail, and
 (b) has, with reasonable cause, failed to surrender to custody,
 fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable, he shall be guilty of an offence.

Maximum Sentence:

Criminal Justice (NI) Order 2003, Article 5(3)

Indictment: 3 years imprisonment or an unlimited fine or both [for offences committed on or after 4 July 2004]

Summary: 12 months imprisonment or a fine not exceeding the statutory maximum (£5,000) or both [for offences committed on or after 4 July 2004]

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Offence under Article 5(1)	Negligent or non-deliberate failure	Fine + Estreatment of Recognizance	Fine to Community Order + Estreatment of Recognizance
	Deliberate failure	1 month Custody + Estreatment of Recognizance	Community Order to 6 months Custody + Estreatment of Recognizance
Offence under Article 5(2)		Fine + Estreatment of Recognizance	Fine to Community Order + Estreatment of Recognizance

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Deliberate attempt to evade justice 2. Deliberate evasion of authorities 3. Lengthy absence	1. Innocent misunderstanding 2. Prompt voluntary surrender 3. A non-custodial sentence was imposed for the offence on which bail was originally granted

Relevant Cases:

NI Cases:

N/A

English Cases:

1. R v White; R v McKinnon [2003] 2 Cr App R(S) 29

Notes:

1. Where the offender fails to appear before a Magistrates' Court following his entering into a recognizance to do so, the Court SHALL (a) order the estreat of the recognizance; and (b) direct the issue of a summons to any surety for that person requiring the surety to appear before a court of summary jurisdiction on a date specified in the summons to show cause why he should not pay the sum in which he is bound – Article 132 of the Magistrates' Courts (NI) Order 1981.

BREACH OF 'REGULATED MATCH' BANNING ORDER

Justice Act (NI) 2011

41.– (1) This section applies where a person (the “offender”) is convicted of an offence by or before a court.
 (2) If the court is satisfied that—
 (a) the offence is one to which subsection (4) applies; and
 (b) there are reasonable grounds to believe that making a banning order would help to prevent violence or disorder at or in connection with any regulated matches,
 it must make such an order in respect of the offender.
 ...
 (4) This subsection applies to an offence if—
 (a) the offence involved the person who committed it engaging in violence or disorder; and
 (b) the offence was committed—
 (i) at a regulated match or while the person committing it was entering or leaving (or trying to enter or leave) the ground;
 (ii) on a journey to or from a regulated match; or
 (iii) otherwise, where it appears to the court from all the circumstances that the offence was motivated (wholly or partly) by a regulated match.
 ...
 49.– (1) A person subject to a banning order who fails to comply with any requirement imposed by the order is guilty of an offence.

Maximum Sentence:

Justice Act (NI) 2011, section 49(2)
Summary only: 6 months imprisonment or a fine not exceeding Level 5 (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Breach of a technical nature	Fine	Fine to Community Order
Breach of a fundamental nature	3 months Custody	Community Order to 6 months Custody

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Planning or pre-meditation 2. Offender involves other persons to assist in the offence 3. Offence caused children to be distressed/frightened 4. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*	N/A

Relevant Cases:

<i>NI Cases:</i> N/A	<i>English Cases:</i> N/A
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Notes:

1.*Where a court finds the offence was aggravated by ‘hostility’ it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)

MAKING/DISTRIBUTING MATERIAL INFRINGING COPYRIGHT

Copyright, Designs and Patents Act 1988

- 107.- (1) A person commits an offence who, without the licence of the copyright owner-
- (a) makes for sale or hire, or
 - (b) imports into the United Kingdom otherwise than for his private and domestic use, or
 - (c) possesses in the course of a business with a view to committing any act infringing the copyright, or
 - (d) in the course of a business -
 - (i) sells or lets for hire, or
 - (ii) offers or exposes for sale or hire, or
 - (iii) exhibits in public, or
 - (iv) distributes, or
 - (e) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright, an article which is, and which he knows or has reason to believe is, an infringing copy of a copyright work.
- (2) A person commits an offence who-
- (a) makes an article specifically designed or adapted for making copies of a particular copyright work, or
 - (b) has such an article in his possession,
- knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business.
- (2A) A person who infringes copyright in a work by communicating the work to the public-
- (a) in the course of a business, or
 - (b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,
- commits an offence if he knows or has reason to believe that, by doing so, he is infringing copyright in that work.

Maximum Sentence:

Copyright, Designs and Patents Act 1988, s.107

Offence under section 107(1)(a),(b),(d)(iv) or (e)

Indictment: 10 years imprisonment and/or Unlimited Fine

Summarily: 6 months imprisonment and/or the statutory maximum Fine (£5,000) (for offences committed before 8 June 2010)
6 months imprisonment and/or £50,000 Fine (for offences committed on or after 8 June 2010)

Offence under section 107(1)(c),(d)(i)-(iii) or (2)

Summarily: 3 months imprisonment and/or the statutory maximum Fine (£5,000) (for offences committed before 8 June 2010)
3 months imprisonment and/or £50,000 Fine (for offences committed on or after 8 June 2010)

Offence under section 107(2A)

Indictment: 2 years imprisonment and/or Unlimited Fine

Summarily: 6 months imprisonment and/or Level 5 Fine (£5,000) (for offences committed before 1 January 2011)
3 months imprisonment and/or Level 5 Fine (£5,000) (for offences committed on or after 1 January 2011)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Offence under section 107(1)(a),(b),(d)(iv) or (e)	Small number of counterfeit items	Community Order	Community Order* to 3 months Custody
	Larger number of counterfeit items	3 months Custody	Community Order* to 6 months Custody
Offence under section 107(1)(c),(d)(i)-(iii) or (2)		Community Order	Fine to Community Order
Offence under section 107(2A)	Small amount of material	Fine	Fine to Community Order
	Larger amount of material	Community Order	Community Order to 3 months Custody

*Where appropriate, the Court may consider imposing a high level fine as an alternative to a Community Order.

Examples of Possible Aggravating Factors of Offence

Examples of Possible Mitigating Factor of Offence

<ul style="list-style-type: none"> 1. High degree of professionalism 2. High level of profit 3. Purchaser at risk of harm (e.g. from counterfeit medicines/health supplements) 	<ul style="list-style-type: none"> 1. Mistake or ignorance about provenance of goods 		
<p><u>Relevant Cases:</u></p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p><i><u>NI Cases:</u></i></p> <ul style="list-style-type: none"> R v Rymacki and Jankowski [2013] NICC 20 R v Mahoney [2016] NICA 27 </td> <td style="width: 50%; vertical-align: top;"> <p><i><u>English Cases:</u></i></p> <ul style="list-style-type: none"> 1. R v Yanko [1996] 1 Cr App R(S) 217 2. R v Du’Kett [1998] 2 Cr App R(S) 59 3. R v Adam [1999] 1 Cr App R(S) 403 4. R v Gleeson [2002] 1 Cr App R(S) 112 5. R v Woolridge [2006] 1 Cr App R(S) 13 6. R v Hatton [2008] 1 Cr App R(S) 74 7. R v Brayford [2011] 1 Cr App R(S) 109 8. R v Nimley [2011] 1 Cr App R(S) 120 </td> </tr> </table>		<p><i><u>NI Cases:</u></i></p> <ul style="list-style-type: none"> R v Rymacki and Jankowski [2013] NICC 20 R v Mahoney [2016] NICA 27 	<p><i><u>English Cases:</u></i></p> <ul style="list-style-type: none"> 1. R v Yanko [1996] 1 Cr App R(S) 217 2. R v Du’Kett [1998] 2 Cr App R(S) 59 3. R v Adam [1999] 1 Cr App R(S) 403 4. R v Gleeson [2002] 1 Cr App R(S) 112 5. R v Woolridge [2006] 1 Cr App R(S) 13 6. R v Hatton [2008] 1 Cr App R(S) 74 7. R v Brayford [2011] 1 Cr App R(S) 109 8. R v Nimley [2011] 1 Cr App R(S) 120
<p><i><u>NI Cases:</u></i></p> <ul style="list-style-type: none"> R v Rymacki and Jankowski [2013] NICC 20 R v Mahoney [2016] NICA 27 	<p><i><u>English Cases:</u></i></p> <ul style="list-style-type: none"> 1. R v Yanko [1996] 1 Cr App R(S) 217 2. R v Du’Kett [1998] 2 Cr App R(S) 59 3. R v Adam [1999] 1 Cr App R(S) 403 4. R v Gleeson [2002] 1 Cr App R(S) 112 5. R v Woolridge [2006] 1 Cr App R(S) 13 6. R v Hatton [2008] 1 Cr App R(S) 74 7. R v Brayford [2011] 1 Cr App R(S) 109 8. R v Nimley [2011] 1 Cr App R(S) 120 		
<p><u>Notes:</u> N/A</p>			

PASSING COUNTERFEIT CURRENCY

Forgery and Counterfeiting Act 1981

15.- (1) It is an offence for a person-

- (a) to pass or tender as genuine any thing which is, and which he knows or believes to be, a counterfeit of a currency note or of a protected coin; or
- (b) to deliver to another any thing which is, and which he knows or believes to be, such a counterfeit, intending that the person to whom it is delivered or another shall pass or tender it as genuine.

Maximum Sentence:

Forgery and Counterfeiting Act 1981 s.22

Indictment: 10 years imprisonment and/or Unlimited Fine

Summarily: 6 months imprisonment and/or statutory maximum fine (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Offence relates to a single counterfeit note or small number of coins	2 months Custody	Community Order to 3 months Custody
Offence relates to a small number of counterfeit notes	3 months Custody	1 – 6 months Custody

Examples of Possible Aggravating Factors of Offence

1. Offence committed for purpose of financial gain
2. High level of professionalism

Examples of Possible Mitigating Factor of Offence

1. Notes/coins acquired innocently

Relevant Cases:

NI Cases:

1. R v McClean (23/5/97)(Unreported)

English Cases:

1. R v Crick (1981) 3 Cr App R(S) 275
2. R v Everett (1983) 5 Cr App R(S) 207
3. R v Howard (1985) 7 Cr App R(S) 320

Notes:

POSSESSING COUNTERFEIT CURRENCY

Forgery and Counterfeiting Act 1981

16. - (1) It is an offence for a person to have in his custody or under his control any thing which is, and which he knows or believes to be, a counterfeit of a currency note or of a protected coin, intending either to pass or tender it as genuine or to deliver it to another with the intention that he or another shall pass or tender it as genuine.
- (2) It is an offence for a person to have in his custody or under his control, without lawful authority or excuse, any thing which is, and which he knows or believes to be, a counterfeit of a currency note or of a protected coin.
- (3) It is immaterial for the purposes of subsections (1) and (2) above that a coin or note is not in a fit state to be passed or tendered or that the making or counterfeiting of a coin or note has not been finished or perfected.

Maximum Sentence:

Forgery and Counterfeiting Act 1981 s.22

Offence under section 16(1)

Indictment: 10 years imprisonment and/or Unlimited Fine

Summarily: 6 months imprisonment and/or statutory maximum fine (£5,000)

Offence under section 16(2)

Indictment: 2 years imprisonment and/or Unlimited Fine

Summarily: 6 months imprisonment and/or statutory maximum fine (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Offence under section 16(1)	Offence relates to a single counterfeit note or small number of coins	Community Order	Fine to 3 months Custody
	Offences relates to a small number of counterfeit notes	2 months Custody	Community Order to 6 months Custody
Offence under section 16(2)	Offence relates to a single counterfeit note or a small number of coins	Fine	Fine to Community Order
	Offences relates to a small number of counterfeit notes	Community Order	Community Order to 3 months Custody

Examples of Possible Aggravating Factors of Offence

1. Offence committed for purpose of financial gain

Examples of Possible Mitigating Factor of Offence

1. Notes/coins acquired innocently

Relevant Cases:

NI Cases:

1. R v McClean (23/5/97)(Unreported)

English Cases:

1. R v Crick (1981) 3 Cr App R(S) 275
 2. R v Everett (1983) 5 Cr App R(S) 207
 3. R v Howard (1985) 7 Cr App R(S) 320

Notes:

UNAUTHORISED USE OF TRADE MARK

Trade Marks Act 1994

92. - (1) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor—
- (a) applies to goods or their packaging a sign identical to, or likely to be mistaken for, a registered trade mark, or
 - (b) sells or lets for hire, offers or exposes for sale or hire or distributes goods which bear, or the packaging of which bears, such a sign, or
 - (c) has in his possession, custody or control in the course of a business any such goods with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b).
- (2) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor—
- (a) applies a sign identical to, or likely to be mistaken for, a registered trade mark to material intended to be used—
 - (i) for labelling or packaging goods,
 - (ii) as a business paper in relation to goods, or
 - (iii) for advertising goods, or
 - (b) uses in the course of a business material bearing such a sign for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods, or
 - (c) has in his possession, custody or control in the course of a business any such material with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b).
- (3) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor—
- (a) makes an article specifically designed or adapted for making copies of a sign identical to, or likely to be mistaken for, a registered trade mark, or
 - (b) has such an article in his possession, custody or control in the course of a business, knowing or having reason to believe that it has been, or is to be, used to produce goods, or material for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods.

Maximum Sentence:

Trade Marks Act 1994, s.92(6))

Indictment: 10 years imprisonment and/or Unlimited Fine

Summarily: 6 months imprisonment and/or Fine of the prescribed sum (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Small number of counterfeit items	No involvement in production	Fine	Fine to Community Order
	Involvement in production	Community Order	Fine to Community Order
Larger number of counterfeit items but no involvement in production		Community Order	Community Order to 6 months Custody

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. High degree of professionalism 2. High level of profit 3. Purchaser at risk of harm (e.g. from counterfeit medicines/health supplements)	1. Mistake or ignorance about provenance of goods

Relevant Cases:

NI Cases:

R v Rymacki and Jankowski [2013] NICC 20

R v Mahoney [2016] NICA 27

English Cases:

1. R v Yanko [1996] 1 Cr App R(S) 217

2. R v Du'Kett [1998] 2 Cr App R(S) 59

3. R v Adam [1999] 1 Cr App R(S) 403

4. R v Gleeson [2002] 1 Cr App R(S) 112

5. R v Woolridge [2006] 1 Cr App R(S) 13

6. R v Hatton [2008] 1 Cr App R(S) 74

7. R v Brayford [2011] 1 Cr App R(S) 107

Notes:

1. A person does not commit an offence under section 92 unless (a) the goods are goods in respect of which the trade mark is registered, or (b) the trade mark has a reputation in the United Kingdom and the use of the sign takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the trade mark. – Section 92(4) of the 1994 Act.
2. It is a defence to an offence under section 92 to show reasonable belief that the use of the sign in the manner in which it was used, or was to be used, was not an infringement of the registered trade mark. – Section 92(5) of the 1994 Act.

CRUELTY TO PERSON UNDER 16

Children and Young Persons Act (NI) 1968

20. - (1) If any person who has attained the age of sixteen and has responsibility for any child or young person under that age, wilfully assaults, ill-treats, neglects, abandons or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of an offence ...

Maximum Sentence:

Children and Young Persons Act (NI) 1968, s.20(1)

Indictment: 10 years imprisonment and/or Unlimited Fine

Summarily: 6 months imprisonment and/or Fine of the prescribed sum (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
<p>D subjected child to single incident of short-term neglect, short-term abandonment or short-term ill-treatment where only <u>no</u> physical/emotional injury resulted.</p> <p>OR</p> <p>D permitted child to be subjected child to single incident of short-term neglect, short-term abandonment or short-term ill-treatment where only <u>no</u> physical/emotional injury resulted.</p>	1 month Custody	Community Order to 6 months Custody
<p>D subjected child to single incident of short-term neglect, short-term abandonment or short-term ill-treatment where only <u>minor</u> physical/emotional injury resulted.</p> <p>OR</p> <p>D permitted child to be subjected child to single incident of short-term neglect, short-term abandonment or short-term ill-treatment where only <u>minor</u> physical/emotional injury resulted.</p>	3 months Custody	Community Order to 6 months Custody

Examples of Possible Aggravating Factors of Offence

1. Targeting one particular child in the family
2. Sadistic behaviour
3. Threats to prevent the victim from reporting the offence
4. Deliberate concealment of the victim from the authorities
5. Failure to seek medical help and/or assistance from the authorities
6. D had been placed in a position of trust
7. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*

Examples of Possible Mitigating Factor of Offence

1. D has sought medical help and/or assistance from the authorities

Relevant Cases:

NI Cases:

1. R v W [2014] NICA 71

English Cases:

1. R v Durkin [1989] 11 Cr App R(S) 313
2. R v Andrew [1995] 16 Cr App R(S) 899
3. R v Ahmed [2003] 1 Cr App R(S) 40
4. R v J and M [2005] 1 Cr App R(S) 63
5. AG's Reference (No.105 of 2004) [2005] 2 Cr App R(S) 42

Notes:

1. Where offence committed against 2 or more children, D shall NOT be liable to a separate penalty in respect of each child except upon separate complaints [s.33(1) of the 1968 Act]; but 'multiple victims' is an aggravating factor of general application and remains applicable even where s.33(1) is engaged.
2. 'Reasonable punishment' of the child is not a defence to an offence under s.20 [Law Reform (Miscellaneous Provisions) (NI) Order 2006, Article 2].
3. For the purposes of an offence under section 20:
 - (a) a parent or other person legally liable to maintain a child or young person, or the legal guardian of a child or young person, shall be deemed to

have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him, or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, he has failed to take steps to procure it to be provided under the Health and Personal Social Services (Northern Ireland) Order 1972 or Part VII of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

(b) where it is proved that the death of an infant under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the infant) while the infant was in bed with some other person who has attained the age of sixteen, that other person shall, if he was, whilst in bed, under the influence of intoxicating liquor or drugs, be deemed to have neglected the infant in a manner likely to cause injury to its health.

[s.20(2) of the 1968 Act]

4. A 'specified offence' for the purposes of a 'Violent Offender Prevention Order' – Section 55 of the Justice Act (NI) 2015

5.*Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)

EXPOSING CHILD UNDER 2 WHEREBY LIFE OR PERMANENT HEALTH IS ENDANGERED

Offences Against the Person Act 1861

27. Whosoever shall unlawfully abandon or expose any child, being under the age of two years, whereby the life of such child shall be endangered, or the health of such child shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanour ...

Maximum Sentence:

Offences Against the Person Act 1861, s.27

Indictment: 5 years imprisonment and/or Unlimited Fine

Magistrates' Court (NI) Order 1981, Art.46(4)

Summary: 12 months imprisonment or a fine not exceeding the prescribed sum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Single incident of short-term abandonment/exposure where <u>no</u> physical injury resulted	1 months Custody	Community Order to 6 months Custody
Single incident of short-term abandonment/exposure where only <u>minor</u> physical injury resulted	3 months Custody	Community Order to 12 months Custody

Examples of Possible Aggravating Factors of Offence

1. Targeting one particular child in the family
2. Sadistic behaviour
3. Deliberate concealment of the victim from the authorities
4. Failure to seek medical help and/or assistance from the authorities
5. D had been placed in a position of trust
6. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*

Examples of Possible Mitigating Factor of Offence

1. D has sought medical help and/or assistance from the authorities

Relevant Cases:

NI Cases:

N/A

English Cases:

1. R v Durkin [1989] 11 Cr App R(S) 313
2. R v Andrew [1995] 16 Cr App R(S) 899
3. R v Ahmed [2003] 1 Cr App R(S) 40
4. R v J and M [2005] 1 Cr App R(S) 63
5. AG's Reference (No.105 of 2004) [2005] 2 Cr App R(S) 42

Notes:

1. Where offence committed against 2 or more children, D shall NOT be liable to a separate penalty in respect of each child except upon separate complaints [s.33(1) of the 1968 Act]; but 'multiple victims' is an aggravating factor of general application and remains applicable even where s.33(1) is engaged.
2. Indictable offence triable summarily with consent of the accused (Art.45 of, and Sch.2 to, the Magistrate's Court (NI) Order 1981).
3. A 'specified offence' for the purposes of a 'Violent Offender Prevention Order' – Section 55 of the Justice Act (NI) 2015
- 4.*Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)

EXPOSING CHILD UNDER 12 TO RISK OF BURNING

Children and Young Persons Act (NI) 1968

29. - (1) If any person who has attained the age of sixteen, having responsibility for any child under the age of twelve, allows the child to be in any room containing an open fire or any heating appliance liable to cause injury to a person by contact therewith, not sufficiently protected to guard against the risk of his being burnt or scalded, without taking reasonable precautions against that risk, he shall be guilty of an offence ...

Maximum Sentence:

Children and Young Persons Act (NI) 1968, s.29(1)
Summary Only: Level 1 Fine (£200)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	Fine	Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. No parental supervision at time of incident 2. Child suffered injury	1. D had taken all reasonable steps to prevent incident occurring

Relevant Cases:

NI Cases:
N/A

English Cases:
N/A

Notes:

1. Where offence committed against 2 or more children, D shall NOT be liable to a separate penalty in respect of each child except upon separate complaints [s.33(1) of the 1968 Act]; but ‘multiple victims’ is an aggravating factor of general application and remains applicable even where s.33(1) is engaged.

ABSTRACTING ELECTRICITY

Theft Act (NI) 1969

Art.13 - A person who dishonestly uses without due authority, or dishonestly causes to be wasted or diverted, any electricity shall, on conviction on indictment, be liable to imprisonment ...

Maximum Sentence:

Theft Act (NI) 1969, s.13

Indictment: 5 years imprisonment or an unlimited fine or both

Magistrates' Courts (NI) Order 1981, Art. 46(4)

Summary: 12 months imprisonment or a fine not exceeding the prescribed sum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Little or no sophistication in how offence committed (e.g. simply using a cable to bypass electricity meter)	Community Order + Restitution Order	Community Order to 3 months Custody + Restitution Order
Sophisticated methods used to abstract the electricity (e.g. using a device to interfere with the meter or connecting into electricity feed for another property)	3 months Custody + Restitution Order	Community Order to 12 months Custody + Restitution Order

Examples of Possible Aggravating Factors of Offence

1. Offence committed over long period of time
2. Method of abstraction presented a risk of danger to people or property
3. Method of abstraction resulted in innocent 3rd party paying for the electricity

Examples of Possible Mitigating Factor of Offence

1. Offence committed out of desperation
2. Voluntary restitution paid

Relevant Cases:

NI Cases:

1. N/A

English Cases:

1. R v Hodkinson (1980) 2 Cr App R (S) 331

Notes:

1. Indictable offence triable summarily with consent of the accused (Art.45 of, and Sch.2 to, the Magistrate's Court (NI) Order 1981).

BURGLARY (Dwelling)

Theft Act (NI) 1969

9. - (1) A person is guilty of burglary if-
- (a) he enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection (2); or
 - (b) having entered any building or part of a building as a trespasser, he steals or attempts to steal anything in the building or that part of it...
- (2) The offences referred to in subsection (1)(a) are offences of stealing anything in the building or part of a building in question, ... and of doing unlawful damage to the building or anything therein.

Maximum Sentence:

Theft Act (NI) 1969, s.7

Indictment: 14 years imprisonment or an unlimited fine or both

Magistrates' Court (NI) Order 1981, Art.46(4)

Summary: 12 months imprisonment or a fine not exceeding the prescribed sum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Unoccupied premises	3 months Custody	Community Order to 6 months Custody
Occupied premises	6 months Custody	Community Order to 12 months Custody

Examples of Possible Aggravating Factors of Offence

1. Ransacking/ vandalism of the premises
2. Pre-meditation or professional planning
3. Victim deliberately targeted (e.g. out of spite or due to vulnerability)
4. Housebreaking implements carried
5. Occupier at home
6. Goods stolen of sentimental value
7. Trauma to victim beyond that normally associated with type of offence
8. Forced entry
9. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*

Examples of Possible Mitigating Factor of Offence

1. Offender played only a minor role in the burglary
2. Offence committed on impulse

Relevant Cases:

NI Cases:

1. R v O'Keefe (6 February 1998)(Unreported)
2. R v Megarry [2002] NICA 29
3. R v Cromie [2008] NICA 47
4. R v Martin [2010] NICA 26

English Cases:

1. R v McInerney [2002] EWCA Crim 3003
2. R v Saw [2009] EWCA Crim 1

Notes:

1. Indictable offence triable summarily with consent of the accused except burglary with intent to commit an indictable offence or if any person in the dwelling was subjected to violence or the threat of violence (Art.45 of, and Sch.2 to, the Magistrate's Court (NI) Order 1981).
2. The court may enquire into the factual circumstances of the offence and the personal circumstances of the accused before accepting jurisdiction.
3. A 'specified offence' for the purposes of a 'Violent Offender Prevention Order' where the offence is committed under Article 9(1)(a) with the intent to commit unlawful damage to the building or anything therein – Section 55 of the Justice Act (NI) 2015
- 4.*Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)

BURGLARY (Non-Dwelling)

Theft Act (NI) 1969

9. - (1) A person is guilty of burglary if-
- (a) he enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection (2); or
 - (b) having entered any building or part of a building as a trespasser, he steals or attempts to steal anything in the building or that part of it...
- (2) The offences referred to in subsection (1)(a) are offences of stealing anything in the building or part of a building in question, ... and of doing unlawful damage to the building or anything therein.

Maximum Sentence:

Theft Act (NI) 1969, s.7

Indictment: 14 years imprisonment or an unlimited fine or both

Magistrates' Court (NI) Order 1981, Art.46(4)

Summary: 12 months imprisonment or a fine not exceeding the prescribed sum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Unoccupied premises	Community Order	Community Order to 6 months Custody
Occupied premises	4 months Custody	Community Order to 12 months Custody

Examples of Possible Aggravating Factors of Offence

1. Ransacking/ vandalism of the premises
2. Pre-meditation or professional planning
3. Victim deliberately targeted (e.g. out of spite or due to vulnerability)
4. Housebreaking implements carried
5. Forced entry
6. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*

Examples of Possible Mitigating Factor of Offence

1. Offender played only a minor role in the burglary
2. Offence committed on impulse

Relevant Cases:

NI Cases:

1. R v Lendrum (6 August 1993)(Unreported)
2. R v McGill (3 April 1998) (Unreported)
3. R v Black [2003] NICA 51

Notes:

1. Indictable offence triable summarily with consent of the accused except burglary with intent to commit an indictable offence (Art.45 of, and Sch.2 to, the Magistrate's Court (NI) Order 1981).
2. The court may enquire into the factual circumstances of the offence and the personal circumstances of the accused before accepting jurisdiction.
3. A 'specified offence' for the purposes of a 'Violent Offender Prevention Order' where the offence is committed under Article 9(1)(a) with the intent to commit unlawful damage to the building or anything therein – Section 55 of the Justice Act (NI) 2015
- 4.*Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)

HANDLING/RECEIVING STOLEN GOODS

Theft Act (NI) 1969

21. - (1) A person handles stolen goods if (otherwise than in the course of the stealing), knowing or believing them to be stolen goods, he dishonestly receives the goods, or dishonestly undertakes or assists in their retention, removal, disposal or realisation by or for the benefit of another person, or if he arranges to do so.

Maximum Sentence:

Theft Act (NI) 1969, s.7

Indictment: 14 years imprisonment or an unlimited fine or both

Magistrates' Court (NI) Order 1981, Art.46(4)

Summary: 12 months imprisonment or a fine not exceeding the prescribed sum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	3 months Custody	Fine to 12 months Custody

Examples of Possible Aggravating Factors of Offence

1. Closeness of offender to primary offence (geographically or temporally)
2. High level of profit made/expected by offender
3. Seriousness of primary offence (e.g. domestic burglary)
4. High value of goods
5. Features of planning/sophistication

Examples of Possible Mitigating Factor of Offence

1. Little or no benefit to the offender
2. Voluntary restitution to victim

Relevant Cases:

NI Cases:

1. R v Jackson (4 April 1995)(Unreported)
2. R v Corrigan [2010] NICA 23

English Cases:

1. R v Webbe [2002] 1 Cr App R(S) 22

Notes:

1. Indictable offence triable summarily with consent of the accused (Art.45 of, and Sch.2 to, the Magistrate's Court (NI) Order 1981).

MAKING OFF WITHOUT PAYMENT

Theft (NI) Order 1978

- s.5 - (1) Subject to paragraph (3), a person who, knowing that payment on the spot for any goods supplied or service done is required or expected from him, dishonestly makes off without having paid as required or expected and with intent to avoid payment of the amount due shall be guilty of an offence.
- (2) For purposes of this Article “payment on the spot” includes payment at the time of collecting goods on which work has been done or in respect of which service has been provided.
- (3) Paragraph (1) shall not apply where the supply of the goods or the doing of the service is contrary to law, or where the service done is such that payment is not legally enforceable.

Maximum Sentence:

Theft (NI) Order 1978, s.6

Indictment: 2 years imprisonment or an unlimited fine or both

Summary: 6 months imprisonment or a fine not exceeding the prescribed sum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Little or no planning or sophistication	Community Order + Restitution Order	Fine to Community Order + Restitution Order
Acting in unison or part of a group OR Intimidation of victim OR High level of planning or sophistication	Community Order + Restitution Order	Community Order to 6 months Custody + Restitution Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Value of the goods/services 2. Child accompanying offender is involved or aware of theft 3. Victim particularly vulnerable (e.g. small independent shop or service provider)	1. Offender motivated by sense of desperation 2. Voluntary restitution paid

Relevant Cases:

NI Cases:
N/A

English Cases:
N/A

Notes:

1. General power to disqualify from holding a driving licence under Article 91 of the Criminal Justice (NI) Order 2008.

POSSESSING FALSE IDENTITY DOCUMENT WITHOUT REASONABLE EXCUSE

Identity Documents Act 2010

s.6 - (1) It is an offence for a person ("P"), without reasonable excuse, to have in P's possession or under P's control— .
 (a) an identity document that is false, .
 (b) an identity document that was improperly obtained, .
 (c) an identity document that relates to someone else, .
 ...

Maximum Sentence:

Forgery and Counterfeiting Act 1981, s.6

Indictment: 10 years imprisonment or an unlimited fine or both

Summary: 6 months imprisonment or a fine not exceeding the statutory maximum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	3 months Custody	Fine to 6 months Custody

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Clear knowledge that document was false	1. Genuine mistake or ignorance

Relevant Cases:

NI Cases:
N/A

English Cases:
1. R v Ovieriakhi [2009] EWCA Crim 452

Notes:

SOCIAL SECURITY FRAUD

Social Security Administration (NI) Act 1992

Dishonest Representations

105A. - (1) If a person dishonestly-

- (a) makes a false statement or representation; or
- (b) produces or furnishes, or causes or allows to be produced or furnished, any document or information which is false in a material particular;

with a view to obtaining any benefit or other payment or advantage under the relevant social security legislation (whether for himself or for some other person), he shall be guilty of an offence.

[See further s.105A(1A)-(1G) for similar offences]

False Representations

106. - (1) If a person for the purpose of obtaining any benefit or other payment under the relevant social security legislation, whether for himself or some other person, or for any other purpose connected with that legislation-

- (a) makes a statement or representation which he knows to be false; or
- (b) produces or furnishes, or knowingly causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular,

he shall be guilty of an offence.

[See further s.106(1A)-(1G) for similar offences]

Maximum Sentence:

Dishonest Representations – s.105A(3)

Indictment: 7 years imprisonment or an unlimited fine or both

Summary: 6 months imprisonment or statutory maximum fine (£5,000) or both

False Representations – s.106(2)

Summary: 3 months imprisonment or a Level 5 fine (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Offence under s.105A	Community Order	Fine to 6 months Custody
Offence under s.106	Community Order	Fine to 3 months Custody

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Offending carried out over a long period 2. Offender acting in unison with one or more others 3. Planning 4. Offender motivated by greed or desire to live beyond his/her means 5. High value of benefit received 6. False or forged documents used 7. Official documents altered or falsified 8. Claim fraudulent from the outset 	<ol style="list-style-type: none"> 1. Pressurised by others 2. Voluntary repayment of amounts overpaid

Relevant Cases:

NI Cases:

1. R v Duff (5 March 1991) (Unreported)
2. Brady [2011] NICA 4
3. R v Harkin and McCool [2015] NICA 31

English cases:

1. R v Stewart [1987] 1 WLR 559
2. R v Graham and Whatley [2005] 1 Cr App R(S) 115

Notes:

Where accused has not voluntarily repaid the monies the court may make a Restitution Order or Compensation Order.

THEFT (Breach of Trust)

Theft Act (NI) 1969

- 1.- (1) A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and "thief" and "steal" shall be construed accordingly.
 (2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief's own benefit.

Maximum Sentence:

Theft Act (NI) 1969, s.7

Indictment: 10 years imprisonment or an unlimited fine or both

Magistrates' Court (NI) Order 1981, Art.46(4)

Summary: 12 months imprisonment or a fine not exceeding the prescribed sum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Single theft	3 months Custody	Community Order to 6 months Custody
Planned course of conduct	6 months Custody	Community Order to 12 months Custody

Examples of Possible Aggravating Factors of Offence

1. Long course of offending
2. Suspicion deliberately thrown on others
3. Offender motivated by intention to cause harm or out of revenge
4. Elaborate plan to cover-up theft (e.g. falsification of accounts)
5. Value of loss caused
6. Impact on victim

Examples of Possible Mitigating Factor of Offence

1. Return/Replacement of stolen property
2. Offence motivated by sense of desperation

Relevant Cases:

NI Cases:

1. R v Gault [1989] NI 232
2. R v Conlon [1999] 10 BNIL 62
3. R v Millen [2006] NICC 16
4. R v Nurse [2010] NICC 3

English Cases:

1. R v Clark [1998] 2 Cr App Rep 137

Notes:

1. Indictable offence triable summarily with consent of the accused (Art.45 of, and Sch.2 to, the Magistrate's Court (NI) Order 1981).
2. If committed in relation to a motor vehicle then court also has discretion to disqualify from driving (Sch.1 to the Road Traffic Offenders (NI) Order 1996).

THEFT (Shoplifting)

Theft Act (NI) 1969

- 1.- (1) A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and “thief” and “steal” shall be construed accordingly.
 (2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief’s own benefit.

Maximum Sentence:

Theft Act (NI) 1969, s.7

Indictment: 10 years imprisonment or an unlimited fine or both

Magistrates’ Court (NI) Order 1981, Art.46(4)

Summary: 12 months imprisonment or a fine not exceeding the prescribed sum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Little or no planning or sophistication AND goods stolen of low value	Community Order	Fine to Community Order
Evidence of some planning (e.g. going equipped)	Community Order	Fine to 3 months Custody
Organised group AND high level of planning	3 months Custody	Community Order to 6 months Custody

Examples of Possible Aggravating Factors of Offence

1. Child accompanying offender is involved or aware of theft
2. Professional offending
3. Victim particularly vulnerable (e.g. small independent shop)
4. Offender targeted high value goods
5. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*

Examples of Possible Mitigating Factor of Offence

1. Offender motivated by sense of desperation

Relevant Cases:

NI Cases:

1. R v Finkle (4 August 1988)(Unreported)
2. R v Belfast Recorder, ex parte McNally [1992] NI 217

English cases:

1. R v Page [2004] EWCA Crim 3358

Notes:

1. Indictable offence triable summarily with consent of the accused (Art.45 of, and Sch.2 to, the Magistrate’s Court (NI) Order 1981).
- 2.*Where a court finds the offence was aggravated by ‘hostility’ it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)

THEFT (Simpliciter)

Theft Act (NI) 1969

- 1.- (1) A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and “thief” and “steal” shall be construed accordingly.
 (2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief’s own benefit.

Maximum Sentence:

Theft Act (NI) 1969, s.7

Indictment: 10 years imprisonment or an unlimited fine or both

Magistrates’ Court (NI) Order 1981, Art.46(4)

Summary: 12 months imprisonment or a fine not exceeding the prescribed sum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Theft from the person not involving vulnerable victim AND low value	Community Order	Fine to 3 months Custody
Theft from vulnerable victim	4 months Custody	Community Order to 12 months Custody

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Offender motivated by intention to cause harm or out of revenge 2. High level of inconvenience caused to victim (e.g. replacing house keys, credit cards, etc.) 3. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*	N/A

Relevant Cases:

NI Cases:

1. R v Jackson (4 April 1995)(Unreported)
2. R v Boyd [1996] NIJB 130

Notes:

1. Indictable offence triable summarily with consent of the accused (Art.45 of, and Sch.2 to, the Magistrate’s Court (NI) Order 1981).
2. If committed in relation to a motor vehicle then court also has discretion to disqualify from driving (Sch.1 to the Road Traffic Offenders (NI) Order 1996).
- 3.*Where a court finds the offence was aggravated by ‘hostility’ it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)

POSSESSION OF 'CLASS A' DRUGS

Misuse of Drugs Act 1971

- 5.- (1) Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person to have a controlled drug in his possession.
 (2) Subject to section 28 of this Act and to subsection (4) below, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1).

Maximum Sentence:

Misuse of Drugs Act 1971

Summarily: 6 months imprisonment or £5,000 fine or both

Indictment:: 7 years imprisonment or a fine or both

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Possession of a small quantity of the drug for personal use	Fine	Fine to Community Order
Possession of larger amount of the drug for personal use	Community Order	Fine to 3 months Custody

Examples of Possible Aggravating Factors of Offence

1. Offender exercising or acting in position of special responsibility.
2. Possession of drugs in a public place or school.

Examples of Possible Mitigating Factor of Offence

1. Evidence that use was to help cope with a medical condition.

Relevant Cases:

NI Cases

R v Hogg [1994] NI 258

R v Haveron and Others (7 July 1995)(Unreported)

R. v. McIlwaine [1998] NI 136

R. v. Murdock [2003] NICA 21

DPP's Ref (No.2 of 2013)(McKeown); R v Han Lin [2013] NICA 28

DPP's Ref (Nos.1, 2, 3 & 4 of 2015)(Hughes and others) [2015] NICA 53

English Cases

R v Aramah (1982) 4 Cr App R (S) 407.

R v Morris [2001] 1 Cr App R 25

Notes:

1. For exemptions and exceptions to Section 5 see Misuse of Drugs Regulations 2001 (SI 2001 No. 3998), Regulation 10.
2. For defences see Misuse of Drugs Act 1971, section 5(4)

POSSESSION OF 'CLASS B' DRUGS

Misuse of Drugs Act 1971

- 5.- (1) Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person to have a controlled drug in his possession.
 (2) Subject to section 28 of this Act and to subsection (4) below, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1).

Maximum Sentence

Misuse of Drugs Act 1971

Summarily: 3 months imprisonment and/or a fine up to £2,500

Indictment: 5 years imprisonment

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Possession of a small quantity of the drug for personal use	Fine	Fine to Community Order
Possession of larger amount of the drug for personal use	Community order	Community Order to 2 months Custody

Examples of Possible Aggravating Factors of Offence

1. Offender exercising or acting in position of special responsibility.
2. Possession of drugs in a public place or school.

Examples of Possible Mitigating Factor of Offence

1. Evidence that use was to help cope with a medical condition.

Relevant Cases:

NI Cases

R v Hogg [1994] NI 258

R v Haverton and Others (7 July 1995)(Unreported)

R. v. McIlwaine [1998] NI 136

R. v. Murdock [2003] NICA 21

R v Ming Chen [2012] NICA 17

DPP's Ref (No.2 of 2013)(McKeown); R v Han Lin [2013] NICA 28

DPP's Ref (Nos.1, 2, 3 & 4 of 2015)(Hughes and others) [2015] NICA 53

English Cases

R v Aramah (1982) 4 Cr App R (S) 407.

R v Auton [2011] EWCA Crim 76

Notes:

1. For exemptions and exceptions to Section 5, see Misuse of Drugs Regulations 2001 (SI 2001 No. 3998) regulation 10.
2. For defences see Misuse of Drugs Act 1971, section 5(4)

POSSESSION OF 'CLASS C' DRUGS

Misuse of Drugs Act 1971

- 5.- (1) Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person to have a controlled drug in his possession.
 (2) Subject to section 28 of this Act and to subsection (4) below, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1).

Maximum Sentence:

Misuse of Drugs Act 1971

Summarily: 3 months imprisonment and/or £1,000 fine

Indictment: 2 years imprisonment

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Possession of a small quantity of the drug for personal use	Fine	Fine to Community Order
Possession of larger amount of the drug for personal use	Fine	Fine to 2 months Custody

Examples of Possible Aggravating Factors of Offence

1. Offender exercising or acting in position of special responsibility.
2. Possession of drugs in a public place or school.

Examples of Possible Mitigating Factor of Offence

1. Evidence that use was to help cope with a medical condition.

Relevant Cases:

NI Cases

R v Hogg [1994] NI 258

R v Chakwana [2010] NICA 19

DPP's Ref (No.2 of 2013)(McKeown); R v Han Lin [2013] NICA 28

English Cases

N/A

Notes:

1. For exemptions and exceptions to Section 5, see Misuse of Drugs Regulations 2001 (SI 2001 No. 3998) regulation 10.
2. For defences see Misuse of Drugs Act 1971, section 5(4)

POSSESSION OF ‘CLASS A’ DRUGS WITH INTENT TO SUPPLY

Misuse of Drugs Act 1971

5.- (3) Subject to section 28 of this Act, it is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with intent to supply it to another in contravention of section 4(1) of this Act.

Maximum Sentence:

Misuse of Drugs Act 1971, Sch.4

Indictment: 14 years imprisonment

Summarily: 6 months imprisonment and/or Fine of the prescribed sum (£5,000)

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Sharing minimal quantity between equals on a non-commercial basis	Community Order	Fine to Community Order
Small scale retail supply to consumer	3 months Custody	1 - 6 months Custody

Examples of Possible Aggravating Factors of Offence

1. Offender exercising or acting in position of special responsibility.
2. Supply to vulnerable persons including children.
3. Offence committed on/in vicinity of school premises.

Examples of Possible Mitigating Factor of Offence

1. Acting as a social supplier for no financial gain of a controlled drug that the offender lawfully possessed by way of a medical prescription.

Relevant Cases:

NI Cases

R v Hogg [1994] NI 258

R v Haveron and Others (7 July 1995) (Unreported)

R v Darragh & Anor [2001] NICA 7

R v McIlwaine [1998] NI 136

R v Murdock [2003] NICA 21

DPP’s Ref (No.2 of 2013)(McKeown); R v Han Lin [2013] NICA 28

DPP’s Ref (Nos.1, 2, 3 & 4 of 2015)(Hughes and others) [2015] NICA 53

English Cases

R v Aramah (1982) 4 Cr App R (S) 407

R v Ronchetti [1998 2 Cr App R (S) 100

Notes:

POSSESSION OF 'CLASS B' DRUGS WITH INTENT TO SUPPLY

Misuse of Drugs Act 1971

5.- (3) Subject to section 28 of this Act, it is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with intent to supply it to another in contravention of section 4(1) of this Act.

Maximum Sentence:

Misuse of Drugs Act 1971, Sch.4

Indictment: 14 years imprisonment

Summarily: 6 months imprisonment and/or £2,500 Fine

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Sharing minimal quantity between equals on a non-commercial basis	Community Order	Fine to Community Order
Small scale retail supply to consumer	2 months Custody	Community Order to 6 months Custody

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Offender exercising or acting in position of special responsibility. 2. Supply to vulnerable persons including children. 3. Offence committed on/in vicinity of school premises.	1. Acting as a social supplier for no financial gain of a controlled drug that the offender lawfully possessed by way of a medical prescription.

Relevant Cases:

NI Cases

R v Hogg [1994] NI 258

R v Haveron and Others (7 July 1995) (Unreported)

R v Darragh & Anor [2001] NICA 7

R v McIlwaine [1998] NI 136

R v Murdock [2003] NICA 21

R v Ming Chen [2012] NICA 17

DPP's Ref (No.2 of 2013)(McKeown); R v Han Lin [2013] NICA 28

DPP's Ref (Nos.1, 2, 3 & 4 of 2015)(Hughes and others) [2015] NICA 53

English Cases

R v Aramah (1982) 4 Cr App R (S) 407

R v Ronchetti [1998] 2 Cr App R (S) 100

R v Auton [2011] EWCA Crim 76

Notes:

POSSESSION OF ‘CLASS C’ DRUGS WITH INTENT TO SUPPLY

Misuse of Drugs Act 1971

5.- (3) Subject to section 28 of this Act, it is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with intent to supply it to another in contravention of section 4(1) of this Act.

Maximum Sentence

Misuse of Drugs Act 1971, Sch.4

Indictment: 14 years imprisonment

Summarily: 3 months imprisonment and/or £2,500 Fine

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Sharing minimal quantity between equals on a non-commercial basis	Community Order	Fine to Community Order
Small scale retail supply to consumer	1 month Custody	Community Order to 3 months custody

Examples of Possible Aggravating Factors of Offence

1. Offender exercising or acting in position of special responsibility.
2. Supply to vulnerable persons including children.
3. Offence committed on/in vicinity of school premises.

Examples of Possible Mitigating Factor of Offence

1. Acting as a social supplier for no financial gain of a controlled drug that the offender lawfully possessed by way of a medical prescription.

Relevant Cases:

NI Cases

R v. Mellwaine [1998] NI 136

R v. Murdock [2003] NICA 21

DPP’s Ref (No.2 of 2013)(McKeown); R v Han Lin [2013] NICA 28

English Cases

N/A

Notes:

CULTIVATING CANNABIS

Misuse of Drugs Act 1971

6.- (1) Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person to cultivate any plant of the genus Cannabis.
 (2) Subject to section 28 of this Act, it is an offence to cultivate any such plant in contravention of subsection (1) above.

Maximum Sentence:

Misuse of Drugs Act 1971, Sch.4

Indictment: 14 years imprisonment

Summarily: 6 months imprisonment and/or Fine of the prescribed sum (£5,000)

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Very small scale cultivation for personal use only (i.e. one or two plants.)	Fine	Fine to Community Order
Larger scale cultivation	Community Order	Community Order to 6 months custody

Examples of Possible Aggravating Factors of Offence

1. Use of sophisticated growing system
2. Use of sophisticated system of concealment
3. Persistent use/cultivation of cannabis
4. Involvement of vulnerable/young persons

Examples of Possible Mitigating Factor of Offence

1. Evidence drug used to help with a medical condition

Relevant Cases:

NI Cases

R v O'Brien [2011] NICA 74

English Cases

R v Xu [2007] EWCA Crim 3129

R v Quayle & Ors [2005] EWCA Crim 1415 (27 May 2005)

R v Lyon (1997) EWCA Crim 2114 (14 August, 1997)

R v Auton and Others [2011] EWCA Crim 76

Notes:

BREACH OF PROHIBITION NOTICE

Water (NI) Order 1999

8. - (1) Where it appears to the Department that a contravention of Article 7(1) (whether a new contravention or a repetition or continuation of one already occurred or occurring) is likely to occur-
- (a) by reason of any use or proposed use of a waterway or of any land for the disposal of any matter;
 - (b) by reason of any use or proposed use of any land for the storage of any matter; or
 - (c) by reason of any use or proposed use of a vessel or vehicle from which poisonous, noxious or polluting matter may enter a waterway or water contained in any underground strata;
- the Department may serve a notice on the owner of the land or the person so using or proposing so to use the waterway, land, vessel or vehicle-
- (i) prohibiting the use complained of; or
 - (ii) permitting it only subject to conditions designed to remove the grounds of complaint; or
 - (iii) requiring it to be stopped within such period as may be specified in the notice.
- ...
- (5) It is an offence for any person to contravene any prohibition, condition or requirement imposed by a notice served on that person under paragraph (1) which has taken effect ...

Maximum Sentence:

Water (NI) Order 1999, Art.8(9)

Indictment: 2 years imprisonment and/or Unlimited Fine

Summary: 3 months imprisonment and/or the statutory maximum fine (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Offence committed on non-commercial basis	£1,000 Fine + Compensation Order	£750 Fine to 2 months Custody + Compensation Order
Offence committed on commercial basis	2 months Custody + Compensation Order	£3,000 Fine to 3 months Custody + Compensation Order

Examples of Possible Aggravating Factors of Offence

45. Quantity and type of pollutant involved
46. Human health, animal health, or flora were adversely affected (especially where a protected species or a site designated for nature conservation)
47. Extensive clean-up, site restoration or animal rehabilitation operations required
The offending activity occurred near housing, children's play areas or schools, livestock, fishing area or environmentally sensitive sites
48. Offender's attitude towards the relevant authorities or Department was dismissive or obstructive
49. Other lawful activities were prevented or significantly interfered with

Examples of Possible Mitigating Factor of Offence

1. Offender played a relatively minor role, or relatively little personal responsibility, in the commission or the offence

Relevant Cases:

NI Cases:

N/A

English Cases

R v Thames Valley Utilities [2010] EWCA Crim 202

R v Cemex Cement Ltd [2007] EWCA Crim 1759

R v Anglian Water Services Ltd [2003] EWCA Crim 2243

R v Milford Haven Port Authority [2000] 2 Cr App R(S) 423

R v O'Brien and Enkel [2000] 1 Cr App R(S) 358

R v F Howe and Son (Engineer) Ltd [1999] 2 Cr App R(S) 37

R v Garrett [1997] 1 Cr App R(S) 109

Notes:

DEPOSITING WASTE WITHOUT A LICENCE

Waste and Contaminated Land (NI) Order 1997

4. – (1) Subject to paragraphs (2) and (3) a person shall not-
- (a) deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited in or on any land unless a waste management licence authorising the deposit is in force and the deposit is in accordance with the licence;
-
- (6) A person who contravenes paragraph (1) or any condition of a waste management licence shall be guilty of an offence.

Maximum Sentence:

Waste and Contaminated Land (NI) Order 1997, Art.4(8)
Indictment: 5 years imprisonment and/or Unlimited Fine
Summary: 6 months imprisonment and/or £50,000 Fine

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Offence committed on non-commercial basis	Waste NOT containing 'hazardous' material*	£2,500 Fine** + Compensation Order***	£1,000 - £5,000 Fine** + Compensation Order***
	Waste containing 'hazardous' material*	£10,000 Fine** + Compensation Order***	£5,000 Fine** to 3 months Custody + Compensation Order***
Offence committed on commercial basis	Waste NOT containing 'hazardous' material*	£15,000 Fine** + Compensation Order***	£10,000 Fine** to 3 months Custody + Compensation Order***
	Waste containing 'hazardous' material*	2 months Custody + Compensation Order***	£20,000 Fine** to 6 months Custody + Compensation Order***

* 'Hazardous' material includes, but is not limited to, toxic/corrosive chemicals, asbestos and hospital waste.

** **In determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence. – Art.4(11) of the 1997 Order.**

*** When determining the amount of any Compensation Order the loss or damage resulting from the offence includes costs incurred by the owner or occupier of the land, the Department of the Environment or a District Council in removing the waste and taking other steps to eliminate the consequences of the waste being deposited/disposed on the land. – Article 5C of the 1997 Order.

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ul style="list-style-type: none"> 50. Quantity of waste involved 51. Human health, animal health, or flora were adversely affected (especially where a protected species or a site designated for nature conservation) 52. Extensive clean-up, site restoration or animal rehabilitation operations required 53. Waste deposited near housing, children's play areas or schools, livestock or environmentally sensitive sites 54. Offence was a deliberate or reckless breach of the law, rather than the result of carelessness 55. Offender failed to respond to advice/caution/warning from the relevant regulatory authority or Department 56. Offender ignored relevant concerns voiced by employees or others 57. Offender's attitude towards the relevant authorities or Department was dismissive or obstructive 58. Other lawful activities were prevented or significantly interfered with 59. Waste has escaped into a watercourse or the atmosphere 	<ul style="list-style-type: none"> 2. Offender played a relatively minor role, or relatively little personal responsibility, in the commission or the offence 3. Offender genuinely and reasonably lacked awareness or understanding of the regulations specific to the activity in which he was engaged 4. Offence was an isolated lapse 5. Offender's prompt reporting of the offence and ready co-operation with the relative authorities or Department

Relevant Cases:

NI Cases:

R v Allingham and Allingham; R v McKenna [2012] NICA 29
R v Braniff [2016] NICA 9

English Cases

R v Thames Valley Utilities [2010] EWCA Crim 202
R v Cemex Cement Ltd [2007] EWCA Crim 1759
R v Anglian Water Services Ltd [2003] EWCA Crim 2243
R v Milford Haven Port Authority [2000] 2 Cr App R(S) 423
R v O'Brien and Enkel [2000] 1 Cr App R(S) 358
R v F Howe and Son (Engineer) Ltd [1999] 2 Cr App R(S) 37
R v Garrett [1997] 1 Cr App R(S) 109

Notes:

1. The court may order the forfeiture of any vehicle used in or for the purposes of the commission of the offence. – Art.5D of the 1997 Order.
2. The court may order the offender to pay to the Department of the Environment the costs of the investigation of the offence and the costs arising out of the seizure of any vehicle involved in the offence.

DISCHARGE / DEPOSIT OF POLLUTING MATTER

Water (NI) Order 1999

- 7.- (1) Subject to the following provisions of this Part, a person commits an offence if, whether knowingly or otherwise—
- (a) he discharges or deposits any poisonous, noxious or polluting matter so that it enters a waterway or water contained in any underground strata; or
 - (b) he discharges or deposits any matter so that it enters a waterway or water contained in any underground strata and tends either directly or in combination with similar acts (whether his own or those of another) to impede the proper flow of the water of the waterway or strata in a manner leading or likely to lead to pollution or a substantial aggravation of pollution due to other causes or of its consequences.
- (2) Subject to the following provisions of this Part, a person commits an offence if, by any means whatsoever, he makes any discharge of any trade or sewage effluent—
- (a) into a waterway or water contained in any underground strata; or
 - (b) from land, through a pipe, into the sea outside the seaward limits of any waterway.
- (3) On a person's conviction of an offence under paragraph (1), the court by or before which he is convicted may on the application of the Department, of which not less than 10 days' notice has been given to the person charged, make an order directing him to take such measures as the court may consider necessary to remedy or nullify any contravention of paragraph (1).
- (4) A person who fails to comply with an order under paragraph (3) shall be guilty of an offence.
- ...
- (6) Subject to the following provisions of this Part, a person who contravenes the conditions of any [Departmental] consent under Article 7A(3)(a) shall be guilty of an offence.

Maximum Sentence:

Water (NI) Order 1999, Art.7(7)

Indictment: 2 years imprisonment and/or Unlimited Fine

Summary: 3 months imprisonment and/or £20,000 Fine

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Offence committed on non-commercial basis	£2,000 Fine + Compensation Order*	£1,000 Fine to 3 months Custody + Compensation Order**
Offence committed on commercial basis	2 months Custody + Compensation Order*	£10,000 Fine to 3 months Custody + Compensation Order*

* When determining the amount of any Compensation Order the loss or damage resulting from the offence includes costs incurred by the owner or occupier of the land, the Department of the Environment or a District Council in removing the waste and taking other steps to eliminate the consequences of the waste being deposited/disposed on the land. – Article 5C of the 1997 Order.

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
60. Quantity and type of pollutant involved 61. Human health, animal health, or flora were adversely affected (especially where a protected species or a site designated for nature conservation) 62. Extensive clean-up, site restoration or animal rehabilitation operations required 63. Pollutants released near housing, children's play areas or schools, livestock, fishing area or environmentally sensitive sites 64. Offence was a deliberate or reckless breach of the law, rather than the result of carelessness 65. Offender failed to respond to advice/caution/warning from the relevant regulatory authority or Department 66. Offender ignored relevant concerns voiced by employees or others 67. Offender's attitude towards the relevant authorities or Department was dismissive or obstructive 68. Other lawful activities were prevented or significantly interfered with	6. Offender played a relatively minor role, or relatively little personal responsibility, in the commission or the offence 7. Offender genuinely and reasonably lacked awareness or understanding of the regulations specific to the activity in which he was engaged 8. Offence was an isolated lapse 9. Offender's prompt reporting of the offence and ready co-operation with the relative authorities or Department 10. Offender has already made reparations 11. Offender has taken corrective steps to prevent future accidents occurring.

Relevant Cases:

NI Cases:

R v Allingham and Allingham; R v McKenna [2012] NICA 29
 R v Braniff [2016] NICA 9

English Cases

R v Thames Valley Utilities [2010] EWCA Crim 202
 R v Cemex Cement Ltd [2007] EWCA Crim 1759

R v Anglian Water Services Ltd [2003] EWCA Crim 2243
R v Milford Haven Port Authority [2000] 2 Cr App R(S) 423
R v O'Brien and Enkel [2000] 1 Cr App R(S) 358
R v F Howe and Son (Engineer) Ltd [1999] 2 Cr App R(S) 37
R v Garrett [1997] 1 Cr App R(S) 109

Notes:

TREATING / KEEPING / DISPOSING OF WASTE IN MANNER LIKELY TO CAUSE POLLUTION

Waste and Contaminated Land (NI) Order 1997

4. – (1) Subject to paragraphs (2) and (3) a person shall not-

...
(c) treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.

...
(6) A person who contravenes paragraph (1) or any condition of a waste management licence shall be guilty of an offence.

...
(10) In this Article "relevant offence" means an offence under this Article in respect of a contravention of paragraph (1)(c) consisting of the treatment, keeping or disposal within the curtilage of a domestic property of household waste from that property.

Maximum Sentence:

Waste and Contaminated Land (NI) Order 1997, Art.4(8)-(9)

(i) 'Relevant offence' committed by a person other than an 'establishment or undertaking':

Indictment: Unlimited Fine

Summary: Statutory maximum fine (£5,000)

(ii) Not a 'relevant offence', or a 'relevant offence' committed by an 'establishment or undertaking':

Indictment: 5 years imprisonment and/or Unlimited Fine

Summary: 6 months imprisonment and/or £50,000 Fine

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
'Relevant offence' committed by a person other than an 'establishment or undertaking'	£1,000 Fine* + Compensation Order**	£500 - £2,500 Fine* + Compensation Order**
'Relevant offence' committed by an 'establishment or undertaking' OR Not a 'relevant offence' committed on non-commercial basis	£5,000 Fine* + Compensation Order**	£1,000 Fine* to 3 months Custody + Compensation Order**
Not a 'relevant offence' committed on commercial basis	2 months Custody + Compensation Order**	£20,000 Fine* to 6 months Custody + Compensation Order**

*** In determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence. – Art.4(11) of the 1997 Order.**

****** When determining the amount of any Compensation Order the loss or damage resulting from the offence includes costs incurred by the owner or occupier of the land, the Department of the Environment or a District Council in removing the waste and taking other steps to eliminate the consequences of the waste being deposited/disposed on the land. – Article 5C of the 1997 Order.

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
69. Quantity of waste involved 70. Human health, animal health, or flora were adversely affected (especially where a protected species or a site designated for nature conservation) 71. Extensive clean-up, site restoration or animal rehabilitation operations required 72. Waste deposited near housing, children's play areas or schools, livestock or environmentally sensitive sites 73. Offence was a deliberate or reckless breach of the law, rather than the result of carelessness 74. Offender failed to respond to advice/caution/warning from the relevant regulatory authority or Department 75. Offender ignored relevant concerns voiced by employees or others 76. Offender's attitude towards the relevant authorities or Department was dismissive or obstructive 77. Other lawful activities were prevented or significantly interfered with 78. Waste has escaped into a watercourse or the atmosphere	12. Offender played a relatively minor role, or relatively little personal responsibility, in the commission or the offence 13. Offender genuinely and reasonably lacked awareness or understanding of the regulations specific to the activity in which he was engaged 14. Offence was an isolated lapse 15. Offender's prompt reporting of the offence and ready co-operation with the relative authorities or Department

Relevant Cases:

NI Cases:

R v Allingham and Allingham; R v McKenna [2012] NICA 29
R v Braniff [2016] NICA 9

English Cases

R v Thames Valley Utilities [2010] EWCA Crim 202
R v Cemex Cement Ltd [2007] EWCA Crim 1759
R v Anglian Water Services Ltd [2003] EWCA Crim 2243
R v Milford Haven Port Authority [2000] 2 Cr App R(S) 423
R v O'Brien and Enkel [2000] 1 Cr App R(S) 358
R v F Howe and Son (Engineer) Ltd [1999] 2 Cr App R(S) 37
R v Garrett [1997] 1 Cr App R(S) 109

Notes:

1. The court may order the forfeiture of any vehicle used in or for the purposes of the commission of the offence. – Art.5D of the 1997 Order.
2. The court may order the offender to pay to the Department of the Environment the costs of the investigation of the offence and the costs arising out of the seizure of any vehicle involved in the offence.

TREATING / KEEPING / DISPOSING OF WASTE WITHOUT A LICENCE

Waste and Contaminated Land (NI) Order 1997

4. – (1) Subject to paragraphs (2) and (3) a person shall not-

- ...
 (b) treat, keep or dispose of controlled waste, or knowingly cause or knowingly permit controlled waste to be treated, kept or disposed of-
 (i) in or on any land, or
 (ii) by means of any mobile plant,
 except under and in accordance with a waste management licence;
 ...

(6) A person who contravenes paragraph (1) or any condition of a waste management licence shall be guilty of an offence.

Maximum Sentence:

Waste and Contaminated Land (NI) Order 1997, Art.4(8)

Indictment: 5 years imprisonment and/or Unlimited Fine

Summary: 6 months imprisonment and/or £50,000 Fine

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Offence committed on non-commercial basis	Waste NOT containing 'hazardous' material*	£2,500 Fine** + Compensation Order***	£1,000 - £5,000 Fine** + Compensation Order***
	Waste containing 'hazardous' material*	£10,000 Fine** + Compensation Order***	£5,000 Fine** to 3 months Custody + Compensation Order***
Offence committed on commercial basis	Waste NOT containing 'hazardous' material*	£15,000 Fine** + Compensation Order***	£10,000 Fine** to 3 months Custody + Compensation Order***
	Waste containing 'hazardous' material*	2 months Custody + Compensation Order***	£20,000 Fine** to 6 months Custody + Compensation Order***

* 'Hazardous' material includes, but is not limited to, toxic/corrosive chemicals, asbestos and hospital waste.

** **In determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence. – Art.4(11) of the 1997 Order.**

*** When determining the amount of any Compensation Order the loss or damage resulting from the offence includes costs incurred by the owner or occupier of the land, the Department of the Environment or a District Council in removing the waste and taking other steps to eliminate the consequences of the waste being deposited/disposed on the land. – Article 5C of the 1997 Order.

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
79. Quantity of waste involved 80. Human health, animal health, or flora were adversely affected (especially where a protected species or a site designated for nature conservation) 81. Extensive clean-up, site restoration or animal rehabilitation operations required 82. Waste deposited near housing, children's play areas or schools, livestock or environmentally sensitive sites 83. Offence was a deliberate or reckless breach of the law, rather than the result of carelessness 84. Offender failed to respond to advice/caution/warning from the relevant regulatory authority or Department 85. Offender ignored relevant concerns voiced by employees or others 86. Offender's attitude towards the relevant authorities or Department was dismissive or obstructive 87. Other lawful activities were prevented or significantly interfered	16. Offender played a relatively minor role, or relatively little personal responsibility, in the commission or the offence 17. Offender genuinely and reasonably lacked awareness or understanding of the regulations specific to the activity in which he was engaged 18. Offence was an isolated lapse 19. Offender's prompt reporting of the offence and ready co-operation with the relative authorities or Department

with 88. Waste has escaped into a watercourse or the atmosphere	
--	--

Relevant Cases:

NI Cases:

R v Allingham and Allingham; R v McKenna [2012] NICA 29
R v Braniff [2016] NICA 9

English Cases

R v Thames Valley Utilities [2010] EWCA Crim 202
R v Cemex Cement Ltd [2007] EWCA Crim 1759
R v Anglian Water Services Ltd [2003] EWCA Crim 2243
R v Milford Haven Port Authority [2000] 2 Cr App R(S) 423
R v O'Brien and Enkel [2000] 1 Cr App R(S) 358
R v F Howe and Son (Engineer) Ltd [1999] 2 Cr App R(S) 37
R v Garrett [1997] 1 Cr App R(S) 109

Notes:

1. The court may order the forfeiture of any vehicle used in or for the purposes of the commission of the offence. – Art.5D of the 1997 Order.
2. The court may order the offender to pay to the Department of the Environment the costs of the investigation of the offence and the costs arising out of the seizure of any vehicle involved in the offence.

BREACH OF CONDITIONS IN FIREARMS CERTIFICATE

Firearms (NI) Order 2004

Art.6.- (6) A person who fails to comply with any condition subject to which a firearm certificate is held by him shall be guilty of an offence.

Maximum Sentence:

Firearms (NI) Order 2004, Sch. 5

Summary Only: 12 months imprisonment and/or Level 5 fine (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Breach which did not permit other persons to have unlawful access to the firearms		Fine	Fine to Community Order
Breach which permitted other persons to have unlawful access to the firearms	Breach was negligent	Community Order	Fine to Community Order
	Breach was deliberate	Community Order	Community Order to 3 Months Custody
Breach which placed one or more persons at risk of injury	Breach was negligent	3 months Custody	Community Order to 12 months Custody
	Breach was deliberate	6 Months Custody	3-12 months Custody

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Breach resulted in firearm being used for criminal conduct	N/A

Relevant Cases:

NI Cases:

1. Re DGD [firearms certificate] [2011] NIQB 123

English Cases:

N/A

Notes:

1. Where a person (a) is convicted of an offence under the 2004 Order or is convicted of any crime for which he is sentenced to imprisonment/YOC/JJC; or (b) has been ordered to enter into a recognizance to keep the peace or to be of good behaviour a condition of which is that he shall not possess, use or carry a firearm; or (c) is subject to a probation order containing a requirement that he shall not possess, use or carry a firearm; then the court before which he is convicted or by which the order is made may make such order as to the forfeiture or disposal of any firearm or ammunition found in his possession as the court thinks fit and may cancel any firearm certificate held by the person convicted. – Article 72(1)

2. Summary proceedings may be instituted at any time within 4 years from the date of the offence (but if instituted after 6 months from date of offence then require the consent of the Attorney General) – Article 69(4)

POSSESSION OF A FIREARM
(other than handgun or sawn-off shotgun)

Firearms (NI) Order 2004

Art.4.- (1) A person who-

...
(b) has in his possession, or purchases or acquires, a firearm other than a handgun without holding a firearm certificate or otherwise than as authorised by a firearm certificate, shall be guilty of an offence.

Maximum Sentence:

Firearms (NI) Order 2004, Sch. 5

Indictment: 5 years imprisonment or an unlimited fine or both

7 years imprisonment or an unlimited fine or both (if aggravated offence within Article 67)

Summary: 12 months imprisonment or a fine not exceeding statutory maximum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Carrying an unloaded air gun or air rifle	Fine	Fine to 3 months Custody
Carrying loaded air gun or air rifle	Community Order	Community Order to 6 months Custody
Carrying imitation firearm OR Carrying unloaded shotgun without ammunition	3 months Custody	Community Order to 12 months Custody

Examples of Possible Aggravating Factors of Offence

1. Brandishing the firearm
2. Carrying firearm in a busy place
3. Planned illegal use
4. Firearm used to put a person or group of people in fear
5. Where offender is participating in a violent incident

Examples of Possible Mitigating Factor of Offence

1. Firearm to be used for lawful purpose (not amounting to a defence)

Relevant Cases:

NI Cases:

1. R v Caughey [1974] NIJB
2. R v Clinton [2001] NI 207
3. R v Shoukri [2004] NI 181
4. R v McKenzie [2005] NICA 7

English Cases:

1. R v Avis (1998) 2 Cr App R (S) 178
2. R v Sheen and Sheen [2011] EWCA Crim 2461

Notes:

1. "handgun" means any firearm which either has a barrel less than 30 centimetres in length or is less than 60 centimetres in length overall, other than an air gun, a muzzle-loading firearm or a firearm designed as a signalling apparatus.
2. Where a person (a) is convicted of an offence under the 2004 Order or is convicted of any crime for which he is sentenced to imprisonment/YOC/JJC; or (b) has been ordered to enter into a recognizance to keep the peace or to be of good behaviour a condition of which is that he shall not possess, use or carry a firearm; or (c) is subject to a probation order containing a requirement that he shall not possess, use or carry a firearm; then the court before which he is convicted or by which the order is made may make such order as to the forfeiture or disposal of any firearm or ammunition found in his possession as the court thinks fit and may cancel any firearm certificate held by the person convicted. – Article 72(1)

DELIBERATE INFECTION OF ANIMALS

Diseases of Animals (NI) Order 1981

5A. - (1) A person commits an offence if, without lawful authority or excuse (proof of which shall lie on him), he knowingly or recklessly does any act which causes or is intended to cause an animal or bird to be infected with a disease.

(2) A person commits an offence if, without lawful authority or excuse (proof of which shall lie on him), that person acquires or takes possession of an animal or bird which he knows, or ought reasonably to know, to be infected with a disease.

Maximum Sentence:

Diseases of Animals (NI) Order 1981, Art. 52(7)

Indictment: 2 years imprisonment and/or an unlimited fine

Summary: 6 months and/or the statutory maximum fine (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
The disease did not spread to other animals	1 month Custody + Disqualification	£2,000 Fine to 2 months Custody + Disqualification
The disease spread to other animals	3 months Custody + Disqualification	2 – 6 months Custody + Disqualification

Examples of Possible Aggravating Factors of Offence

Examples of Possible Mitigating Factor of Offence

- 89. Offender's attitude towards the relevant authorities or Department was dismissive or obstructive
- 90. Human health was adversely affected by the spread of the disease
- 91. The level of compensation paid out by the Department for destruction of animals as a result of the offence
- 92. The offence was committed for the purpose of financial gain

N/A

Relevant Cases:

NI Cases:

N/A

English Cases

N/A

Notes:

1. If a person is convicted of an offence under Article 5A the court may disqualify him, for such period as it thinks fit, from keeping or dealing in any animals or poultry (or any animals or poultry of a specified kind). – Article 5B(1)
2. If a person is convicted of an offence under Article 5A and, at any time after the date of that conviction, that person is convicted of a further offence under that Article, the court shall disqualify him, for such period as it thinks fit, from keeping or dealing in any animals or poultry (or any animals or poultry of a specified kind). – Article 5B(2)

FAILURE TO CLEANSE AND DISINFECT

Diseases of Animals (NI) Order 1981

52. - (1) Any person who without lawful authority or excuse, proof of which shall lie on him,-
 (a) contravenes any provision of this Order, or of an order of the Department; or
 ...
 shall be guilty of an offence against this Order.

Brucellosis Control Order (Northern Ireland) 2004*

13. - (1) The Department may serve on the owner or occupier of any holding on which there is, or has within 56 days been, an affected or suspected animal or any animal which may have been exposed to the possibility of brucella infection or the carcase of such an animal, a notice requiring him to –
 (a) cleanse and disinfect, at his own expense, and in such manner and within such period as may be specified in the notice –
 (i) all or any part of his holding, and
 (ii) any equipment, appliance, utensil or other thing used in connection with any such animal or carcase;
 (b) soak any litter in an approved disinfectant and destroy such litter in the manner specified in the notice;
 (c) dispose of washings from cleansing and disinfection carried out under sub-paragraph (a) in the manner specified in the notice;
 (d) provide footbaths containing an approved disinfectant at all entrances to and exits from the holding.
 (2) In this Article “washings” means any material, disinfectant or water remaining after the cleansing and disinfection has been carried out.

14. - The Department may, by notice served on the owner or person in charge of any vehicle which is used for the movement or removal of –
 (a) any diseased or suspected animal or carcase; or
 (b) any animal, carcase, litter or dung which is or has been in contact with a diseased or suspected animal or carcase,
 require him, in such manner and within such period as may be specified in the notice, to cleanse and disinfect with an approved disinfectant that vehicle and any equipment, utensil, appliance or other thing used in connection with that carriage.

(*The Brucellosis Control Order (NI) 2004 is merely illustrative of an Order made by the Department under the authority of Article 5 of the 1981 Order. The present guidelines are applicable to the offence of ‘Failure to Cleanse and Disinfect’ contained within any Order made under Article 5 of the 1981 Order.)

Maximum Sentence:

Diseases of Animals (NI) Order 1981, Art. 52(3)(a)

Summary Only: (i) Level 5 fine (£5,000); or
 (ii) In the case of an offence committed with respect to more than five animals or birds, Level 3 fine (£1,000) for each animal or bird; or
 (iii) In the case of an offence committed in relation to carcasses or other inanimate things, Level 5 fine (£5,000) together with a further fine not exceeding Level 3 (£1,000) in respect of every 508 kilogrammes in weight of the carcasses or other things after the first 508 kilogrammes.

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
The disease did not spread to other animals	£500 Fine	£100 - £1,000 Fine
The disease spread to other animals within the herd	£1,000 Fine	£500 - £2,500 Fine
The disease spread to other herds	£3,000 Fine	£2,000 - £5,000 Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
93. Offender’s attitude towards the relevant authorities or Department was dismissive or obstructive 94. Human health was adversely affected by the spread of the disease 95. The level of compensation paid out by the Department for destruction of animals as a result of the offence	N/A

Relevant Cases:

NI Cases:
 N/A

English Cases
 N/A

Notes:

1. Where a person is convicted of an offence under Article 52(1)(a) and is guilty of an offence against that subparagraph within one year after the conviction he shall be guilty of a further offence and shall be liable either to the fine mentioned in Article 52(3)(a) or to imprisonment for a term not exceeding one month – Art. 52(4) of the 1981 Order

FAILURE TO COMPLY WITH RESTRICTIONS

Diseases of Animals (NI) Order 1981

52. - (1) Any person who without lawful authority or excuse, proof of which shall lie on him,-
 (a) contravenes any provision of this Order, or of an order of the Department; or
 ...
 shall be guilty of an offence against this Order.
 ...

Brucellosis Control Order (Northern Ireland) 2004*

8. - (1) The Department may serve a notice on a herd keeper where –
 (a) it suspects that disease may exist or may within 56 days have existed on the holding on which the herd is normally kept;
 (b) a reactor has been found in the herd as a result of an official test;
 (c) a reactor in another herd had access to the herd;
 (d) a reactor in another herd was moved from the herd;
 (e) an animal in the herd has been exposed to the possibility of infection with disease by contact with a reactor;
 (f) a sample of milk from the herd when tested for the presence of brucella infection by the Department has given such result as to cause the Department to suspect that an animal in the herd is infected with disease;
 (g) an animal in the herd has had an abortion and has not been cleared by an official test;
 (h) an animal in the herd has given an inconclusive result to an official test; or
 (i) animals in the herd have been compulsorily slaughtered under Article 15 as animals which have been exposed to a significant risk of infection with disease.

(2) A notice under paragraph (1) may –
 (a) prohibit the movement to or from the holding on which the herd is kept of any animal except under and in accordance with the conditions of a licence issued by the Department;
 (b) require the herd keeper to isolate any animal from other animals;
 (c) require the herd keeper to isolate in a house or building or otherwise under cover, any in-calf animal in the herd immediately before it calves and to keep such animal and any calf it produces in isolation from other animals until it has given a negative reaction to an official test after calving and he has been informed by the Department in writing that it and the calf can join the herd;
 (d) require the herd keeper to detain any animal in his herd on a specified area of the holding on which the herd is kept;
 ...

(*The Brucellosis Control Order (NI) 2004 is merely illustrative of an Order made by the Department under the authority of Article 5 of the 1981 Order. The present guidelines are applicable to the offence of ‘Failure to Comply with Restrictions’ contained within any Order made under Article 5 of the 1981 Order.)

Maximum Sentence:

Diseases of Animals (NI) Order 1981, Art. 52(3)(a)

Summary Only: (i) Level 5 fine (£5,000); or

- (ii) In the case of an offence committed with respect to more than five animals or birds, Level 3 fine (£1,000) for each animal or bird; or
 (iii) In the case of an offence committed in relation to carcasses or other inanimate things, Level 5 fine (£5,000) together with a further fine not exceeding Level 3 (£1,000) in respect of every 508 kilogrammes in weight of the carcasses or other things after the first 508 kilogrammes.

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
The disease did not spread to other herds	£1,000 Fine	£500 - £2,500 Fine
The disease spread to other herds	£3,000 Fine	£2,000 - £5,000 Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
96. Offender’s attitude towards the relevant authorities or Department was dismissive or obstructive 97. Human health was adversely affected by the spread of the disease 98. The level of compensation paid out by the Department for destruction of animals as a result of the offence	N/A

Relevant Cases:

NI Cases:

N/A

English Cases

N/A

Notes:

1. Where a person is convicted of an offence under Article 52(1)(a) and is guilty of an offence against that subparagraph within one year after the conviction he shall be guilty of a further offence and shall be liable either to the fine mentioned in Article 52(3)(a) or to imprisonment for a term not exceeding one month – Art. 52(4) of the 1981 Order

FAILURE TO ISOLATE ANIMAL

Diseases of Animals (NI) Order 1981

10. - (1) Every person having in his possession or under his charge an animal affected with disease shall—
(a) as far as practicable keep that animal separate from animals not so affected;

...

52. - (1) Any person who without lawful authority or excuse, proof of which shall lie on him,-
(a) contravenes any provision of this Order, or of an order of the Department;

...

shall be guilty of an offence against this Order.

...

Brucellosis Control Order (Northern Ireland) 2004*

7. - Where the Department knows or suspects that an animal on any holding has been moved or dealt with otherwise than in accordance with this Order or the Scheme, as the case may be, it may by notice –

(a) require the keeper to –

(i) detain the animal on a specified area of the holding and isolate it from other animals;

...

(*The Brucellosis Control Order (NI) 2004 is merely illustrative of an Order made by the Department under the authority of Article 5 of the 1981 Order. The present guidelines are applicable to the offence of 'Failure to Isolate Animal' contained within any Order made under Article 5 of the 1981 Order.)

Maximum Sentence:

Diseases of Animals (NI) Order 1981, Art. 52(3)(a)

Summary Only: (i) Level 5 fine (£5,000); or

(ii) In the case of an offence committed with respect to more than five animals or birds, Level 3 fine (£1,000) for each animal or bird; or

(iii) In the case of an offence committed in relation to carcasses or other inanimate things, Level 5 fine (£5,000) together with a further fine not exceeding Level 3 (£1,000) in respect of every 508 kilogrammes in weight of the carcasses or other things after the first 508 kilogrammes.

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
The disease did not spread to other animals	£500 Fine	£100 - £1,000 Fine
The disease spread to other animals within the herd	£1,000 Fine	£500 - £2,500 Fine
The disease spread to other herds	£3,000 Fine	£2,000 - £5,000 Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
99. Offender's attitude towards the relevant authorities or Department was dismissive or obstructive 100. Human health was adversely affected by the spread of the disease 101. The level of compensation paid out by the Department for destruction of animals as a result of the offence	N/A

Relevant Cases:

NI Cases:

N/A

English Cases

N/A

Notes:

1. Where a person is convicted of an offence under Article 52(1)(a) and is guilty of an offence against that subparagraph within one year after the conviction he shall be guilty of a further offence and shall be liable either to the fine mentioned in Article 52(3)(a) or to imprisonment for a term not exceeding one month – Art. 52(4) of the 1981 Order

FAILURE TO MAINTAIN FENCES

Diseases of Animals (NI) Order 1981

52. - (1) Any person who without lawful authority or excuse, proof of which shall lie on him,-
 (a) contravenes any provision of this Order, or of an order of the Department; or
 ...
 shall be guilty of an offence against this Order.
 ...

Brucellosis Control Order (Northern Ireland) 2004*

10. - (1) The keeper of a herd shall maintain the fences dividing his holding from adjoining land in such condition as to prevent –
 (a) contact of his herd with animals on adjoining land; and
 (b) his herd from straying from the holding.
 (2) Where a reactor is found in any herd, the keeper of the herd shall take all practical precautions to prevent the infection of any animals kept on the adjoining land by contact with animals on his holding.

(*The Brucellosis Control Order (NI) 2004 is merely illustrative of an Order made by the Department under the authority of Article 5 of the 1981 Order. The present guidelines are applicable to the offence of ‘Failure to Maintain Fences’ contained within any Order made under Article 5 of the 1981 Order.)

Maximum Sentence:

Diseases of Animals (NI) Order 1981, Art. 52(3)(a)

Summary Only: (i) Level 5 fine (£5,000); or

(ii) In the case of an offence committed with respect to more than five animals or birds, Level 3 fine (£1,000) for each animal or bird; or

(iii) In the case of an offence committed in relation to carcasses or other inanimate things, Level 5 fine (£5,000) together with a further fine not exceeding Level 3 (£1,000) in respect of every 508 kilogrammes in weight of the carcasses or other things after the first 508 kilogrammes.

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
The animals were not infected with a disease		£250 Fine	£100 - £500 Fine
The animals were infected with a disease	The disease did not spread to other herds	£1,000 Fine	£500 - £2,500 Fine
	The disease spread to other herds	£3,000 Fine	£2,000 - £5,000 Fine

Examples of Possible Aggravating Factors of Offence

Examples of Possible Mitigating Factor of Offence

102. Offender’s attitude towards the relevant authorities or Department was dismissive or obstructive
 103. Human health was adversely affected by the spread of the disease
 104. The level of compensation paid out by the Department for destruction of animals as a result of the offence

N/A

Relevant Cases:

NI Cases:

N/A

English Cases

N/A

Notes:

1. Where a person is convicted of an offence under Article 52(1)(a) and is guilty of an offence against that subparagraph within one year after the conviction he shall be guilty of a further offence and shall be liable either to the fine mentioned in Article 52(3)(a) or to imprisonment for a term not exceeding one month – Art. 52(4) of the 1981 Order

FAILURE TO NOTIFY BIRTH / DEATH / MOVEMENT OF CATTLE

Cattle Identification (Notification of Births, Deaths and Movements) Regulations (NI) 1999

5. - (1) Any person who fails to comply with the requirement to notify the birth, movement or death of any animal in accordance with the second indent of Article 7.1 of the Council Regulation either in the manner provided for in, or within the time limits specified by, these Regulations shall be guilty of an offence.

(2) Any person who knowingly or recklessly provides information which he knows or believes to be false in any notification sent by him under these Regulations, shall be guilty of an offence.

Maximum Sentence:

Cattle Identification (Notification of Births, Deaths and Movements) Regulations (NI) 1999, Reg.14(2)

Indictment: 2 years imprisonment and/or an unlimited fine

Summarily: 3 months imprisonment and/or the statutory maximum fine (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Offence under Regulation 5(1)	£750 Fine	£500 - £1,500 Fine
Offence under Regulation 5(2)	£1,500 Fine	£1,000 Fine to 2 months Custody

Examples of Possible Aggravating Factors of Offence

Examples of Possible Mitigating Factor of Offence

105. Offender's attitude towards the relevant authorities or Department was dismissive or obstructive
 106. Offence was committed for financial gain
 107. Conduct of the offence increased the risk of spread of disease

N/A

Relevant Cases:

NI Cases:

R v McCracken [2007] NICC 51

English Cases

N/A

Notes:

FAILURE TO NOTIFY PRESENCE OF DISEASE

Diseases of Animals (NI) Order 1981

10. - (1) Every person having in his possession or under his charge an animal affected with disease shall—
 ...
 (b) with all practicable speed give notice of the fact of the animal being so affected to the Department or to a member of the Royal Ulster Constabulary stationed in the district in which the animal so affected is.
52. - (1) Any person who without lawful authority or excuse, proof of which shall lie on him,-
 (a) contravenes any provision of this Order, or of an order of the Department; or
 ...
 shall be guilty of an offence against this Order.
 ...

Brucellosis Control Order (Northern Ireland) 2004*

3. - (1) A keeper of an affected or suspected animal or a herd keeper who knows or suspects that any animal in his herd –
 (a) has been exposed to the possibility of infection by being in contact with an affected animal (other than an animal in his own herd), or
 (b) has been in any other way exposed to the disease
 shall, with all practicable speed, give notice of the fact to a Divisional Veterinary Office.

(*The Brucellosis Control Order (NI) 2004 is merely illustrative of an Order made by the Department under the authority of Article 5 of the 1981 Order. The present guidelines are applicable to the offence of 'Failure to Notify Presence of Disease' contained within any Order made under Article 5 of the 1981 Order.)

Maximum Sentence:

Diseases of Animals (NI) Order 1981, Art. 52(3)(a)

- Summary Only:* (i) Level 5 fine (£5,000); or
 (ii) In the case of an offence committed with respect to more than five animals or birds, Level 3 fine (£1,000) for each animal or bird; or
 (iii) In the case of an offence committed in relation to carcasses or other inanimate things, Level 5 fine (£5,000) together with a further fine not exceeding Level 3 (£1,000) in respect of every 508 kilogrammes in weight of the carcasses or other things after the first 508 kilogrammes.

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
The disease did not spread to other animals	£500 Fine	£100 - £1,000 Fine
The disease spread to other animals within the herd	£1,000 Fine	£500 - £2,500 Fine
The disease spread to other herds	£3,000 Fine	£2,000 - £5,000 Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
108. Offender's attitude towards the relevant authorities or Department was dismissive or obstructive 109. Human health was adversely affected by the spread of the disease 110. The level of compensation paid out by the Department for destruction of animals as a result of the offence	N/A

Relevant Cases:

NI Cases:

N/A

English Cases

N/A

Notes:

1. Where a person is convicted of an offence under Article 52(1)(a) and is guilty of an offence against that subparagraph within one year after the conviction he shall be guilty of a further offence and shall be liable either to the fine mentioned in Article 52(3)(a) or to imprisonment for a term not exceeding one month – Art. 52(4) of the 1981 Order

FAILURE TO PRE-MOVEMENT TEST

Diseases of Animals (NI) Order 1981

52. - (1) Any person who without lawful authority or excuse, proof of which shall lie on him,-
(a) contravenes any provision of this Order, or of an order of the Department; or

...
shall be guilty of an offence against this Order.

...

Brucellosis Control Order (Northern Ireland) 2004*

5. - (2) Subject to paragraphs (3) and (4), an animal shall not make any controlled movement unless –
(a) it has reacted negatively to a pre-movement test on a sample taken from it during the 30 days prior to the date of the movement; or
(b) it is moved under and in accordance with the conditions of a licence issued by the Department.
- (3) If, during the period of 30 days following the taking of a sample for a pre-movement test, an animal makes a controlled movement, that animal shall not make a second or further such movement during the remainder of the 30 day period unless, before the second or further movement, it has reacted negatively to a second or further pre-movement test, as the case may be.
- (4) The requirements of paragraph (3) for a second or further pre-movement test shall not apply in any case where an animal is moved to a market, show or exhibition from a herd where the animal has reacted negatively to a pre-movement test carried out in that herd on a sample taken at any time during the 30 days prior to the date of the movement and during that period the animal has not formed part of any other herd.

(*The Brucellosis Control Order (NI) 2004 is merely illustrative of an Order made by the Department under the authority of Article 5 of the 1981 Order. The present guidelines are applicable to the offence of ‘Failure to Pre-movement Test’ contained within any Order made under Article 5 of the 1981 Order.)

Maximum Sentence:

Diseases of Animals (NI) Order 1981, Art. 52(3)(a)

Summary Only: (i) Level 5 fine (£5,000); or

(ii) In the case of an offence committed with respect to more than five animals or birds, Level 3 fine (£1,000) for each animal or bird; or

(iii) In the case of an offence committed in relation to carcasses or other inanimate things, Level 5 fine (£5,000) together with a further fine not exceeding Level 3 (£1,000) in respect of every 508 kilogrammes in weight of the carcasses or other things after the first 508 kilogrammes.

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Tests indicate the animal was not infected with a disease		£250 Fine	£100 - £500 Fine
Tests indicate the animal was infected with a disease	The disease did not spread to other animals	£1,000 Fine	£500 - £2,500 Fine
	The disease spread to other animals	£3,000 Fine	£2,000 - £5,000 Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
111. Offender’s attitude towards the relevant authorities or Department was dismissive or obstructive 112. Human health was adversely affected by the spread of the disease 113. The level of compensation paid out by the Department for destruction of animals as a result of the offence	N/A

Relevant Cases:

NI Cases:

N/A

English Cases

N/A

Notes:

1. Where a person is convicted of an offence under Article 52(1)(a) and is guilty of an offence against that subparagraph within one year after the conviction he shall be guilty of a further offence and shall be liable either to the fine mentioned in Article 52(3)(a) or to imprisonment for a term not exceeding one month – Art. 52(4) of the 1981 Order

FAILURE TO PRESENT ANIMALS FOR TESTING

Diseases of Animals (NI) Order 1981

52. - (1) Any person who without lawful authority or excuse, proof of which shall lie on him,-
 (a) contravenes any provision of this Order, or of an order of the Department; or
 ...
 shall be guilty of an offence against this Order.

Brucellosis Control Order (Northern Ireland) 2004*

7. - Where the Department knows or suspects that an animal on any holding has been moved or dealt with otherwise than in accordance with this Order or the Scheme, as the case may be, it may by notice –
 (a) require the keeper to –
 ...
 (ii) have a sample from the animal, and if required any other animal on the holding, subjected to an official test, at his own expense and within such time limit as shall be specified in the notice;
 ...

(*The Brucellosis Control Order (NI) 2004 is merely illustrative of an Order made by the Department under the authority of Article 5 of the 1981 Order. The present guidelines are applicable to the offence of ‘Failure to Present Animals for Testing’ contained within any Order made under Article 5 of the 1981 Order.)

Maximum Sentence:

Diseases of Animals (NI) Order 1981, Art. 52(3)(a)

Summary Only: (i) Level 5 fine (£5,000); or
 (ii) In the case of an offence committed with respect to more than five animals or birds, Level 3 fine (£1,000) for each animal or bird; or
 (iii) In the case of an offence committed in relation to carcasses or other inanimate things, Level 5 fine (£5,000) together with a further fine not exceeding Level 3 (£1,000) in respect of every 508 kilogrammes in weight of the carcasses or other things after the first 508 kilogrammes.

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
The disease did not spread to other animals	£500 Fine	£100 - £1,000 Fine
The disease spread to other animals within the herd	£1,000 Fine	£500 - £2,500 Fine
The disease spread to other herds	£3,000 Fine	£2,000 - £5,000 Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
114. Offender’s attitude towards the relevant authorities or Department was dismissive or obstructive 115. Human health was adversely affected by the spread of the disease 116. The level of compensation paid out by the Department for destruction of animals as a result of the offence	N/A

Relevant Cases:

NI Cases:
 N/A

English Cases
 N/A

Notes:

1. Where a person is convicted of an offence under Article 52(1)(a) and is guilty of an offence against that subparagraph within one year after the conviction he shall be guilty of a further offence and shall be liable either to the fine mentioned in Article 52(3)(a) or to imprisonment for a term not exceeding one month – Art. 52(4) of the 1981 Order

BREACH OF EU FOOD HYGIENE PROVISIONS

Food Hygiene Regulations (NI) 2006

17.- (1) Subject to paragraph (4), any person who contravenes any of the specified Community provisions shall be guilty of an offence.

Maximum Sentence

Food Hygiene Regulations (NI) 2006, Reg.17(2)

Indictment: 2 years imprisonment

Summarily: £5,000 fine

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
<p style="text-align: center;"><u>High Culpability</u></p> <p>(e.g. Deliberate breach or flagrant disregard for the law; failing to put in place measures that are recognised standards in the industry; ignoring concerns by regulators, employees or others; allowing breaches to subsist over a long period of time; serious and/or systemic failure within the organisation to address risks to health and safety)</p>	Adverse effect or risk of adverse effect on individuals; OR Relevant authorities unable to trace products;	£2,500	£1,000 - £5,000 Fine
	Little or no risk of actual adverse effect on individuals	£1,000 Fine	£500 - £2,500 Fine
<p style="text-align: center;"><u>Medium Culpability</u></p> <p>(e.g. Systems were in place but were not sufficiently adhered to or implemented)</p>	Adverse effect or risk of adverse effect on individuals; OR Relevant authorities unable to trace products;	£1,000 Fine	£250 - £2,500 Fine
	Little or no risk of actual adverse effect on individuals	£500 Fine	Conditional Discharge to £1,000 Fine
<p style="text-align: center;"><u>Low Culpability</u></p> <p>(e.g. Significant efforts had been made to secure food safety but had been inadequate in the circumstances; there was no warning or indication that food safety was at risk)</p>	Adverse effect or risk of adverse effect on individuals; OR Relevant authorities unable to trace products;	£500 Fine	Conditional Discharge to £1,000 Fine
	Little or no risk of actual adverse effect on individuals	£250 Fine	Conditional Discharge to £500 Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Offence motivated by financial gain 2. Deliberate concealment of illegal nature of activity 3. Established evidence of wider/community impact 4. Breach of any court order 5. Obstruction of justice 6. Poor food safety or hygiene record (not amounting to an offence) 7. Refusal of free advice or training	1. Steps taken voluntarily to remedy problem 2. Self-reporting, high level of co-operation with investigation and acceptance of responsibility. 3. Good food safety/hygiene record

Relevant Cases:

NI Cases

N/A

English Cases

R v Bramall and Bramall (1991) 12 Cr App R(S) 711

R v F and M Dobson Ltd (1995) 16 Cr App R(S) 957

R v Altaf [1999] 1 Cr App R(S) 429

R v Yusuf [2011] 1 Cr App R(S) 47

R v Crestdane [2013] 1 Cr App R(S) 19

Notes:

- The 'specified Community provisions' are those listed in Schedule 2 to the 2006 Regulations – Reg. 2(1) of the 2006 Regulations.
- Court may impose a Hygiene Prohibition Order upon conviction – Reg. 7 of the 2006 Regulations.

BREACH OF HYGIENE EMERGENCY PROHIBITION ORDER

Food Hygiene Regulations (NI) 2006

- 8.- (1) If an authorised officer is satisfied that the health risk condition is fulfilled with respect to any food business, he may, by a notice served on the relevant food business operator (a "hygiene emergency prohibition notice") impose the appropriate prohibition.
- (2) If a court is satisfied, on the application of such an officer, that the health risk condition is fulfilled with respect to any food business, the court shall, by an order (a "hygiene emergency prohibition order"), impose the appropriate prohibition.
-
- (6) As soon as practicable after the making of a hygiene emergency prohibition order, an authorised officer shall—
- (a) serve a copy of the order on the relevant food business operator; and
 - (b) affix a copy of the order in a conspicuous position on such premises used for the purposes of the food business as it considers appropriate,
- and any person who knowingly contravenes such an order shall be guilty of an offence.

Maximum Sentence

Food Hygiene Regulations (NI) 2006, Reg.17(2)

Indictment: 2 years imprisonment

Summarily: £5,000 fine

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	£2,500	£1,000 - £5,000 Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ul style="list-style-type: none"> 1. Offence motivated by financial gain 2. Deliberate concealment of illegal nature of activity 3. Established evidence of wider/community impact 4. Poor food safety or hygiene record (not amounting to an offence) 5. Refusal of free advice or training 	<ul style="list-style-type: none"> 1. Good food safety/hygiene record

Relevant Cases:

NI Cases

N/A

English Cases

N/A

Notes:

- 1. Court may impose a Hygiene Prohibition Order upon conviction – Reg. 7 of the 2006 Regulations.

BREACH OF HYGIENE IMPROVEMENT NOTICE

Food Hygiene Regulations (NI) 2006

6.- (1) If an authorised officer has reasonable grounds for believing that a food business operator is failing to comply with the Hygiene Regulations, he may by a notice served on that person (a "hygiene improvement notice")—

- (a) state the officer's grounds for believing that the food business operator is failing to comply with the Hygiene Regulations;
- (b) specify the matters which constitute the food business operator's failure to comply;
- (c) specify the measures which, in the officer's opinion, the food business operator must take in order to secure compliance; and
- (d) require the food business operator to take those measures, or measures which are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.

(2) Any person who fails to comply with a hygiene improvement notice shall be guilty of an offence.

Maximum Sentence

Food Hygiene Regulations (NI) 2006, Reg.17(2)
Indictment: 2 years imprisonment
Summarily: £5,000 fine

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	£500	Conditional Discharge to £1,000

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ul style="list-style-type: none"> 1. Offence motivated by financial gain 2. Deliberate concealment of illegal nature of activity 3. Established evidence of wider/community impact 4. Poor food safety or hygiene record (not amounting to an offence) 5. Refusal of free advice or training 	<ul style="list-style-type: none"> 1. Good food safety/hygiene record

Relevant Cases:

NI Cases
N/A

English Cases
N/A

Notes:

1. Court may impose a Hygiene Prohibition Order upon conviction – Reg. 7 of the 2006 Regulations.

BREACH OF HYGIENE PROHIBITION ORDER

Food Hygiene Regulations (NI) 2006

7.- (1) If—

- (a) a food business operator is convicted of an offence under these Regulations; and
 - (b) the court by or before which he is so convicted is satisfied that the health risk condition is fulfilled with respect to the food business concerned,
- the court shall by an order impose the appropriate prohibition.

...

(4) If—

- (a) a food business operator is convicted of an offence under these Regulations; and
 - (b) the court by or before which he is so convicted thinks it proper to do so in all the circumstances of the case,
- the court may, by an order, impose a prohibition on the food business operator participating in the management of any food business, or any food business of a class or description specified in the order.

(5) As soon as practicable after the making of an order under paragraph (1) or (4) (a "hygiene prohibition order"), the enforcement authority shall—

- (a) serve a copy of the order on the relevant food business operator; and
 - (b) in the case of an order made under paragraph (1), affix a copy of the order in a conspicuous position on such premises used for the purposes of the food business as they consider appropriate,
- and any person who knowingly contravenes such an order shall be guilty of an offence.

Maximum Sentence

Food Hygiene Regulations (NI) 2006, Reg.17(2)

Indictment: 2 years imprisonment

Summarily: £5,000 fine

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	£2,500	£1,000 - £5,000 Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Offence motivated by financial gain 2. Deliberate concealment of illegal nature of activity 3. Established evidence of wider/community impact 4. Poor food safety or hygiene record (not amounting to an offence) 5. Refusal of free advice or training	1. Good food safety/hygiene record

Relevant Cases:

NI Cases

N/A

English Cases

N/A

Notes:

1. BREACH OF REMEDIAL ACTION NOTICE
2. BREACH OF DETENTION NOTICE

Food Hygiene Regulations (NI) 2006

- 9.- (1) Where it appears to an authorised officer that in respect of an establishment—
- (a) any of the requirements of the Hygiene Regulations is being breached; or
 - (b) inspection under the Hygiene Regulations is being hampered,
- he may, by a notice in writing (a "remedial action notice") served on the relevant food business operator or his duly authorised representative—
- (c) prohibit the use of any equipment or any part of the establishment specified in the notice;
 - (d) impose conditions upon or prohibit the carrying out of any process; or
 - (e) require the rate of operation to be reduced to such extent as is specified in the notice, or to be stopped completely.
- ...
- (5) An authorised officer of an enforcement authority may, at an establishment subject to approval under Article 4(2) of Regulation 853/2004, by a notice in writing (in this regulation referred to as a "detention notice") served on the relevant food business operator or his duly authorised representative, require the detention of any animal or food present for the purpose of examination (including the taking of samples).
- ...
- (7) Any person who fails to comply with a remedial action notice or a detention notice shall be guilty of an offence.

Maximum Sentence

Food Hygiene Regulations (NI) 2006, Reg.17(2)
Indictment: 2 years imprisonment
Summarily: £5,000 fine

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	£2,500	£1,000 - £5,000 Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Offence motivated by financial gain 2. Deliberate concealment of illegal nature of activity 3. Established evidence of wider/community impact 4. Poor food safety or hygiene record (not amounting to an offence) 5. Refusal of free advice or training	1. Good food safety/hygiene record

Relevant Cases:

NI Cases
 N/A

English Cases
 N/A

Notes:

1. Court may impose a Hygiene Prohibition Order upon conviction – Reg. 7 of the 2006 Regulations.

FOOD STANDARDS AND SAFETY

General Food Regulations (NI) 2004

4.- Any person who contravenes any of the following provisions of Regulation (EC) No.178/2002 shall be guilty of an offence—
[(a) ...]

- (b) Article 14(1) (food safety requirements);
- (c) Article 16 (presentation) in so far as it relates to food;
- (d) Article 18(2) or (3) (traceability) in so far as it relates to food business operators;
- (e) Article 19 (responsibilities for food : food business operators)

Maximum Sentence

General Food Regulations (NI) 2004, Reg.6

Indictment: 2 years imprisonment

Summarily: 6 months imprisonment and/or £5,000 fine (for offences NOT under Regulation 4(a))

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
<p style="text-align: center;"><u>High Culpability</u></p> <p>(e.g. Deliberate breach or flagrant disregard for the law; failing to put in place measures that are recognised standards in the industry; ignoring concerns by regulators, employees or others; allowing breaches to subsist over a long period of time; serious and/or systemic failure within the organisation to address risks to health and safety)</p>	Adverse effect or risk of adverse effect on individuals; OR Relevant authorities unable to trace products; OR Consumer misled regarding food's compliance with religious or personal beliefs.	3 months Custody	1-6 months Custody
	Little or no risk of actual adverse effect on individuals	1 month Custody	Community Order to 3 months Custody
<p style="text-align: center;"><u>Medium Culpability</u></p> <p>(e.g. Systems were in place but were not sufficiently adhered to or implemented)</p>	Adverse effect or risk of adverse effect on individuals; OR Relevant authorities unable to trace products; OR Consumer misled regarding food's compliance with religious or personal beliefs.	1 month Custody	Community Order to 3 months Custody
	Little or no risk of actual adverse effect on individuals	Community Order	Fine to Community Order
<p style="text-align: center;"><u>Low Culpability</u></p> <p>(e.g. Significant efforts had been made to secure food safety but had been inadequate in the circumstances; there was no warning or indication that food safety was at risk)</p>	Adverse effect or risk of adverse effect on individuals; OR Relevant authorities unable to trace products; OR Consumer misled regarding food's compliance with religious or personal beliefs.	Community Order	Fine to Community Order
	Little or no risk of actual adverse effect on individuals	Fine	Fine to Community Order

Examples of Possible Aggravating Factors of Offence

1. Offence motivated by financial gain
2. Deliberate concealment of illegal nature of activity
3. Established evidence of wider/community impact
4. Breach of any court order
5. Obstruction of justice

Examples of Possible Mitigating Factor of Offence

1. Steps taken voluntarily to remedy problem
2. Self-reporting and/or high level of co-operation during the investigation beyond what was necessary in the circumstances
3. Good food safety/hygiene record

6. Poor food safety or hygiene record (not amounting to an offence)	
7. Refusal of free advice or training	
<u>Relevant Cases:</u>	
<u>NI Cases</u> N/A	<u>English Cases</u> R v Bramall and Bramall (1991) 12 Cr App R(S) 711 R v F and M Dobson Ltd (1995) 16 Cr App R(S) 957 R v Altaf [1999] 1 Cr App R(S) 429 R v Yusuf [2011] 1 Cr App R(S) 47 R v Crestdane [2013] 1 Cr App R(S) 19
<u>Notes:</u> 1. These sentencing guidelines do not apply to offences under Regulation 4(a) of the 2004 Regulations (food and feed exported from the Community).	

OBSTRUCTING FOOD HYGIENE OFFICER

Food Hygiene Regulations (NI) 2006

- 15.- (1) Any person who—
- (a) intentionally obstructs any person acting in the execution of the Hygiene Regulations; or
 - (b) without reasonable cause, fails to give to any person acting in the execution of the Hygiene Regulations any assistance or information which that person may reasonably require of him for the performance of his functions under the Hygiene Regulations,
- shall be guilty of an offence.
- (2) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (1)(b)—
- (a) furnishes information which he knows to be false or misleading in a material particular; or
 - (b) recklessly furnishes information which is false or misleading in a material particular,
- shall be guilty of an offence.
- (3) Nothing in paragraph (1)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate him.

Maximum Sentence

Food Hygiene Regulations (NI) 2006, Reg.17(2)
Summarily Only: 3 months imprisonment and/or £5,000 fine

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Offence under Regulation 15(1)(a)	Fine	Conditional Discharge to Community Order
Offence under Regulation 15(1)(b)	Fine	Conditional Discharge to Fine
Offence under Regulation 15(2)	Fine	Fine to Community Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Offence motivated by financial gain 2. Deliberate concealment of illegal nature of activity 3. Established evidence of wider/community impact 4. Poor food safety or hygiene record (not amounting to an offence) 5. Refusal of free advice or training	1. Good food safety/hygiene record

Relevant Cases:

NI Cases
N/A

English Cases
N/A

Notes:

1. Court may impose a Hygiene Prohibition Order upon conviction – Reg. 7 of the 2006 Regulations.

BREACH OF HARASSMENT INJUNCTION

Protection from Harassment (NI) Order 1997

3. - (1) A person shall not pursue a course of conduct-
- (a) which amounts to harassment of another; and
 - (b) which he knows or ought to know amounts to harassment of the other.
- ...
5. - (1) An actual or apprehended breach of Article 3 may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.
- ...
- (3) Where—
- (a) in such proceedings the High Court or a county court grants an injunction for the purpose of restraining the defendant from pursuing any conduct which amounts to harassment; and
- ...
- (6) Where—
- (a) the High Court or a county court grants an injunction for the purpose mentioned in paragraph (3)(a); and
 - (b) without reasonable excuse the defendant does anything which he is prohibited from doing by the injunction, he shall be guilty of an offence.

Maximum Sentence:

Protection from Harassment (NI) Order 1997, Article 5(9)

Indictment: 5 years imprisonment or an unlimited fine or both

Summary: 6 months imprisonment or a fine not exceeding the statutory maximum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Breach of a technical nature	Fine + Compensation Order	Fine to Community Order + Compensation Order
Breach of a fundamental nature	3 month Custody + Compensation Order	Community Order to 6 months Custody + Compensation Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Planning or pre-meditation 2. Offender ignores obvious distress to victim 3. Offender involves other persons to assist in the offence 4. Using contact arrangements with a child to instigate/perpetuate the offence 5. Victim requires medical treatment/counselling as a result of the offence 6. Offence caused children to be distressed/frightened 7. Victim forced to leave home 8. Victim particularly vulnerable 9. Offence motivated by, or demonstrating, hostility to victim on account of their membership of a racial group, religious group, sexual orientation group, disability or presumed disability.* 10. Offender using social media to target victim and/or commit the offence (e.g. cyber-bullying) 	<ol style="list-style-type: none"> 1. Victim encourage/facilitated breach

Relevant Cases:

NI Cases:

N/A

English Cases:

1. R v Liddle; R v Hayes [2000] 1 Cr App R(S) 131
2. R v Hargreaves [2011] EWCA Crim 934
3. R v Thomas [2011] EWCA Crim 2340
4. R v Pace [2005] 1 Cr App R (S) 74
5. R v Guminski [2012] EWCA Crim 42

Notes:

1. *Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated – Criminal Justice (No.2)(NI) Order 2004, Article 2)
2. A court sentencing or otherwise dealing with a defendant convicted of an offence may, additionally, make a 'Restraining Order' prohibiting the defendant from doing anything described in the order for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from conduct which amounts to harassment or cause a fear of violence. – Article 7 of the 1997 Order

3. Can be an offence of 'disorder' for the purposes of a 'Regulated Match Banning Order' where it relates to displaying any or other thing which is threatening, abusive or insulting – Section 44 of the Justice Act (NI) 2011

BREACH OF NON-MOLESTATION ORDER

Family Homes and Domestic Violence (NI) Order 1998

25.- Any person who without reasonable excuse contravenes-

- (a) a non-molestation order;
- (b) where there is in force a non-molestation order prohibiting that person from molesting another person, an occupation order or an order under Article 18;
- (c) an exclusion requirement included by virtue of Article 57A of the Children (Northern Ireland) Order 1995 in an interim care order under Article 57 of that Order; or
- (d) an exclusion requirement included by virtue of Article 63A of the Children (Northern Ireland) Order 1995 in an emergency protection order under Article 63 of that Order,

shall be guilty of an offence ...

Maximum Sentence:

Family Homes and Domestic Violence (NI) Order 1998, Article 25

Summary only: 6 months imprisonment or a Level 5 Fine (£5,000) or both [for offences committed on or after 15 November 2005]

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Breach of a technical nature	Fine + Compensation Order	Fine to Community Order + Compensation Order
Breach of a fundamental nature	3 month Custody + Compensation Order	Community Order to 6 months Custody + Compensation Order

Examples of Possible Aggravating Factors of Offence

1. Planning or pre-meditation
2. Offender ignores obvious distress to victim
3. Offender involves other persons to assist in the offence
4. Using contact arrangements with a child to instigate/perpetuate the offence
5. Victim requires medical treatment/counselling as a result of the offence
6. Offence caused children to be distressed/frightened
7. Victim forced to leave home
8. Victim particularly vulnerable
9. Offence motivated by, or demonstrating, hostility to victim on account of their membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*
10. Offender using social media to target victim and/or commit the offence (e.g. cyber-bullying)

Examples of Possible Mitigating Factor of Offence

1. Victim encouraged/facilitated breach

Relevant Cases:

NI Cases:

N/A

English Cases:

1. R v Liddle; R v Hayes [2000] 1 Cr App R(S) 131
2. R v Hargreaves [2011] EWCA Crim 934
3. R v Thomas [2011] EWCA Crim 2340
4. R v Pace [2005] 1 Cr App R (S) 74
5. R v Guminski [2012] EWCA Crim 42

Notes:

1. *Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated – Criminal Justice (No.2)(NI) Order 2004, Article 2)
2. A court sentencing or otherwise dealing with a defendant convicted of an offence may, additionally, make a 'Restraining Order' prohibiting the defendant from doing anything described in the order for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from conduct which amounts to harassment or cause a fear of violence. – Article 7 of the 1997 Order

BREACH OF RESTRAINING ORDER

Protection from Harassment (NI) Order 1997

- 7.- (1) A court sentencing or otherwise dealing with a person ("the defendant") convicted of an offence may (as well as sentencing him or dealing with him in any other way) make an order under this Article.
- (2) The order may, for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from conduct which-
- (a) amounts to harassment; or
- (b) will cause a fear of violence,
- prohibit the defendant from doing anything described in the order.
- ...
- (5) If without reasonable excuse the defendant does anything which he is prohibited from doing by an order under this Article, he shall be guilty of an offence.
- 7A.- (1) A court before which a person ("the defendant") is acquitted of an offence may, if it considers it necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order.
- (2) Paragraphs (3) to (7) of Article 7 apply to an order under this Article as they apply to an order under that one.

Maximum Sentence:

Protection from Harassment (NI) Order 1997, Article 7(6)

Indictment: 5 years imprisonment or an unlimited fine or both

Summary: 6 months imprisonment or a fine not exceeding the statutory maximum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Breach of a technical nature	Fine + Compensation Order	Fine to Community Order + Compensation Order
Breach of a fundamental nature	3 month Custody + Compensation Order	Community Order to 6 months Custody + Compensation Order

Examples of Possible Aggravating Factors of Offence

1. Planning or pre-meditation
2. Offender ignores obvious distress to victim
3. Offender involves other persons to assist in the offence
4. Using contact arrangements with a child to instigate/perpetuate the offence
5. Victim requires medical treatment/counselling as a result of the offence
6. Offence caused children to be distressed/frightened
7. Victim forced to leave home
8. Victim particularly vulnerable
9. Offence motivated by, or demonstrating, hostility to victim on account of their membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*
10. Offender using social media to target victim and/or commit the offence (e.g. cyber-bullying)

Examples of Possible Mitigating Factor of Offence

1. Victim encouraged/facilitated breach

Relevant Cases:

NI Cases:

N/A

English Cases:

1. R v Liddle; R v Hayes [2000] 1 Cr App R(S) 131
2. R v Hargreaves [2011] EWCA Crim 934
3. R v Thomas [2011] EWCA Crim 2340
4. R v Pace [2005] 1 Cr App R (S) 74
5. R v Guminski [2012] EWCA Crim 42

Notes:

1. *Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated – Criminal Justice (No.2)(NI) Order 2004, Article 2)
2. A court sentencing or otherwise dealing with a defendant convicted of an offence may, additionally, make a 'Restraining Order' prohibiting the defendant from doing anything described in the order for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from conduct which amounts to harassment or cause a fear of violence. – Article 7 of the 1997 Order
3. A court dealing with a person for an offence under Article 7 or 7A may vary or discharge the order in question by a further order. – Article 7(7) of

1997 Order

4. Can be an offence of 'disorder' for the purposes of a 'Regulated Match Banning Order' where it relates to displaying any or other thing which is threatening, abusive or insulting – Section 44 of the Justice Act (NI) 2011

HARASSMENT CAUSING FEAR OF VIOLENCE

Protection from Harassment (NI) Order 1997

6. - (1) A person whose course of conduct causes another to fear, on, at least two occasions, that violence will be used against him shall be guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.
- (2) For the purposes of this Article, the person whose course of conduct is in question ought to know that it will cause another to fear that violence will be used against him on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion.
- (3) It is a defence for a person charged with an offence under this Article to show that-
- (a) his course of conduct was pursued for the purpose of preventing or detecting crime;
 - (b) his course of conduct was pursued under any statutory provision or rule of law or to comply with any condition or requirement imposed by any person under any statutory provision; or
 - (c) the pursuit of his course of conduct was reasonable for the protection of himself or another or for the protection of his or another's property.

Maximum Sentence:

Protection from Harassment (NI) Order 1997, Article 6(4)

Indictment: 5 years imprisonment or an unlimited fine or both (for offences committed before 28 September 2004)

7 years imprisonment or an unlimited fine or both (for offences committed on or after 28 September 2004)

Summary: 6 months imprisonment or a fine not exceeding the prescribed sum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Small number of incidents over a relatively short period of time	1 month Custody + Compensation Order	Community Order to 3 months Custody + Compensation Order + Restraining Order
Persistent contact to victim's home, workplace or during the night	2 months Custody + Compensation Order	Community Order to 6 months Custody + Compensation Order + Restraining Order
Taking/making/distributing photographs or images of the victim; OR Sending/publishing offensive material or messages (including the use of social media); OR Threats of sexual violence	4 months Custody + Compensation Order	1-6 months Custody + Compensation Order + Restraining Order

Examples of Possible Aggravating Factors of Offence

1. Planning or pre-meditation
2. Offender ignores obvious distress to victim
3. Offender involves other persons to assist in the offence
4. Using contact arrangements with a child to instigate/perpetuate the offence
5. Victim requires medical treatment/counselling as a result of the offence
6. Offence motivated by, or demonstrating, hostility to victim on account of their membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*
7. Offence caused children to be distressed/frightened
8. Offence committed in the context of bullying at college/university/workplace/etc.
9. Victim forced to leave home
10. Victim particularly vulnerable
11. Evidence of previous instances of actual violence by the offender

Examples of Possible Mitigating Factor of Offence

1. Provocation

<p>against the victim 12. Creating email/website accounts purporting to be the victim 13. Offender using social media to target victim and/or commit the offence (e.g. cyber-bullying)</p>	
<p>Relevant Cases:</p> <p><i>NI Cases:</i> N/A</p> <p><i>English Cases:</i> 1. R v Debnath [2006] 2 Cr.App.R.(S.) 25 2. R v Buxton and others [2011] 2 Cr.App.R.(S.) 23</p>	
<p>Notes:</p> <p>1. *Where a court finds the offence was aggravated by ‘hostility’ it shall state in open court that the offence was so aggravated – Criminal Justice (No.2)(NI) Order 2004, Article 2)</p> <p>2. A court sentencing or otherwise dealing with a defendant convicted of an offence may, additionally, make a ‘Restraining Order’ prohibiting the defendant from doing anything described in the order for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from conduct which amounts to harassment or cause a fear of violence. – Article 7 of the 1997 Order</p> <p>3. Can be an offence of ‘disorder’ for the purposes of a ‘Regulated Match Banning Order’ where it relates to displaying any or other thing which is threatening,, abusive or insulting – Section 44 of the Justice Act (NI) 2011</p>	

HARASSMENT (Simpliciter)

Protection from Harassment (NI) Order 1997

3. - (1) A person shall not pursue a course of conduct-
- (a) which amounts to harassment of another; and
 - (b) which he knows or ought to know amounts to harassment of the other.
- (2) For the purposes of this Article, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.
- (3) Paragraph (1) does not apply to a course of conduct if the person who pursued it shows-
- (a) that it was pursued for the purpose of preventing or detecting crime;
 - (b) that it was pursued under any statutory provision or rule of law or to comply with any condition or requirement imposed by any person under any statutory provision; or
 - (c) that in the particular circumstances the pursuit of the course of conduct was reasonable.
4. - (1) A person who pursues a course of conduct in breach of Article 3 shall be guilty of an offence.
...

Maximum Sentence:

Protection from Harassment (NI) Order 1997, Article 4(2)

Indictment: 2 years imprisonment or an unlimited fine or both (for offences committed on or after 28 September 2004)

Summary: 6 months imprisonment or a fine not exceeding the prescribed sum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Small number of incidents over a relatively short period of time	Community Order + Compensation Order	Fine to Community Order + Compensation Order + Restraining Order
Persistent contact to victim's home, workplace or during the night	1 month Custody + Compensation Order	Community Order to 3 months Custody + Compensation Order + Restraining Order
Taking/making/distributing photographs or images of the victim; OR Sending/publishing offensive material or messages (including the use of social media);	2 months Custody + Compensation Order	1-6 months Custody + Compensation Order + Restraining Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Planning or pre-meditation 2. Offender ignores obvious distress to victim 3. Offender involves other persons to assist in the offence 4. Using contact arrangements with a child to instigate/perpetuate the offence 5. Victim requires medical treatment/counselling as a result of the offence 6. Offence motivated by, or demonstrating, hostility to victim on account of their membership of a racial group, religious group, sexual orientation group, disability or presumed disability.* 7. Offence caused children to be distressed/frightened 8. Offence committed in the context of bullying at college/university/workplace/etc. 9. Victim forced to leave home 10. Victim particularly vulnerable 11. Creating email/website accounts purporting to be the victim 12. Offender using social media to target victim and/or commit the offence (e.g. cyber-bullying) 	<ol style="list-style-type: none"> 1. Provocation

Relevant Cases:

NI Cases:

N/A

English Cases:

1. R v Liddle; R v Hayes [2000] 1 Cr App R(S) 131
2. R v Debnath [2006] 2 Cr.App.R.(S.) 25
3. R v Buxton and others [2011] 2 Cr.App.R.(S.) 23

Notes:

1. *Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated – Criminal Justice (No.2)(NI) Order 2004, Article 2)
2. A court sentencing or otherwise dealing with a defendant convicted of an offence may, additionally, make a 'Restraining Order' prohibiting the defendant from doing anything described in the order for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from conduct which amounts to harassment or cause a fear of violence. – Article 7 of the 1997 Order
3. Can be an offence of 'disorder' for the purposes of a 'Regulated Match Banning Order' where it relates to displaying any or other thing which is threatening,, abusive or insulting – Section 44 of the Justice Act (NI) 2011

OFFENSIVE/MALICIOUS/NUISANCE COMMUNICATIONS

Communications Act 2003

127. - (1) A person is guilty of an offence if he-
- (a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
 - (b) causes any such message or matter to be so sent.
- (2) A person is guilty of an offence if, for the purpose of causing annoyance, inconvenience or needless anxiety to another, he-
- (a) sends by means of a public electronic communications network, a message that he knows to be false,
 - (b) causes such a message to be sent; or
 - (c) persistently makes use of a public electronic communications network.

Maximum Sentence:

Communications Act, section 127(3)

Summary Only: 6 months imprisonment or a fine not exceeding Level 5 (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Offence under Article 127(1)	Single communication	Community Order + Compensation Order	Community Order 2 months Custody + Compensation Order + Restraining Order
	Multiple communications	Community Order + Compensation Order	Community Order to 6 months Custody + Compensation Order + Restraining Order
	Threat of physical or sexual violence	4 months Custody + Compensation Order	Community Order to 6 months Custody + Compensation Order + Restraining Order
Offence under Article 127(2)	Persistent calls over short period to private individual causing inconvenience or annoyance	Community Order + Compensation Order	Fine to Community Order + Compensation Order + Restraining Order
	Single hoax call to public or private organisation resulting in moderate disruption or anxiety	1 month Custody	Community Order to 3 months Custody + Compensation Order + Restraining Order
	Series of hoax calls to public or private organisations resulting in moderate disruption or anxiety; OR Single hoax call resulting in major disruption or substantial public fear or distress	3 month Custody	Community Order to 6 months Custody + Compensation Order + Restraining Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Planning or pre-meditation 2. Intention is to cause distress to victim 3. Offender involves other persons to assist in the offence 4. Offence took place over a protracted period 5. Offence caused children to be distressed/frightened 6. Offence committed in the context of bullying at college/university/workplace/etc. 7. Victim particularly vulnerable 8. Evidence of previous instances of actual violence by the offender against the victim 9. Demonstrating, hostility to victim on account of their membership of a racial group, religious group, sexual orientation group, disability or presumed disability.* 10. Offender using social media to target victim and/or commit the offence (e.g. cyber-bullying) 	<ol style="list-style-type: none"> 1. Provocation
<u>Relevant Cases:</u>	
<p><u>NI Cases:</u> N/A</p>	<p><u>English Cases:</u> <ol style="list-style-type: none"> 1. R v Judge [2009] 1 Cr App R(S) 74 2. R v Debnath [2006] 2 Cr.App.R.(S.) 25 3. R v Buxton and others [2011] 2 Cr.App.R.(S.) 23 </p>
<p><u>Notes:</u></p> <ol style="list-style-type: none"> 1. *Where a court finds the offence was aggravated by ‘hostility’ it shall state in open court that the offence was so aggravated – Criminal Justice (No.2)(NI) Order 2004, Article 2) 2. A court sentencing or otherwise dealing with a defendant convicted of an offence may, additionally, make a ‘Restraining Order’ prohibiting the defendant from doing anything described in the order for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from conduct which amounts to harassment or cause a fear of violence. – Article 7 of the 1997 Order 3. Can be an offence of ‘disorder’ for the purposes of a ‘Regulated Match Banning Order’ where it relates to displaying any or other thing which is threatening,, abusive or insulting – Section 44 of the Justice Act (NI) 2011 	

BREACH OF A TREE PRESERVATION NOTICE

Planning (NI) Order 1991

66. - (1) If any person, in contravention of a tree preservation order, cuts down, uproots or wilfully destroys a tree, or wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it, he shall be guilty of an offence ...

...

(2) If any person contravenes a tree preservation order otherwise than as mentioned in paragraph (1), he shall be guilty of an offence ...

Maximum Sentence:

Planning (NI) Order 1991, Art.66

(1) Offence under Article 66(1)

Indictment: 2 years imprisonment and/or Unlimited Fine

Summary: 6 months imprisonment and/or £30,000 Fine (for offences committed before 4 May 2011)

6 months imprisonment and/or £100,000 Fine (for offences committed on or after 4 May 2011)

(2) Offence under Article 66(2)

Summary: Level 4 Fine (£2,500) (for offences committed on or after 12 November 2003)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Act falling within Article 66(1)	Offence committed on non-commercial basis	£5,000 Fine	Fine to Community Order
	Offence committed on commercial basis	£25,000 Fine	Fine to 3 months Custody
Act falling within Article 66(2)		Fine	Fine

Examples of Possible Aggravating Factors of Offence

Examples of Possible Mitigating Factor of Offence

117. Offence committed for financial gain (whether profit or cost-saving)
118. Nature of offence has necessitated tree being cut down
119. Offence was committed on commercial basis (where offence is an act falling within Article 66(2))

1. Offender had honest belief that tree was not subject to relevant prohibition.

Relevant Cases:

NI Cases:

N/A

English Cases

R v Palmer [1989] 11 Cr App R(S) 407

Notes:

1. In determining the amount of any fine to be imposed on a person convicted of an offence under paragraph (1), the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence. – Article 66(1A) of the 1991 Order

BREACH OF ENFORCEMENT/STOP NOTICE

Planning (NI) Order 1991

72. - (1) Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.
- (2) Where the owner of the land is in breach of an enforcement notice he shall be guilty of an offence.
73. - (1) Where the Department considers it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, it may, when it serves the copy of the enforcement notice or afterwards, serve a notice (in this Order referred to as a "stop notice") referring to, and having annexed to it a copy of, the enforcement notice and prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.
- ...
- (7) If any person contravenes a stop notice after a site notice has been displayed or the stop notice has been served on him he shall be guilty of an offence.
- (7A) An offence under this Article may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this Article by reference to any period of time following the preceding conviction for such an offence.

Maximum Sentence:

Planning (NI) Order 1991, Art. 72(8)

(1) Offence under 72(2):

Indictment: Unlimited Fine

Summary: £30,000 Fine

Planning (NI) Order 1991, Art. 73(7C)

(2) Offence under 73(7):

Indictment: Unlimited Fine

Summary: £30,000 Fine

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	£5,000 Fine	Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
120. Offender initially breached planning laws for financial gain (whether profit or cost-saving) 121. Continuing offence being committed for financial gain (whether profit or cost-saving) 122. Offence being committed on a commercial basis 123. Continuing offence causing harm or nuisance to third persons	N/A

Relevant Cases:

NI Cases:

Planning Service v Young [2010] NIMag 5

English Cases

R v Fehily (1985) 7 Cr App R(S) 82

R v Dunn (1990) 12 Cr App R(S) 225

R v Ayling [1996] 2 Cr App R(S) 266

Notes:

1. In determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence. – Articles 72(9) and 73(7D) of the 1991 Order

DAMAGING TREE IN CONSERVATION AREA

Planning (NI) Order 1991

66. - (1) If any person, in contravention of a tree preservation order, cuts down, uproots or wilfully destroys a tree, or wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it ...
 ...
 (2) If any person contravenes a tree preservation order otherwise than as mentioned in paragraph (1) ...
- 66A. - (1) Subject to the provisions of this Article and Article 66B, any person who, in relation to a tree to which this Article applies, does any act which might by virtue of Article 65(1)(a) be prohibited by a tree preservation order shall be guilty of an offence.
 (2) Subject to Article 66B, this Article applies to any tree in a conservation area in respect of which no tree preservation order is for the time being in force.
 ...
 (4) Article 66 shall apply to an offence under this Article as it applies to a contravention of a tree preservation order.

Maximum Sentence:

Planning (NI) Order 1991, Art. 66

(1) An act falling within Article 66(1)

Indictment: 2 years imprisonment and/or Unlimited Fine

Summary: 6 months imprisonment and/or £30,000 Fine (for offences committed before 4 May 2011)

6 months imprisonment and/or £100,000 Fine (for offences committed on or after 4 May 2011)

(2) An act falling within Article 66(2)

Summary: Level 3 Fine (£1,000) (for offences committed before 4 May 2011)

Level 4 Fine (£2,500) (for offences committed on or after 4 May 2011)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Act falling within Article 66(1)	Offence committed on non-commercial basis	£5,000 Fine	Fine to Community Order
	Offence committed on commercial basis	£25,000 Fine	Fine to 3 months Custody
Act falling within Article 66(2)		Fine	Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
124. Offence committed for financial gain (whether profit or cost-saving) 125. Nature of offence has necessitated tree being cut down 126. Offence committed on commercial basis (where offence is an act falling within Article 66(2))	1. Offender had honest belief that tree was not subject to relevant prohibition.

Relevant Cases:

NI Cases:

N/A

English Cases

R v Palmer [1989] 11 Cr App R(S) 407

Notes:

DAMAGING A LISTED BUILDING

Planning (NI) Order 1991

49. - (1) Where a building, not being a building excluded by paragraph (8) of Article 44 from the operation of that Article, is included in a list compiled under Article 42, then, if any person who, but for this Article, would be entitled to do so-
- (a) does or permits the doing of any act which causes or is likely to result in damage to the building (other than an act for the execution of excepted works); and
 - (b) does or permits the act with the intention of causing such damage;
- he shall be guilty of an offence ...
- (2) In paragraph (1) "excepted works" means-
- (a) works authorised by planning permission granted in pursuance of an application under this Order; or
 - (b) works for which listed building consent has been given under this Order.
- (3) Where a person convicted under this Article fails to take such reasonable steps as may be necessary to prevent any damage or further damage resulting from the offence, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day on which the failure continues.

Maximum Sentence:

Planning (NI) Order 1991, Art. 49(1)
Summary only: Level 3 Fine (£1,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	Fine	Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
127. Offence committed for financial gain (whether profit or cost-saving) 128. Inability to re-instate works carried out 129. Nature of offence has necessitated the listed building being demolished	20. Re-instatement (as far as possible) of original works has been undertaken by the offender

Relevant Cases:

NI Cases:
N/A

English Cases
N/A

Notes:

NON-COMPLIANCE WITH PLANNING CONTRAVENTION NOTICE

Planning (NI) Order 1991

67D. - (1) If, at any time after the end of the period of 21 days beginning with the day on which a planning contravention notice has been served on any person, he has not complied with any requirement of the notice, he shall be guilty of an offence.
 (2) An offence under paragraph (1) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction for such an offence.

Maximum Sentence:

Planning (NI) Order 1991, Art. 67D(4)
Summary only: Level 3 Fine (£1,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	Fine	Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
130. Offender initially breached planning laws for financial gain (whether profit or cost-saving) 131. Continuing offence being committed for financial gain (whether profit or cost-saving) 132. Offence being committed on a commercial basis 133. Continuing offence causing harm or nuisance to third persons	N/A

Relevant Cases:

NI Cases:
 N/A

English Cases
 R v Fehily (1985) 7 Cr App R(S) 82
 R v Dunn (1990) 12 Cr App R(S) 225
 R v Ayling [1996] 2 Cr App R(S) 266

Notes:

WORKING ON LISTED BUILDING WITHOUT CONSENT

Planning (NI) Order 1991

44.– (1) Subject to this Part, if a person executes or causes to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, and the works are not authorised under paragraph (2), he shall be guilty of an offence.

...

(5) Without prejudice to paragraph (1), if a person executing or causing to be executed any works in relation to a listed building under a listed building consent fails to comply with any condition attached to the consent he shall be guilty of an offence.

Maximum Sentence:

Planning (NI) Order 1991, Art.44(6)

Indictment: 2 years imprisonment and/or Unlimited Fine

Summary: 6 months imprisonment and/or £30,000 Fine (for offences committed before 4 May 2011)

6 months imprisonment and/or £100,000 Fine (for offences committed on or after 4 May 2011)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Technical breach of condition attached to listed building consent (e.g. wrong size of window installed) OR Offence committed on non-commercial basis	£5,000 Fine	Fine to Community Order
Offence committed on commercial basis	£25,000 Fine	Fine to 3 months Custody

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
134. Offence committed for financial gain (whether profit or cost-saving) 135. Offender failed to engage with the relevant authorities prior to works being carried out 136. Offender committed offence following refusal of authorisation by the relevant authorities 137. Inability to re-instate works carried out 138. Nature of offence has necessitated the listed building being demolished	21. Re-instatement (as far as possible) of original works has been undertaken by the offender

Relevant Cases:

NI Cases:

N/A

English Cases

N/A

Notes:

1. In determining the amount of any fine imposed on a person convicted of an offence under paragraph (1) or (5) the court shall have particular regard to any financial benefit which has accrued or is likely to accrue to him in consequence of the offence. – Article 6 of the 1991 Order

POSSESSION OF PSYCHOACTIVE SUBSTANCE IN CUSTODIAL INSTITUTION

Psychoactive Substances Act 2016

9.- (1) A person commits an offence if—

- (a) the person is in possession of a psychoactive substance in a custodial institution,
- (b) the person knows or suspects that the substance is a psychoactive substance, and
- (c) the person intends to consume the psychoactive substance for its psychoactive effects.

Maximum Sentence

Psychoactive Substances Act 2016, s.10(2)

Indictment: 2 years imprisonment

Summarily: 6 months imprisonment and/or £5,000 Fine

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	1 month Custody	Fine to 3 months Custody

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
N/A	N/A

Relevant Cases:

NI Cases

N/A

English Cases

N/A

Notes:

POSSESSION OF PSYCHOACTIVE SUBSTANCE WITH INTENT TO SUPPLY

Psychoactive Substances Act 2016

7.- (1) A person commits an offence if—

- (a) the person is in possession of a psychoactive substance,
- (b) the person knows or suspects that the substance is a psychoactive substance, and
- (c) the person intends to supply the psychoactive substance to another person for its consumption, whether by any person to whom it is supplied or by some other person, for its psychoactive effects.

Maximum Sentence

Psychoactive Substances Act 2016, s.10(1)

Indictment: 7 years imprisonment

Summarily: 6 months imprisonment and/or £5,000 Fine

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Sharing minimal quantity between equals on a non-commercial basis	Community Order	Fine to Community Order
Small scale retail supply to consumer	2 month Custody	Community Order to 6 months custody

Examples of Possible Aggravating Factors of Offence

Examples of Possible Mitigating Factor of Offence

1. Offender exercising or acting in position of special responsibility.
2. Supply to vulnerable persons including children.
3. Offence committed on/in vicinity of school premises.

N/A

Relevant Cases:

NI Cases

N/A

English Cases

N/A

Notes:

PRODUCTION OF PSYCHOACTIVE SUBSTANCE

Psychoactive Substances Act 2016

4.- (1) A person commits an offence if—
 (a) the person intentionally produces a psychoactive substance,
 (b) the person knows or suspects that the substance is a psychoactive substance, and
 (c) the person—
 (i) intends to consume the psychoactive substance for its psychoactive effects, or
 (ii) knows, or is reckless as to whether, the psychoactive substance is likely to be consumed by some other person for its psychoactive effects.

Maximum Sentence

Psychoactive Substances Act 2016, s.10(1)

Indictment: 7 years imprisonment

Summarily: 6 months imprisonment and/or £5,000 Fine

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Very small scale production for limited personal use only	Fine	Fine to Community Order
Larger scale production	Community Order	Community Order to 6 months custody

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Use of sophisticated production system 2. Use of sophisticated system of concealment 4. Involvement of vulnerable/young persons	N/A

Relevant Cases:

NI Cases

N/A

English Cases

N/A

Notes:

SUPPLYING/OFFERING TO SUPPLY A PSYCHOACTIVE SUBSTANCE

Psychoactive Substances Act 2016

- 5.- (1) A person commits an offence if—
- (a) the person intentionally supplies a substance to another person,
 - (b) the substance is a psychoactive substance,
 - (c) the person knows or suspects, or ought to know or suspect, that the substance is a psychoactive substance, and
 - (d) the person knows, or is reckless as to whether, the psychoactive substance is likely to be consumed by the person to whom it is supplied, or by some other person, for its psychoactive effects.
- (2) A person (“P”) commits an offence if—
- (a) P offers to supply a psychoactive substance to another person (“R”), and
 - (b) P knows or is reckless as to whether R, or some other person, would, if P supplied a substance to R in accordance with the offer, be likely to consume the substance for its psychoactive effects.
- 6.- (1) This section applies if—
- (a) a court is considering the seriousness of an offence under section 5, and
 - (b) at the time the offence was committed the offender was aged 18 or over.
- (2) If condition A, B or C is met the court—
- (a) must treat the fact that the condition is met as an aggravating factor (that is to say, a factor that increases the seriousness of the offence), and
 - (b) must state in open court that the offence is so aggravated.
- (3) Condition A is that the offence was committed on or in the vicinity of school premises at a relevant time.
...
- (6) Condition B is that in connection with the commission of the offence the offender used a courier who, at the time the offence was committed, was under the age of 18.
...
- (9) Condition C is that the offence was committed in a custodial institution.

Maximum Sentence

Psychoactive Substances Act 2016, s.10(1)

Indictment: 7 years imprisonment

Summarily: 6 months imprisonment and/or £5,000 Fine

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Offering to Supply	Minimal quantity between equals on a non-commercial basis	Community Order	Fine to Community Order
	Small scale retail supply to consumer	2 month Custody	Community Order to 3 months custody
Supplying	Minimal quantity between equals on a non-commercial basis	Community Order	Community Order to 6 months custody
	Small scale retail supply to consumer	3 month Custody	Community Order to 6 months Custody
Aggravated Offence (section 6 of the 2016 Act)		4 months	3 – 6 months Custody

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Offender exercising or acting in position of special responsibility. 2. Supply to vulnerable persons including children.	

Relevant Cases:

NI Cases
N/A

English Cases
N/A

Notes:

BREACH OF THE PEACE

The Public Order (NI) Order 1987

18.- (1) A person who in any public place uses-

(a) ...

(b) behaviour whereby a breach of the peace is likely to be occasioned,

shall be guilty of an offence.

Maximum Sentence:

Public Order (NI) Order 1987, Art.18(2)

Summary Only: 6 months imprisonment and/or Level 5 fine (£5,000)

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Shouting and/or causing a disturbance for some minutes.	Fine	Conditional Discharge to Fine
Substantial disturbance	Community Order	Community Order to 3 months Custody

Examples of Possible Aggravating Factors of Offence

1. Offence committed at school, hospital or other place where vulnerable persons may be present
2. Offence committed on a public transport
3. Group action
4. Time of day
5. Offence motivated by, or demonstrating, hostility to persons on account of their membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*

Examples of Possible Mitigating Factor of Offence

1. Provocation

Relevant Cases:

N/A

Notes:

1. *Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)
2. Can be an offence of 'disorder' for the purposes of a 'Regulated Match Banning Order' – Section 44 of the Justice Act (NI) 2011

CRIMINAL DAMAGE

Criminal Damage (NI) Order 1977

3.- (1) A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.

Maximum Sentence:

Criminal Damage (NI) Order 1977, Art.9

Summarily: 2 years imprisonment and/or Level 5 fine (£5,000)

Indictment: 14 years imprisonment

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Minor damage (e.g. breaking a small window; small amount of graffiti)	Fine* + Compensation Order	Fine to Community Order** + Compensation Order
Moderate damage (e.g. breaking a large plate glass window or shop window; widespread graffiti)	Community Order* + Compensation Order	Community Order to 3 months Custody** + Compensation Order
Significant damage (e.g. breaking multiple windows)	3 months Custody* + Compensation Order	Community Order to 12 months Custody** + Compensation Order

* Where a court finds the offence was 'committed in the context of domestic violence' or where 'the victim was engaged in providing a service to the public' it shall use a starting point higher than that prescribed.

** Where a court finds the offence was 'committed in the context of domestic violence' or where 'the victim was engaged in providing a service to the public' it may impose a sentence outside the prescribed sentencing range.

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
6. Revenge attack 7. Targeting a vulnerable victim 8. Damage to emergency equipment 9. Damage to a public amenity 10. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*** 11. Attack performed by a group / gang	N/A

Relevant Cases:

NI Cases:

Attorney General's Reference (No. 10 and 11 of 2009) [2009] NICA 63
R v Martin [2010] NICA 26

English Cases:

R v Gwynn [2002] EWCA Crim 2951
R v Roberts & Ors [1997] EWCA Crim 3013
R v Tuplin [2009] EWCA Crim 1572

Notes:

1. ***Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)

2. Can be an offence of 'violence' for the purposes of a 'Regulated Match Banning Order' – Section 44 of the Justice Act (NI) 2011

DISORDERLY BEHAVIOUR

Public Order (NI) Order 1987

18. – (1) A person who in any public place uses-
(a) disorderly behaviour; or
(b) ...
shall be guilty of an offence.

Maximum Sentence:

Public Order (NI) Order 1987, Art.18(2)

Summary Only: 6 months imprisonment and/or Level 5 fine (£5,000)

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Shouting and/or causing a disturbance for some minutes.	Fine	Conditional Discharge to Fine
Substantial disturbance caused with violence	Community Order	Community Order to 3 months Custody

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
12. Group action 13. Offence committed at school, hospital or other place where vulnerable persons may be present 14. Offence committed on public transport 15. Victim providing public service 16. Time of day 17. Offence motivated by, or demonstrating, hostility to persons on account of their membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*	1. Provocation

Relevant Cases:

NI Cases:

N/A

English Cases:

R v Stewart [1998] EWCA Crim 751

R v Lamb [2005] EWCA Crim 3000

R v Turnbull [1996] EWCA Crim 258

Notes:

1. *Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)

2. Can be an offence of 'disorder' for the purposes of a 'Regulated Match Banning Order' – Section 44 of the Justice Act (NI) 2011

OBSTRUCTING POLICE

Police (NI) Act 1998

66. – (1) Any person who assaults, resists, obstructs or impedes a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence.

Maximum Sentence:

Police (NI) Act 1998, Art.66(2)

Summarily: 6 months imprisonment and/or to the statutory maximum fine (£5,000)

Indictment: 2 years imprisonment

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Attempt to prevent arrest or impede police action OR Giving false details	Fine	Conditional Discharge to Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
18. Premeditated action 19. Aggressive words / threats	1. Genuine mistake or misjudgement

Relevant Cases:

NI Cases:

Murtagh v Fitzpatrick [1989] 8 NIJB 78.

Attorney General's Reference (No 1 of 1991) (Gallagher) [1991] NI 218

R v Robinson [2001] 8 BNIL 85

English Cases:

R v Black & Anor [1998] EWCA Crim 1535

R v Nixon [1999] EWCA Crim 2072

Notes:

1. A 'specified offence' for the purposes of a 'Violent Offender Prevention Order' – Section 55 of the Justice Act (NI) 2015

POSSESSION OF AN OFFENSIVE WEAPON

Public Order (NI) Order 1987

22. – (1) A person who, without lawful authority or reasonable excuse (proof of which lies on him), has with him in any public place any offensive weapon shall be guilty of an offence.

Maximum Sentence:

Public Order (NI) Order 1987

Summarily: 12 months imprisonment and/or the statutory maximum fine (£5,000) (for offences committed on or after 16 July 2008)

6 months imprisonment and/or the statutory maximum fine (£5,000) (for offences committed before 16 July 2008)

Indictment: 4 years imprisonment

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Offender possessing concealed weapon	Community Order	Community Order to 3 months Custody
Offender possessing weapon in public view	3 months Custody	Community Order to 9 months Custody

Examples of Possible Aggravating Factors of Offence

Examples of Possible Mitigating Factor of Offence

20. Nature of weapon 21. Specifically planned use of weapon to commit violence, threaten violence, or intimidate 22. Offence motivated by, or demonstrating, hostility to persons on account of their membership of a racial group, religious group, sexual orientation group, disability or presumed disability.* 23. Offender operating in a group or gang 24. Offence committed at school, hospital, or other place where vulnerable persons may be present 25. Offence committed on premises where people carrying out public services 26. Offence committed on public transport	N/A
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Relevant Cases:

NI Cases:

N/A

English Cases:

R v Stark [1998] EWCA Crim 1106
 R v Johnson [1996] EWCA Crim 970
 R v Casey [1996] EWCA Crim 461
 R v Webster [1985] 7 Cr.App.R. (S) 359
 R v Simpson [1992] 13 Cr.App.R (S) 665
 R v Bristow [1997] EWCA Crim 2662
 R v Edwards [2006] EWCA Crim 3362

Notes:

1. *Where a court finds the offence was aggravated by ‘hostility’ it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)

2. “Offensive weapon” means any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him or by some other person – Article 22(2) of the Public Order (NI) Order 1987

RESISTING POLICE

Police (NI) Act 1998

66. – (1) Any person who assaults, resists, obstructs or impedes a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence.

Maximum Sentence:

Police (NI) Act 1998, Art.66(2)

Summarily: 6 months imprisonment and/or to the statutory maximum fine (£5,000)

Indictment: 2 years imprisonment

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Attempting to prevent arrest or other police action without physical resistance/intervention	Fine	Conditional Discharge to Fine
Physical resistance/intervention falling short of assault	Fine	Fine to Community Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
27. Premeditated action 28. Aggressive words / threats 29. Aggressive group action	2. Genuine mistake or misjudgement

Relevant Cases:

NI Cases:

In the Matter of Tennyson [2001] NICA 38

R v Beckett [2008] NICC 10

Murtagh v Fitzpatrick [1989] 8 NIJB 78

Attorney General's Reference (No 1 of 1991) (Gallagher) [1991] NI 218

Robinson (1999) [2001] 8 BNIL 85

English Cases:

N/A

Notes:

RIOTOUS BEHAVIOUR

Public Order (NI) Order 1987

18. – (3) A person who in any public place uses riotous behaviour shall be guilty of an offence.

Maximum Sentence:

Public Order (NI) Order 1987, Art.18(4)

Summary Only: 12 months imprisonment and/or Level 5 Fine (£5,000)

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Verbal disturbance lasting for an extended period of time.	2 months Custody	Community Order to 4 months Custody
Violent disturbance that caused a major disruption to the public or a particular group.	4 months Custody	Community Order to 8 months Custody
Violent disturbance that included the use of petrol bombs, rocks, or other dangerous projectiles and caused a major disruption and safety risk to the public.	6 months Custody	3 - 12 months Custody

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
30. Level of planning and participation by the offender 31. Size of the rioting crowd 32. Role of the offender in starting / inciting the riotous behaviour 33. Length of the incident 34. Offence committed at school, hospital or other place where vulnerable persons may be present 35. Damage to property 36. Offence motivated by, or demonstrating, hostility to persons on account of their membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*	N/A

Relevant Cases:

NI Cases:

R v Leiper [2001] NICA 42

R v Shaw and Houston [1989] 8 NIJB 60

R v Blaney & Ors [1989] NI 286

Attorney General's Reference (Nos. 3 and 4 of 1992) [1993] 3 NIJB 110

R v Dean (18 February 1997) (Unreported)

DPP's Ref (Nos. 13, 14 & 15 of 2013)(McKeown & others) [2013] NICA

63

English Cases

R v Blackshaw and Others [2011] EWCA Crim 2312

Notes:

1. *Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)

2. Can be an offence of 'disorder' for the purposes of a 'Regulated Match Banning Order' – Section 44 of the Justice Act (NI) 2011

THREATS TO DAMAGE PROPERTY

The Criminal Damage (NI) Order 1977

4.- A person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out,-
 (a) to destroy or damage any property belonging to that other or a third person; or
 (b) to destroy or damage his own property in a way which he knows is likely to endanger the life of that other or a third person;
 shall be guilty of an offence.

Maximum Sentence:

Criminal Damage (NI) Order 1977, Art.9
 Summarily: 2 years imprisonment and/or Level 5 fine (£5,000)
 Indictment: 14 years imprisonment

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Single threat uttered in the heat of the moment and no more than a fleeting impact on victim	Fine*	Fine to Community Order**
Single calculated threat OR Victim has genuine fear that threat may be carried out	Fine*	Fine to 3 months Custody**
Repeated threats OR Offender had visible weapon when making threat	2 months Custody*	Community Order to 6 months Custody**

* Where a court finds the offence was 'committed in the context of domestic violence' or where 'the victim was engaged in providing a service to the public' it shall use a starting point higher than that prescribed.

** Where a court finds the offence was 'committed in the context of domestic violence' or where 'the victim was engaged in providing a service to the public' it may impose a sentence outside the prescribed sentencing range.

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Vulnerable victim 2. As a result of the threat the victim needed medical help or counselling 4. Offender deliberately isolated victim 5. Group action 6. Threat directed at victim because of job 7. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.***	1. Provocation

Relevant Cases:

NI Cases:
 R v Hughes [2003] NICA 16

English Cases:
 R v McNally [1996] EWCA Crim 1333
 R v Sullivan [1997] EWCA Crim 1198

Notes:

- ***Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)
- Can be an offence of 'violence' for the purposes of a 'Regulated Match Banning Order' – Section 44 of the Justice Act (NI) 2011

AGGRAVATED VEHICLE TAKING

Road Traffic (NI) Order 1981

- 172A.- (1) Subject to paragraph (3), a person is guilty of aggravated taking of a motor vehicle if-
- (a) he commits an offence under Article 172(1) [taking vehicle without the owner's consent] ...; and
 - (b) it is proved that, at any time after the vehicle was unlawfully taken (whether by him or another) and before it was recovered, the vehicle was driven, or injury or damage was caused, in one or more of the circumstances set out in sub-paragraphs (a) to (d) of paragraph (2).
- (2) The circumstances referred to in paragraph (1)(b) are-
- (a) that the vehicle was driven dangerously on a road or other public place;
 - (b) that, owing to the driving of the vehicle, an accident occurred by which injury was caused to any person;
 - (c) that, owing to the driving of the vehicle, an accident occurred by which damage was caused to any property, other than the vehicle;
 - (d) that damage was caused to the vehicle.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996

Summarily: 6 months imprisonment or the statutory maximum fine (£5,000) or both

Indictment: 5 years imprisonment

Disqualification: Obligatory

Endorsement: Obligatory

Penalty points: 3-11

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Taking vehicle of relative/friend, intending to return	Community Order + Disqualification	Fine to Community Order + Disqualification
Exceeding authorised use of vehicle (e.g. employer's vehicle; retention of hire car beyond return date)	Community Order + Disqualification	Fine to Community Order + Disqualification
Taking a stranger's vehicle	3 months Custody + Disqualification	Community Order to 6 months Custody + Disqualification

Examples of Possible Aggravating Factors of Offence

1. Vehicle deliberately damaged/destroyed
2. Offender under influence of alcohol/drugs
3. Passenger(s)/heavy load carried
4. Vehicle belonging to an elderly or disabled person
5. Emergency services vehicle
6. Medium to large goods vehicle
7. Damage caused in moving traffic accident
8. Disregarding warnings of others
9. Carrying out other tasks while driving
10. Tiredness
11. Trying to avoid arrest
12. Aggressive driving, such as driving much too close to vehicle in front, inappropriate attempts to overtake, or cutting in after overtaking
13. Injury to others
14. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*

Examples of Possible Mitigating Factor of Offence

1. Damage resulting from actions of another (where this does not provide a defence)
2. Offender voluntarily returned vehicle to owner

Relevant Cases:

NI Cases

R v. McMullan (9 September 1992)(Unreported)

R v. Boyd (14 June 1996)(Unreported)

R v McKeown [2016] NICA 24

English Cases

R v. Harper [1995] R.T.R. 340

R v Gostkowski [1995] R.T.R. 324

R v Wiggins [2001] R.T.R. 3

Notes:

1.*Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2

BREACH OF TRAFFIC SIGNAL

Road Traffic (NI) Order 1995

50. - (1) If a person, without reasonable excuse, contravenes an indication given by a traffic sign which is-

- (a) of the prescribed size, colour and type, or
- (b) of another character authorised by the Department under Article 28 of the Road Traffic Regulation (Northern Ireland) Order 1997,

and which has been lawfully placed on or near a road, except where that indication is at variance with an indication given by a constable in uniform, he is guilty of an offence.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996

Summary Only: Level 3 fine (£1,000)

Disqualification: Discretionary (if committed in respect of a traffic sign specified in regulations under Article 50(5) of the Road Traffic (NI) Order 1995)

Endorsement: Obligatory (if committed in respect of a traffic sign specified in regulations under Article 50(5) of the Road Traffic (NI) Order 1995)

Penalty points: 3

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	Fine + 3 Penalty Points	Fine + 3 Penalty Points to 6 months Disqualification

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Inconvenience caused to other road users	N/A

Relevant Cases:

NI Cases

R v McKeown [2016] NICA 24

English Cases

N/A

Notes:

CARELESS/INCONSIDERATE DRIVING

Road Traffic (NI) Order 1995

12.- If a person drives a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, he is guilty of an offence.

12A.- (1) This Article has effect for the purposes of Articles 11A, 12 and 14.

(2) A person is to be regarded as driving without due care and attention if (and only if) the way he drives falls below what would be expected of a competent and careful driver.

(3) In determining for the purposes of paragraph (2) what would be expected of a careful and competent driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

(4) A person is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996, Sch.1

Summarily only: Level 5 fine (£5,000) for offences after 27 June 2007

Disqualification: Discretionary ('until tested' also discretionary – Art.41(4))

Endorsement: Obligatory

Penalty points: 3-9

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Careless or inconsiderate driving arising from momentary inattention with no aggravating factors.	Fine + 3 Penalty Points	Fine + 3-5 Penalty Points
Other cases of careless or inconsiderate driving	Fine + 5 Penalty Points	Fine + 4-9 Penalty Points
Careless or inconsiderate driving falling not far short of dangerous driving	Fine + 8 Penalty Points	Fine + 7-9 Penalty Points or Disqualification

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. High level of traffic or pedestrians in vicinity 2. Location (e.g. near school when children are likely to be present) 3. Excessive speed 4. Carrying out other tasks while driving 5. Carrying passengers or heavy load 6. Tiredness 7. Injury to others 8. Damage to other vehicles or property 	<ol style="list-style-type: none"> 1. Minor risk 2. Inexperience of driver 3. Sudden change in road or weather conditions

Relevant Cases:

NI Cases

R v Megaw [1992] 11 NIJB 25

R v Mullan [1998] NIJB 93

R v McKeown [2016] NICA 24

English Cases

N/A

Notes:

Causing Death by Careless/Inconsiderate Driving

Road Traffic (NI) Order 1995

11A.-A person who causes the death of, or grievous bodily injury to, another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, is guilty of an offence.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996

Summarily: 6 months imprisonment or the statutory maximum fine (£5,000) or both

On Indictment: 5 years imprisonment or an unlimited fine or both

Disqualification: Obligatory ('until tested' discretionary – Art.41(4))

Endorsement: Obligatory

Penalty points: 3-11

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Careless or inconsiderate driving arising from momentary inattention with no aggravating factors.	Community Order + Disqualification	Fine to Community Order + Disqualification
Other cases of careless or inconsiderate driving	Community Order + Disqualification	Community Order to 3 months Custody + Disqualification
Careless or inconsiderate driving falling not far short of dangerous driving	2½ months Custody + Disqualification	3-6 months Custody + Disqualification

Examples of Possible Aggravating Factors of Offence

1. More than one person was killed as a result of the offence
2. Where death has occurred, serious injury to one or more persons was caused in addition to the death(s)
3. Where death has not occurred, more than one person was seriously injured as a result of the offence
4. Other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving whilst disqualified; driving without insurance; taking a vehicle without consent; driving a stolen vehicle
5. Irresponsible behaviour, such as failing to stop or falsely claiming that one of the victims was responsible for the collision

Examples of Possible Mitigating Factor of Offence

1. Offender seriously injured in the collision
2. The victim was a close friend or relative
3. The actions of the victim or a 3rd party contributed to the commission of the offence
4. The offender's lack of driving experience contributed significantly to the likelihood of a collision occurring and/or death resulting
5. The driving was in response to a proven and genuine emergency falling short of a defence

Relevant Cases:

NI Cases:

R v Doole [2010] NICA 11

PPS v McWhinney (11 August 2010)(Unreported)

PPS v McDonagh (Unreported)

DPP's Reference (No.7 of 2013)(Brannigan) [2013] NICA 39

R v McGrade [2014] NICA 8

R v McKeown [2016] NICA 24

Notes:

1. Offences falling within Categories 2 and 3 above may also be dealt with in the Crown Court. The above starting points and ranges apply ONLY to the magistrates' court.
7. A 'specified offence' for the purposes of a 'Violent Offender Prevention Order' – Section 55 of the Justice Act (NI) 2015

DANGEROUS DRIVING

Road Traffic (NI) Order 1995:

- 10.- A person who drives a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.
- 11.- (1) For the purposes of Articles 9 and 10 a person is to be regarded as driving dangerously if (and, subject to paragraph (2), only if)-
 (a) the way he drives falls far below what would be expected of a competent and careful driver; and
 (b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.
- (2) A person is also to be regarded as driving dangerously for the purposes of Articles 9 and 10 if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.
- (3) In paragraphs (1) and (2) "dangerous" refers to danger either of injury to any person or of serious damage to property; and in determining for the purposes of those paragraphs what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.
- (4) In determining for the purposes of paragraph (2) the state of a vehicle, regard may be had to anything attached to or carried on or in it and to the manner in which it is attached or carried.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996, Sch.1

On indictment: 5 years imprisonment or an unlimited fine or both
Summarily: 6 months imprisonment or the statutory maximum fine (£5,000) or both
Disqualification: Obligatory (Must be 'until tested' – Art.41)
Endorsement: Obligatory
Penalty points: 3-11

Assessment of Offence

(Starting points and ranges for a 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Single incident where little or no damage or risk of personal injury.	Fine + 18 months Disqualification	Fine to Community Order + 12-24 months Disqualification
Incident(s) involving excessive speed or showing off, especially on busy roads or in built-up areas; OR Single incident where little or no damage or risk of personal injury but offender was disqualified driver. OR Prolonged bad driving involving deliberate disregard for safety of others; OR Incident(s) involving excessive speed or showing off, especially on busy roads or in built-up area, by disqualified driver; OR Offence committed while be pursued by police.	Community Order + 24 months Disqualification	Community Order to 6 months Custody + 15-36 months disqualification

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Injury to others 2. Damage to other vehicles or property 3. Offence committed in stolen vehicle 4. Disregarding warnings of others 5. Evidence of alcohol or drugs 6. Carrying out others tasks while driving 7. Carrying passengers or heavy load 8. Aggressive driving, such as driving much too close to vehicle in front, racing, inappropriate attempts to overtake or cutting in after overtaking 9. Driving when knowingly suffering from a medical condition which significantly impairs the his/her driving skills 10. Driving a poorly maintained or dangerously loaded vehicle, especially where motivated by commercial concerns 	<ol style="list-style-type: none"> 1. Genuine emergency 2. Speed not excessive 3. Offence due to inexperience rather than irresponsibility of driver

Relevant Cases:

Dangerous Driving (simpliciter)

R v Boyd [1996] NIJB 130
 R v McCullagh (11 July 1997)(Unreported)
 R v McShane (16 March 1998)(Unreported)
 R v Gaynor [2001] NICA 40
 R v McQuillan [2005] NICA 5
 R v Cromie [2008] NICA 47
 R v McKeown [2016] NICA 24

Dangerous Driving causing death:

AG's Reference (Nos. 2, 6, 7 and 8 of 2003) [2003] NICA 28
 R v McCartney [2007] NICA 41
 AG's Reference (No.2 of 2008)(McGinn) [2008] NICA 40
 R v Conrad Doole [2010] NICA 11

English Cases (Dangerous Driving):

R v Stevens [2003] EWCA Crim 2823
 R v Watson [2007] EWCA Crim 1595

Notes:

Road Traffic (NI) Order 1981, Art.19A(4) – In determining the expiration of the period of restriction ('R' Plates), any time during which a person is disqualified for holding or obtaining a licence, or holds a provisional licence only, shall be disregarded.

DRIVING WHILST DISQUALIFIED

Road Traffic (NI) Order 1981

168A.- (1) Subject to paragraphs (3) and (4), a person is guilty of an offence if, while disqualified for holding or obtaining a driving licence, he—
...
(c) drives a motor vehicle on a road.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996

Summarily: 6 months imprisonment or the statutory maximum fine (£5,000) or both

On indictment: 2 years imprisonment or unlimited fine or both

Disqualification: Discretionary ('until tested' also discretionary – Art.41(4))

Endorsement: Obligatory

Penalty points: 6

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	Custody + 18 months Disqualification	Community Order to 6 months Custody + 6-36 months Disqualification

Examples of Possible Aggravating Factors of Offence

1. Never passed test
2. Planned long term evasion
3. Vehicle obtained during ban
4. Driving for remuneration
5. Evidence of associated bad driving
6. Offender caused accident
8. Driving early within period of disqualification

Examples of Possible Mitigating Factors of Offence

1. Genuine emergency established
2. Genuine reason why not aware of disqualification.

Relevant Cases:

NI Cases:

R v Smith and Others [2004] NICC 12

R v McKeown [2016] NICA 24

English Cases:

R v Forbes [2005] EWCA Crim 2069

Notes:

Art. 168A(3).- Paragraph (1)(a) and (b) do not apply in relation to disqualification by virtue of Article 17 (Disqualification of persons under age).

DRIVING WHILST UNFIT

Road Traffic (NI) Order 1995

15.- (1) A person who, when driving or attempting to drive a mechanically propelled vehicle on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996

Summary only: 6 months imprisonment or level 5 fine (£5,000) or both

Disqualification: Obligatory ('until tested' also obligatory – Art.41(3) and SR 1997/370)

Endorsement: Obligatory

Penalty points: 3-11

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

	<u>Starting Point</u>	<u>Sentencing Range</u>						
Where ability to drive impaired OR Where alcohol level is available showing: <table border="1"> <tr> <td><u>Breath (mg)</u></td> <td><u>Blood (ml)</u></td> <td><u>Urine (ml)</u></td> </tr> <tr> <td align="center">36-70</td> <td align="center">81-160</td> <td align="center">108-214</td> </tr> </table>	<u>Breath (mg)</u>	<u>Blood (ml)</u>	<u>Urine (ml)</u>	36-70	81-160	108-214	Fine + 18 months Disqualification	£150-£1500 Fine + 12-24 months Disqualification
<u>Breath (mg)</u>	<u>Blood (ml)</u>	<u>Urine (ml)</u>						
36-70	81-160	108-214						
Where ability to drive significantly impaired OR Where alcohol level is available showing: <table border="1"> <tr> <td><u>Breath (mg)</u></td> <td><u>Blood (ml)</u></td> <td><u>Urine (ml)</u></td> </tr> <tr> <td align="center">71 or more</td> <td align="center">161 or more</td> <td align="center">215 or more</td> </tr> </table>	<u>Breath (mg)</u>	<u>Blood (ml)</u>	<u>Urine (ml)</u>	71 or more	161 or more	215 or more	Fine + 24 months Disqualification	£200-£2000 fine + 18-36 months Disqualification
<u>Breath (mg)</u>	<u>Blood (ml)</u>	<u>Urine (ml)</u>						
71 or more	161 or more	215 or more						

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Involved in accident 2. Location (e.g. near school) 3. High level of traffic or pedestrians in the vicinity 4. Driving LGV, HGV, PSV, etc 5. Poor road or weather conditions 6. Carrying passengers 7. Driving for hire or reward	1. Genuine emergency established* 2. Spiked drinks* 3. Very short distance driven* *where not amounting to special reasons

Relevant Cases:

NI Cases

R v McKeown [2016] NICA 24

English Cases

N/A

Notes:

The court has a discretion to certify for the requisite Drink Driving Course.

DRIVING WITHOUT A LICENCE

Road Traffic (NI) Order 1981

3.- (1) It is an offence under this Order for a person to drive on a road a motor vehicle of any class otherwise than in accordance with a licence authorising him to drive a motor vehicle of that class.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996

Summary only: Level 3 Fine (£1,000)

Disqualification: Discretionary (if committed by driving a motor vehicle in a case where either no licence authorising the driving of that vehicle could have been granted to the offender or, if a provisional (but no other) licence to drive it could have been granted to him, the driving would not have complied with the conditions of the licence)

Endorsement: Obligatory (if one of the above conditions is met)

Penalty points: 3-6

Assessment of Offence

(1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	Fine + 5 Penalty Points	Fine + 3 Penalty Points to 3 months Disqualification

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
N/A	N/A

Relevant Cases:

NI Cases

R v McKeown [2016] NICA 24

English Cases

N/A

Notes:

DRIVING WITH EXCESS ALCOHOL

Road Traffic (NI) Order 1995

16. - (1) If a person-
 (a) drives or attempts to drive a motor vehicle on a road or other public place ...
 after consuming so much alcohol that the proportion of it in his breath, blood or urine exceed the prescribed limit he is guilty of an offence.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996

Summarily: 6 months imprisonment or level 5 fine (£5,000) or both

Disqualification: Obligatory ('until tested' also obligatory – Art.41(3) and SR 1997/370)

Endorsement: Obligatory

Penalty points: 3-11

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Level of Alcohol</u>			<u>Starting Point</u>	<u>Sentencing Range</u>
<u>Breath (mg)</u>	<u>Blood (ml)</u>	<u>Urine (ml)</u>		
36-70	81-160	108-214	Fine + 18 months Disqualification	£150-£1500 Fine + 12-24 months Disqualification
71 or more	161 or more	215 or more	Fine + 24 months Disqualification	£200-£2000 fine + 18-36 months Disqualification

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Involved in accident 2. Location (e.g. near school) 3. High level of traffic or pedestrians in the vicinity 4. Driving LGV, HGV, PSV, etc 5. Poor road or weather conditions 6. Carrying passengers 7. Driving for hire or reward 8. Evidence of unacceptable standard of driving 	<ol style="list-style-type: none"> 1. Genuine emergency established* 2. Spiked drinks* 3. Very short distance driven* <p>*where not amounting to special reasons</p>

Relevant Cases:

NI Cases

R v McKeown [2016] NICA 24

English Cases

N/A

Notes:

The court has a discretion to certify for the requisite Drink Driving Course.

FAILING TO GIVE INFORMATION RE: IDENTITY OF DRIVER

Road Traffic (NI) Order 1981

Art.177. - (1) Where the driver of a vehicle is alleged to be guilty of an offence to which this Article applies-

- (a) the driver of the vehicle shall on demand give to a constable his correct name and address and where the driver is not the owner of the vehicle, that of the owner and any other information concerning the vehicle (including the names and addresses of any passengers carried in or on the vehicle at the time of the alleged offence) which it is in his power to give and, if he fails to do so, he shall be guilty of an offence under this Order;
- (b) the owner of the vehicle shall give such information as he may be required by a constable to give as to the identity of the driver, and, if he fails to do so, he shall be guilty of an offence under this Order, unless he shows to the satisfaction of the court that he did not know and could not with reasonable diligence have ascertained who the driver was; and
- (c) any other person shall, if required as aforesaid, give any information which it is in his power to give and which may lead to the identification of the driver or owner of the vehicle, and, if he fails to do so, he shall be guilty of an offence under this Order..

(2) This Article applies to-

- (a) an offence under any provision of the Road Traffic Orders,
- (b) an offence under Article 27, 28 or 29 of the Offenders Order,
- (c) an offence under any other enactment relating to the use of vehicles on roads,
- (d) an offence of manslaughter committed by the driver of a motor vehicle, and
- (e) an offence under section 14 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978.

Maximum Sentence:

Road Traffic Offenders' (NI) Order (1996), Schedule 1

Summary Only: Level 3 Fine (£1,000)

Disqualification: Discretionary if committed under Art.177(1)(b) or (c) (Not applicable if D is a company)

Endorsement: Obligatory if so committed (Not applicable if D is a company)

Penalty Points: 6

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Where the offence of which the driver is suspected does NOT carry an obligatory disqualification	Fine + Disqualification	Fine + 6 Penalty Points to 12 months Disqualification
Where the offence of which the driver is suspected carries an obligatory disqualification	Fine + Disqualification	Fine + 6 – 18 months Disqualification

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. The seriousness of the offence of which the driver is suspected	N/A

Relevant Cases:

NI Cases:

R v McKeown [2016] NICA 24

English Cases:

N/A

Notes:

FAILING TO PRODUCE LICENCE / INSURANCE / TEST CERTIFICATE

Road Traffic (NI) Order 1981

180.- (4) If any person fails to produce his licence or certificate of insurance or certificate of security or test certificate or goods vehicle test certificate immediately when asked for it or, alternatively, to bring it in person within 7 days after the production of his licence or certificate of insurance or certificate of security or test certificate or goods vehicle test certificate was so required to such police station as the person so failing shall have specified at the time its production was required, he shall be guilty of an offence under this Order.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996

Summary only: Level 3 fine (£1,000)

Disqualification: No

Endorsement: No

Penalty points: No

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	Fine	£60 - £500 Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Vehicle in blatantly dangerous condition 2. Never passed test previously 3. Gave false details 4. Driving LGV, HGV, PSV etc. 5. Driving for hire or reward 6. Evidence of sustained use unlicensed 7. Involved in accident 8. Accident resulting in injury 	<ol style="list-style-type: none"> 1. Responsibility for getting test rests with another 2. Genuine misunderstanding 3. Recent failure to renew where test results expired 4. Vehicle not being driven

Relevant Cases:

NI Cases

R v McKeown [2016] NICA 24

English Cases

N/A

Notes:

FAILING TO PROVIDE SPECIMEN OF BREATH/BLOOD

Road Traffic (NI) Order 1995

18. - (1) In the course of an investigation into whether a person has committed an offence under Article 14, 15 or 16 a constable may, subject to the following provisions of this Article and Article 20, require him-

- (a) to provide 2 specimens of breath for analysis by means of a device of a type approved by the Head of the Department, or
- (b) to provide a specimen of blood or urine for a laboratory test.

...

(7) A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this Article is guilty of an offence.

Maximum Sentence

Road Traffic Offenders (NI) Order 1996

Where offender was driving or attempting to drive

Summary only: 6 months imprisonment or Level 5 fine (£5,000) or both

Disqualification: Obligatory

Endorsement: Obligatory

Penalty points: 3-11

In any other case

Summary only: 3 months imprisonment or Level 4 fine (£2,500) or both

Disqualification: Discretionary

Endorsement: Obligatory

Penalty points: 10

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Where offender was 'in charge' of motor vehicle	Deliberate failure/refusal to provide sample	Fine + 15 months Disqualification	£150 - £1,500 Fine + 3 - 24 months Disqualification
	Deliberate failure/refusal to provide sample AND evidence of serious impairment	Fine + 21 months Disqualification	£200 - £2,500 Fine + 6 - 36 months Disqualification
Where offender was driving or attempting to drive motor vehicle	Deliberate failure/refusal to provide sample	Fine + 18 months Disqualification	Fine + 15 - 30 months Disqualification
	Deliberate failure/refusal to provide sample AND evidence of serious impairment	Fine + 24 months Disqualification	£200 - £2,500 Fine + 18 - 36 months Disqualification

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Evidence of unacceptable standard of driving 2. LGV, HGV, PSV etc. 3. Driving for hire or reward 4. Involved in accident 5. High likelihood of driving 	<ol style="list-style-type: none"> 1. Honestly held but unreasonable excuse 2. Low likelihood of driving

Relevant Cases:

NI Cases

R v McKeown [2016] NICA 24

English Cases

N/A

Notes:

FAILING TO STOP FOR CONSTABLE

Road Traffic (NI) Order 1981

180. - (1) A constable in uniform may require any person driving a mechanically propelled vehicle on a road or other public place or any person riding a cycle on a road or other public place to stop, and any person who fails to stop when he is so required shall be guilty of an offence under this Order.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996

Summary only: Level 5 fine (£5,000) if committed by a person driving a mechanically propelled vehicle
Level 3 fine (£1,000) if committed by a person riding a cycle

Disqualification: No

Endorsement: No

Penalty points: No

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	Fine	£60 - £500 Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Prolonged road chase 2. Attempt to conceal	N/A

Relevant Cases:

N/A

Notes:

1. The Court has a general discretion to disqualify from driving for any offence under Article 91 of the Criminal Justice (NI) Order 2008.

FAILING TO STOP/REMAIN/REPORT INJURY ACCIDENT OR DAMAGE ACCIDENT

Road Traffic (NI) Order 1981

175. – (1) If in any case, owing to the presence on a road or other public place of a mechanically propelled vehicle, an accident occurs whereby-

- (a) injury is caused to any person other than the driver of that vehicle; or
- (b) injury is caused to any animal other than an animal in or on that vehicle or owned by the driver of that vehicle; or
- (c) damage is caused to any property other than that vehicle or property in or on that vehicle or property of the driver or owner of that vehicle,

the following provisions of this paragraph shall have effect-

- (i) the driver of the vehicle shall, if the vehicle is not stationary after the occurrence of the accident, stop the vehicle,
- (ii) the driver of the vehicle shall keep the vehicle stationary at or near the place where the accident occurred for such period as is reasonable in all the circumstances having regard to the provisions of sub-paragraph (iii),
- (iii) the driver of the vehicle shall give to any constable on demand and to any other person who on reasonable grounds requires him to do so, his name and address, the name and address of the owner of the vehicle and the identification mark or number of the vehicle,
- (iv) the driver of the vehicle shall if for any reason he does not give the particulars mentioned in sub-paragraph (iii) or (whether or not those particulars are given) the accident has directly or indirectly resulted in injury to any other person, forthwith report the accident and give those particulars and, where the vehicle is a motor vehicle, produce his certificate (within the meaning of Article 97(4)) at a police station or to a member of the Police Service of NI so, however, that it shall be a good defence to any person charged under paragraph (2) with a contravention of the provisions of this sub-paragraph to prove that he had good cause for such contravention and that he reported the accident and gave the particulars at a police station or to a member of the Police Service of NI as soon as was reasonably practicable after the occurrence of the accident.

(2) Every person who knowingly contravenes any of the provisions of paragraph (1) shall be guilty of an offence under this Order.

Maximum Sentence

Road Traffic Offenders (NI) Order 1996
Summary only: 6 months imprisonment or Level 5 fine (£5,000) or both
Disqualification: Discretionary
Endorsement: Obligatory
Penalty points: 5-10

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Accident where damage only is caused	Fine + Disqualification	Fine + 5 Penalty Points to Disqualification
Accident where injury is caused	Community Order + Disqualification	Community Order to 6 months Custody + Disqualification

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
6. Evidence of drink or drugs / Evading being tested for drink or drugs 7. Giving false details 8. Seriousness of damage/injury 9. Nature of driving 10. Nature of accident	3. Offender reasonably believed his identity was known 4. Offender had genuine fear of retribution by other party 5. Offender subsequently reported accident but was not sufficiently prompt.

Relevant Cases:

NI Cases
 R v McKeown [2016] NICA 24

English Cases
 N/A

Notes:

1. If in any case the offence consists only in failure to produce a certificate of insurance the punishment is that provided under Art.180.

IN CHARGE OF VEHICLE WITH EXCESS ALCOHOL

Road Traffic (NI) Order 1995

16. - (1) If a person-

...

(b) is in charge of a motor vehicle on a road or other public place after consuming so much alcohol that the proportion of it in his breath, blood or urine exceed the prescribed limit he is guilty of an offence.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996

Summarily: 6 months imprisonment or level 5 fine (£5,000) or both

Disqualification: Discretionary ('until tested' also discretionary – Art.41(4))

Endorsement: Obligatory

Penalty points: 10

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Level of Alcohol</u>			<u>Starting Point</u>	<u>Sentencing Range</u>
<u>Breath (mg)</u>	<u>Blood (ml)</u>	<u>Urine (ml)</u>		
36-70	81-160	108-214	Fine + 12 months Disqualification	£150-£1500 fine + 10 Penalty Points to 24 months Disqualification
71 or more	161 or more	215 or more	Fine + 18 months disqualification	£200-£2000 fine + 10 Penalty Points to 36 months Disqualification

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Driving LGV, HGV, PSV, etc 2. Ability to drive seriously impaired 3. Vehicle in use for hire or reward at time of offence 4. Accident has occurred involving the offender 5. Evidence that car was being driven prior to police arrival at scene	1. Low likelihood of driving

Relevant Cases:

NI Cases

R v McKeown [2016] NICA 24

English Cases

N/A

Notes:

The court will have particular regard to the circumstances surrounding how the offender came to be 'in charge' of the vehicle.

IN CHARGE WHILST UNFIT

Road Traffic (NI) Order 1995

15.- (2) ... a person who, when in charge of a mechanically propelled vehicle which is on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996

Summary only: 3 months imprisonment or level 5 fine (£5,000) or both

Disqualification: Discretionary ('until tested' also discretionary – Art.41(4))

Endorsement: Obligatory

Penalty points: 10

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

	<u>Starting Point</u>	<u>Sentencing Range</u>						
Where ability to drive would have been impaired OR Where alcohol level is available showing: <table border="1"> <tr> <td align="center"><u>Breath (mg)</u></td> <td align="center"><u>Blood (ml)</u></td> <td align="center"><u>Urine (ml)</u></td> </tr> <tr> <td align="center">36-70</td> <td align="center">81-160</td> <td align="center">108-214</td> </tr> </table>	<u>Breath (mg)</u>	<u>Blood (ml)</u>	<u>Urine (ml)</u>	36-70	81-160	108-214	Fine + 12 months Disqualification	£150-£1500 fine + 10 Penalty Points to 24 months Disqualification
<u>Breath (mg)</u>	<u>Blood (ml)</u>	<u>Urine (ml)</u>						
36-70	81-160	108-214						
Where ability to drive would have been significantly impaired OR Where alcohol level is available showing: <table border="1"> <tr> <td align="center"><u>Breath (mg)</u></td> <td align="center"><u>Blood (ml)</u></td> <td align="center"><u>Urine (ml)</u></td> </tr> <tr> <td align="center">71 or more</td> <td align="center">161 or more</td> <td align="center">215 or more</td> </tr> </table>	<u>Breath (mg)</u>	<u>Blood (ml)</u>	<u>Urine (ml)</u>	71 or more	161 or more	215 or more	Fine + 18 months disqualification	£200-£2000 fine + 10 Penalty Points to 36 months Disqualification
<u>Breath (mg)</u>	<u>Blood (ml)</u>	<u>Urine (ml)</u>						
71 or more	161 or more	215 or more						

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Driving LGV, HGV, PSV, etc 2. Vehicle in use for hire or reward at time of offence 3. Accident has occurred involving the offender 4. Evidence that car was being driven prior to police arrival at scene 5. High likelihood of driving 6. Driving for hire or reward	1. Low likelihood of driving

Relevant Cases:

NI Cases

R v McKeown [2016] NICA 24

English Cases

N/A

Notes:

1. The court will have particular regard to the circumstances surrounding how the offender came to be 'in charge' of the vehicle.

MAKING/USING FALSE CERTIFICATE OF INSURANCE

Forgery and Counterfeiting Act 1981

s.1 - A person is guilty of forgery if he makes a false instrument, with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.

...

s. 3 - It is an offence for a person to use an instrument which is, and which he knows or believes to be, false, with the intention of inducing somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.

Maximum Sentence:

Forgery and Counterfeiting Act 1981, s.6

Indictment: 10 years imprisonment or an unlimited fine or both

Summary: 6 months imprisonment or a fine not exceeding the statutory maximum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
False certificate made for own use	Community Order	Community Order to 6 months Custody
False certificate made for other's use OR False certificate made for commercial gain OR False certificate used for commercial gain	3 months Custody	1 - 6 months Custody

Examples of Possible Aggravating Factors of Offence

1. Offence committed as part of organised or sophisticated enterprise
2. Use of 3rd party's identity

Examples of Possible Mitigating Factor of Offence

N/A

Relevant Cases:

NI Cases:

1. R v Nurse [2010] NICC 3

English Cases:

N/A

Notes:

1. Any object shown to the satisfaction of the Court to relate to the offence may be forfeited and either destroyed or dealt with in such other manner as the court may order (subject to the owner or any interested party being permitted to make representations) – Section 7 of the 1981 Act
2. General power to disqualify from holding a driving licence under Article 91 of the Criminal Justice (NI) Order 2008.

NO TAXI LICENCE

Road Traffic (NI) Order 1981

Driver Taxi Licence

Art.59. - (1) No public service vehicle shall stand or ply for hire or carry passengers for hire unless the driver, holds a passenger-carrying vehicle driver's licence, as defined in Article 70(2) or, as the case may be, a taxi driver's licence within the meaning of Article 79A.

- (2) If a public service vehicle stands or plies for hire or carries passengers for hire contrary to this Article the owner of the vehicle shall be guilty of an offence under this Order unless he proves that the driver acted without his privity or consent.

Vehicle Taxi Licence

Art.60. - (1) A public service vehicle shall not stand or ply for hire or carry passengers for hire unless there is in force with respect to the vehicle a licence granted under Article 61 (in this Order referred to as a "public service vehicle licence").

- (2) If a public service vehicle is used in standing or plying for hire or is used to carry passengers for hire in contravention of this Article, the owner of the vehicle and the driver of the vehicle shall be guilty of an offence under this Order but the driver shall not be guilty of an offence under this Article if he proves that he did not know that there was not in force in relation to the vehicle a licence granted under Article 61.
- (3) Any public service vehicle which is used in standing or plying for hire or which is used to carry passengers for hire without having such distinguishing mark or plate as may from time to time be prescribed shall be deemed to be an unlicensed public service vehicle.

Maximum Sentence:

Road Traffic Offenders' (NI) Order (1996), Schedule 1

Driver's Taxi Licence

Summary Only: Level 3 Fine (£1,000)

Vehicle Taxi Licence

Summary Only: Level 4 Fine (£2,500)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
No Driver's Taxi Licence	£250	£150 - £500
No Vehicle Taxi Licence	£500	£350 - £1,000

Examples of Possible Aggravating Factors of Offence

1. Commercial business/large scale operation
2. No insurance / Invalid insurance
3. Vehicle no roadworthy
4. Offender had applied for relevant licence but had been refused by the authorities

Examples of Possible Mitigating Factor of Offence

N/A

Relevant Cases:

NI Cases:

N/A

English Cases:

N/A

Notes:

1. General power to disqualify from holding a driving licence under Article 91 of the Criminal Justice (NI) Order 2008.

NO VEHICLE TEST CERTIFICATE

Road Traffic (NI) Order 1995

63. - (1) A person who uses on a road or other public place at any time, or causes or permits to be so used, a motor vehicle to which this Article applies, and as respects which no test certificate has been issued within the appropriate period before that time, is guilty of an offence.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996

Summary only: Level 4 fine (£2,500) if committed in respect of a goods vehicle or a vehicle adapted to carry more than 8 passengers
Level 3 fine (£1,000) in any other case

Disqualification: No

Endorsement: No

Penalty points: No

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	Fine	£50 - £250 Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
N/A	N/A

Relevant Cases:

N/A

Notes:

PERMITTING / DRIVING IN EXCESS OF PERMITTED DRIVING TIME

Road Traffic (NI) Order 1981

Art.56 - (3) Any person who drives, or who causes or permits any person employed by him or subject to his orders to drive, a goods vehicle contrary to the domestic drivers' hours code shall be guilty of an offence under this Order.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996, Schedule 1
Summary Only: Level 4 fine (£2,500)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Offence committed by driver	£500	£250 - £1,000
Offence committed by owner company	£1,000	£500 - £2,500

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
N/A	N/A

Relevant Cases:

NI Cases:
N/A

English Cases:
N/A

Notes:

1. See further the Vehicles (Drivers' Hours of Duty) Regulations (NI) 1991; and Passenger and Goods Vehicles (Recording Equipment) Regulations 1996
2. General power to disqualify from holding a driving licence under Article 91 of the Criminal Justice (NI) Order 2008.

TACHOGRAPH OFFENCES

Passenger & Goods Vehicles (Recording Equipment) Regulations (NI) 1996

Reg. 3. - (1) A person shall not use, or cause or permit to be used, a vehicle to which this regulation applies-

(a) unless there is in the vehicle recording equipment which-

(i) has been installed in accordance with the Community Recording Equipment Regulation,

(ii) complies with the relevant Annexes to that Regulation, and

(iii) is being used as provided by Articles 13 to 15 of that Regulation; or

(b) if there is in the vehicle recording equipment which has been repaired (whether before or after installation) otherwise than in accordance with the Community Recording Equipment Regulation,

and any person who contravenes this provision shall be guilty of an offence ...

Reg.5 - (1) A person who, with intent to deceive, forges, alters or uses any seal on recording equipment installed in, or designed for installation in, a vehicle to which regulation 3 applies, shall be guilty of an offence.

Reg. 6A - (1) This regulation applies to the following documents—

(a) record sheets;

(b) manual records and printouts made in accordance with the Community Recording Equipment Regulation.

(2) If such a document relates to a person in his capacity as the driver of a vehicle to which regulation 3 applies, he must before the end of the delivery period deliver the document to the transport undertaking to whose orders he was subject in driving the vehicle.

...

(4) A person who without reasonable excuse fails to comply with paragraph (2) is liable on summary conviction ...

(5) If a transport undertaking fails without reasonable excuse to secure that each driver subject to its orders complies with paragraph (2), in respect of documents relating to him in his capacity as such a driver, it is liable on summary conviction

....

Maximum Sentence:

(i) Using/Permitting to Use Vehicle Without Tachograph

Passenger & Goods Vehicles (Recording Equipment) Regulations (NI) 1996, Reg.3(1)

Summary Only: Level 5 fine (£5,000)

(ii) Forging/Altering Tachograph

Passenger & Goods Vehicles (Recording Equipment) Regulations (NI) 1996, Reg.5(2)

Indictment: 2 years imprisonment or an unlimited fine or both

Summary: Statutory maximum fine (£5,000)

(iii) Using/Permitting to Use Vehicle Without Tachograph

Passenger & Goods Vehicles (Recording Equipment) Regulations (NI) 1996, Reg.6A(4)&(5)

Summary Only: Level 4 fine (£2,500)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Offence under Regulation 3 or 6A	Committed by driver	£500	£250 - £1,000
	Committed by owner company	£1,000	£500 - £2,500
Offence under Regulation 5	Committed by driver	£750	£500 - £2,500
	Committed by owner company	£2,000	£1,000 - £5,000

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
N/A	N/A

Relevant Cases:

NI Cases:

1. R v Dewart [2015] NICA 35

English Cases:

N/A

Notes:

1. General power to disqualify from holding a driving licence under Article 91 of the Criminal Justice (NI) Order 2008.

TAKING VEHICLE WITHOUT CONSENT

Road Traffic (NI) Order 1981

172. - ... any person who, without having the consent of the owner or other lawful authority, takes or attempts to take, a motor vehicle, trailer ... for his own or another's use or, knowing that any motor vehicle, trailer ... has been taken without such authority, drives or attempts to drive it or allows himself to be carried in or on it shall be guilty of an offence under this Order.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996

Summarily: 6 months imprisonment or the statutory maximum fine (£5,000) or both

Indictment: 1 year imprisonment or a fine or both

Disqualification: Discretionary

Endorsement: No

Penalty points: No

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Taking vehicle of relative/friend, intending to return	Fine + Disqualification	Fine to Community Order + Disqualification
Exceeding authorised use of vehicle (e.g. employer's vehicle; retention of hire car beyond return date)	Fine + Disqualification	Fine to Community Order + Disqualification
Taking a stranger's vehicle	Community Order + Disqualification	Community Order to 3 months Custody + Disqualification

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Vehicle belonging to elderly/disabled person 2. Emergency services vehicle 3. Medium to large goods vehicle 4. Passengers carried 5. Damage caused to lock/ignition in course of taking vehicle 6. Taking vehicle from private premises 7. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.* 	<ol style="list-style-type: none"> 1. Offender voluntarily returned vehicle to owner

Relevant Cases:

NI Cases

R v McKeown [2016] NICA 24

English Cases

N/A

Notes:

1.*Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)

USING/CAUSING/PERMITTING NO INSURANCE

Road Traffic (NI) Order 1981

90.– (1) Subject to the provisions of this Part, it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a road or other public place unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third-party risks as complies with the requirements of this Part.

...
(4) Any person who contravenes paragraph (1) shall be guilty of an offence under this Order.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996

Summary Only: 6 months imprisonment or a Level 5 fine (£5,000) or both (for offences committed after 16 July 2008)

Disqualification: Discretionary

Endorsement: Obligatory

Penalty points: 6-8

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Using/causing/permitting no insurance	Fine + 8 Penalty Points	Fine to Community Order + 8 Penalty Points to 6 months Disqualification

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
9. Gave false details 10. Driving LGV, HGV, PSV etc. 11. Driving for hire or reward 12. Involved in accident	1. Responsibility for providing insurance rests with another 2. Genuine misunderstanding 3. Recent failure to renew or failure to transfer vehicle details where insurance was in existence 4. Vehicle not being driven

Relevant Cases:

NI Cases

R v McKeown [2016] NICA 24

English Cases

N/A

Notes:

USING MOBILE PHONE WHILE DRIVING

Road Traffic (NI) Order 1995

56A.- A person who contravenes a construction and use requirement—

...
 (b) as to not driving or supervising the driving of a motor vehicle while using a hand-held mobile telephone or other hand-held interactive communication device, or not causing or permitting the driving of a motor vehicle by another person using such a telephone or other device, is guilty of an offence.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996

Summary only: Level 4 fine (£2,500) if committed in respect of a goods vehicle or a vehicle adapted to carry more than 8 passengers
 Level 3 fine (£1,000) in any other case

Disqualification: Discretionary

Endorsement: Obligatory

Penalty points: 3

Assessment of Offence

(starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Speaking on mobile phone	Fine + 3 Penalty Points	Fine + 3 Penalty Points
Typing on, or reading, mobile phone	Fine + 3 months Disqualification	Fine + 3 Penalty Points to 6 months Disqualification

Examples of Possible Aggravating Factors of Offence

N/A

Examples of Possible Mitigating Factor of Offence

N/A

Relevant Cases:

NI Cases

R v McKeown [2016] NICA 24

English Cases

N/A

Notes:

USING/PERMITTING OVERLOADED GOODS VEHICLE

Road Traffic (NI) Order 1995

57. - (1) A person who-

- (a) contravenes a construction and use requirement as to any description of weight applicable to-
 - (i) a goods vehicle; or
 - (ii) a motor vehicle or trailer adapted to carry more than eight passengers; or
- (b) uses on a road a vehicle which does not comply with such a requirement, or causes or permits a vehicle to be so used, is guilty of an offence.

Maximum Sentence:

Road Traffic Offenders (NI) Order 1996, Schedule 1
Summary Only: Level 5 fine (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Offence committed by driver	£500*	£250 - £1,000*
Offence committed by owner company	£1,000*	£500 - £2,000*

*Based on the load being less than 10% above permitted weight; where greater than 10% then the starting point and sentencing range may be increased accordingly.

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
N/A	N/A

Relevant Cases:

NI Cases:
N/A

English Cases:
1. N/A

Notes:

1. See further the Motor Vehicles (Construction and Use) Regulations (Northern Ireland) 1989.
2. General power to disqualify from holding a driving licence under Article 91 of the Criminal Justice (NI) Order 2008.

BREACH OF FOREIGN TRAVEL ORDER

Sexual Offences Act 2003

122. – (1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by a foreign travel order.

Maximum Sentence:

Sexual Offences Act 2003, s.122(2)

Indictment: 5 years imprisonment

Summary: 6 months imprisonment and/or a fine not exceeding the statutory maximum (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Breach of a technical nature	Fine	Fine to Community Order
Breach of a fundamental nature	2 months Custody	Community Order to 6 months Custody

Examples of Possible Aggravating Factors of Offence

1. Proven history of violence or threats by the offender
2. Offender has history of disobedience to court orders
3. Breach committed immediately or shortly after order made

Examples of Possible Mitigating Factor of Offence

N/A

Relevant Cases:

NI Cases:

N/A

English Cases

N/A

Notes:

1. Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge - s.122(3)

BREACH OF RISK OF SEXUAL HARM ORDER

Sexual Offences Act 2003

128. – (1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by—
(a) a risk of sexual harm order; or
(b) an interim risk of sexual harm order.

Maximum Sentence:

Sexual Offences Act 2003, s.128(3)

Indictment: 5 years imprisonment

Summary: 6 months imprisonment and/or a fine not exceeding the statutory maximum (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Breach of a technical nature	Fine	Fine to Community Order
Breach of a fundamental nature	2 months Custody	Community Order to 6 months Custody

Examples of Possible Aggravating Factors of Offence

1. Proven history of violence or threats by the offender
2. Offender has history of disobedience to court orders
3. Breach committed immediately or shortly after order made

Examples of Possible Mitigating Factor of Offence

N/A

Relevant Cases:

NI Cases:

N/A

English Cases

N/A

Notes:

1. Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge - s.128(3)

BREACH OF SEXUAL OFFENCES NOTIFICATION REQUIREMENTS

Sexual Offences Act 2003

91. – (1) A person commits an offence if he—
 (a) fails, without reasonable excuse, to comply with section 83(1), 84(1), 84(4)(b), 85(1), 87(4) or 89(2)(b) or any requirement imposed by regulations made under section 86(1); or
 (b) notifies to the police, in purported compliance with section 83(1), 84(1) or 85(1) or any requirement imposed by regulations made under section 86(1), any information which he knows to be false.

Maximum Sentence:

Sexual Offences Act 2003, s.91(2)

Indictment: 5 years imprisonment

Summary: 6 months imprisonment and/or the statutory maximum fine (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Negligent or inadvertent failure to comply with requirements	Community Order	Fine to Community Order
Deliberate failure to comply with requirements OR supply of information known to be false	2 months Custody	Community Order to 4 months custody
Conduct as described in box above AND long period of non-compliance OR attempts to avoid detection	4 months Custody	Community Order to 6 months Custody

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
N/A	1. Genuine misunderstanding

Relevant Cases:

NI Cases:

1. DPP v King [2007] NIMag 1

English Cases

N/A

Notes:

BREACH OF SEXUAL OFFENCES PREVENTION ORDER

Sexual Offences Act 2003

113. – (1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by—
- (a) a sexual offences prevention order;
 - (b) an interim sexual offences prevention order;
 - (c) an order under section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders);
 - (d) an order under section 2, 2A or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders and interim orders made in England and Wales and in Scotland);
 - (e) an order under Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders and interim orders made in Northern Ireland).

Maximum Sentence:

Sexual Offences Act 2003, s.113(2)

Indictment: 5 years imprisonment

Summary: 6 months imprisonment and/or a fine not exceeding the statutory maximum (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Breach of a technical nature	Fine	Fine to Community Order
Breach of a fundamental nature	2 months Custody	Community Order to 6 months Custody

Examples of Possible Aggravating Factors of Offence

1. Proven history of violence or threats by the offender
2. Offender has history of disobedience to court orders
3. Breach committed immediately or shortly after order made

Examples of Possible Mitigating Factor of Offence

N/A

Relevant Cases:

NI Cases:

1. DPP v King [2007] NIMag 1

English Cases

N/A

Notes:

1. Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge - s.113(3)

CAUSING A PERSON TO ENGAGE IN SEXUAL ACTIVITY WITHOUT CONSENT

Sexual Offences (NI) Order 2008

8. - (1) A person (A) commits an offence if—
 (a) he intentionally causes another person (B) to engage in an activity,
 (b) the activity is sexual,
 (c) B does not consent to engaging in the activity, and
 (d) A does not reasonably believe that B consents.
 (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

Maximum Sentence:

Sexual Offences (NI) Order 2008, Art.8(4)-(5)

(1) Where the activity involved penetration of V’s anus or vagina; penetration of V’s mouth with a person’s penis; penetration of a person’s anus or vagina with a part of V’s body or by V with anything else; or penetration of a person’s mouth with V’s penis:

Indictment only: Life imprisonment (Discretionary)

(2) Any other activity:

Indictment: 10yrs imprisonment

Summary: 6mths imprisonment and/or statutory maximum fine (£5,000).

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Contact between part of the offender’s body (other than genitalia) with part of the victim’s body (other than genitalia)	Community Order + Compensation Order	Fine to 2 months Custody + Compensation Order
Contact between part of the victim’s body and the offender’s clothed genitalia	Community Order + Compensation Order	Fine to 6 months Custody + Compensation Order
Contact between part of the victim’s body and the naked genitalia of the offender or second victim	4 months custody + Compensation Order	3 - 6 months custody + Compensation Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
37. More than one offender acting together 38. Abuse of trust 39. Offence motivated by prejudice (race, religion, sexual orientation, physical disability) 40. Prolonged activity or contact 41. Victim targeted, groomed, exploited 42. Use of drugs, alcohol, or other substance to facilitate the offence 43. Number of victims 44. Negative impact on the victim(s) 45. Vulnerability of the victim	1. Youth and immaturity of offender 2. Minimal or fleeting contact 3. Both the offender and victim are teenagers similar in age

Relevant Cases:

NI Cases:

N/A

English Cases:

- R v Corran [2005] EWCA Crim 192
 R. v Kizlaite & Anor [2006] EWCA Crim 1492
 R v Ayeva [2009] EWCA Crim 2640
 R v Brough [2007] 1 Cr App R(S) 55

Notes:

- This offence is similar in concept to the now repealed offence of ‘gross indecency towards a child’ (contrary to s.22 of the Children and Young Persons Act (NI) 1968) with the main difference being the offence can be committed against an adult.
- Notification requirements under Part 2 of the Sexual Offences Act 2003 apply.
- ‘Children Barred List’ and ‘Vulnerable Adults Barred List’ under the Safeguarding Vulnerable Groups (NI) Order 2007 apply.

CAUSING OR INCITING A CHILD TO ENGAGE IN SEXUAL ACTIVITY

Sexual Offences (NI) Order 2008

17. - (1) A person aged 18 or over (A) commits an offence if—
 (a) he intentionally causes or incites another person (B) to engage in an activity,
 (b) the activity is sexual, and
 (c) either—
 (i) B is under 16 and A does not reasonably believe that B is 16 or over, or
 (ii) B is under 13.

Maximum Sentence:

Sexual Offences (NI) Order 2008, Art.17(2)-(3)

(1) Where the activity caused or incited involved penetration of V’s anus or vagina; penetration of V’s mouth with a person’s penis; penetration of a person’s anus or vagina with a part of V’s body or by V with anything else; or penetration of a person’s mouth with V’s penis:

Indictment only: 14 years imprisonment

(2) Any other activity:

Indictment: 14 years imprisonment

Summary: 6 months imprisonment and/or statutory maximum fine (£5,000).

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Causing/inciting contact between part of the offender’s body (other than genitalia) with part of the victim’s body (other than genitalia)	2 months Custody + Compensation Order	Community Order to 3 months Custody + Compensation Order
Causing/inciting contact between part of the victim’s body and the offender’s clothed genitalia	3 months Custody + Compensation Order	Community Order to 6 months Custody + Compensation Order
Causing/inciting contact between part of the victim’s body and the naked genitalia of the offender or second victim	4 months custody + Compensation Order	Community Order to 6 months Custody + Compensation Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
46. More than one offender acting together 47. Abuse of trust 48. Offence motivated by prejudice (race, religion, sexual orientation, physical disability) 49. Sustained attack 50. Negative impact on the victim(s) 51. More than one victim 52. Victims targeted, groomed, exploited 53. Physical or mental harm caused 54. Substantial age gap	1. Closeness in age between the victim and the offender 2. Mutual consenting experimentation between teenagers 3. Single isolated incident with minimal or fleeting contact

Relevant Cases:

NI Cases:

- R v SG [2010] NICA 32
 R v Hume [2006] NICC 18
 R v JC [2003] NICA 19

English Cases:

- R v Price [2008] EWCA Crim 1974
 R v Corran & Ors. [2005] EWCA Crim 192
 R v Ayeva [2009] EWCA Crim 2640
 R v Delucca [2010] EWCA Crim 710
 R. v Collard [2004] EWCA Crim 1664
 R v Mortimer [2010] EWCA Crim 1303

Notes:

- This offence, along with Article 15 of the Sexual Offences (NI) Order 2008, replaced ‘causing or encouraging seduction or prostitution of a girl under 17’ and ‘gross indecency towards a child’ (contrary to sections 21 & 22 of the Children and Young Persons Act (NI) 1968).
- The offence provides a reasonable belief defence as to the victim’s age where the child is 13-15 years old.
- The offence applies even where the child has given ‘ostensible’ consent to the activity.
- Notification requirements under Part 2 of the Sexual Offences Act 2003 apply.
- ‘Children Barred List’ and ‘Vulnerable Adults Barred List’ under the Safeguarding Vulnerable Groups (NI) Order 2007 apply.

CAUSING OR INCITING A CHILD UNDER 13 TO ENGAGE IN SEXUAL ACTIVITY

Sexual Offences (NI) Order 2008

15. – (1) A person commits an offence if—
- (a) he intentionally causes or incites another person (B) to engage in an activity,
 - (b) the activity is sexual, and
 - (c) B is under 13.

Maximum Sentence:

Sexual Offences (NI) Order 2008, Art.15(2)-(3)

(1) Where the activity involved penetration of V's anus or vagina; penetration of V's mouth with a person's penis; penetration of a person's anus or vagina with a part of V's body or by V with anything else; or penetration of a person's mouth with V's penis:

Indictment only: Life imprisonment (Discretionary)

(2) Any other activity:

Indictment: 14 years imprisonment

Summary: 6 months imprisonment or statutory maximum fine (£5,000) or both.

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Causing/inciting contact between part of the offender's body (other than genitalia) with part of the victim's body (other than genitalia)	2 months Custody + Compensation Order	Community Order to 3 months Custody + Compensation Order
Causing/inciting contact between part of the victim's body and the offender's clothed genitalia	3 months Custody + Compensation Order	Community Order to 6 months Custody + Compensation Order
Causing/inciting contact between part of the victim's body and the naked genitalia of the offender or second victim	4 months custody + Compensation Order	Community Order to 6 months Custody + Compensation Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
55. More than one offender acting together 56. Abuse of trust/special relationship 57. Offence motivated by prejudice (race, religion, sexual orientation, physical disability) 58. Sustained attack 59. Negative impact on the victim(s) 60. More than one victim 61. Victims targeted, groomed, exploited 62. Physical or mental harm caused 63. Vulnerability of the victim	1. Youth and immaturity of the offender 2. Single isolated incident with minimal or fleeting contact

Relevant Cases:

NI Cases:

R v SG [2010] NICA 32
 R v Hume [2006] NICC 18
 R v JC [2003] NICA 19

English Cases:

R v T [2008] EWCA Crim 815
 Attorney General's Reference (No. 28 of 2010) [2010] EWCA Crim 1996
 R v Corran [2005] EWCA Crim 192

Notes:

1. This offence, along with Article 17 of the Sexual Offences (NI) Order 2008, replaced the offences of 'causing or encouraging seduction or prostitution of a girl under 17' and 'gross indecency towards a child' (contrary to sections 21 & 22 of the Children and Young Persons Act (NI) 1968) where the victim is under 13).
2. The act committed is the same as Article 8 of the Sexual Offences (NI) Order 2008 (causing a person to engage in sexual activity without consent) but here CONSENT IS NOT AN ISSUE.
3. Maximum sentence under the old offence (gross indecency) was only 10 years.
4. Notification requirements under Part 2 of the Sexual Offences Act 2003 apply.
5. 'Children Barred List' and 'Vulnerable Adults Barred List' under the Safeguarding Vulnerable Groups (NI) Order 2007 apply.

EXPOSURE

Sexual Offences (NI) Order 2008

70. - (1) A person commits an offence if—
(a) he intentionally exposes his genitals, and
(b) he intends that someone will see them and be caused alarm or distress.

Maximum Sentence:

Sexual Offences (NI) Order 2008, Art.70(2)

Indictment: 2 years imprisonment

Summary: 6 months imprisonment and/or a fine not exceeding the statutory maximum (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Basic offence as defined in the SOA 2003, with no aggravating factors	Community Order	Fine to Community Order
Offence with an aggravating factor(s)	Community Order	Community Order to 6 months Custody

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
64. Abuse of trust / special relationship 65. Proximity of offence to school, hospital, etc. 66. Intimidating behaviour / threats of violence 67. Threats to prevent the victim from reporting an offence 68. Vulnerable victim	

Relevant Cases:

NI Cases:
N/A

English Cases:
R v Bell [2008] EWCA Crim 55
R v Whitton [2006] EWCA Crim 3229
R v Rakib [2011] EWCA Crim 870
R v Stark [1998] EWCA Crim 1106

Notes:

- Notification requirements under Part 2 of the Sexual Offences Act 2003 apply –
 - where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - in any other case—
 - the victim was under 18, or
 - the offender, in respect of the offence or finding, is or has been—
 - sentenced to a term of imprisonment;
 - detained in a hospital, or
 - made the subject of a community sentence of at least 12 months.
- 'Children Barred List' and 'Vulnerable Adults Barred List' under the Safeguarding Vulnerable Groups (NI) Order 2007 apply where offence was committed against a child under the age of 16.

GROSS INDECENCY WITH OR TOWARDS A CHILD

Children and Young Persons Act (NI) 1968

22. – (1) Any person who commits an act of gross indecency (defined as unlawful sexual contact between an adult and a child which falls short of full sexual intercourse) with or towards a child, or who incites a child to such an act with him or another, shall be guilty of an offence

Maximum Sentence:

Children and Young Persons Act (NI) 1968, s.22

Indictment: 10 years imprisonment

Summary: 6 months imprisonment or a fine not exceeding the prescribed sum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Contact between part of the offender's body (other than genitalia) with part of the victim's body (other than genitalia)	2 months Custody + Compensation Order	Community Order to 3 months Custody + Compensation Order
Contact between part of the victim's body and the offender's clothed genitalia	3 months Custody + Compensation Order	Community Order to 6 months Custody + Compensation Order
Contact between part of the victim's body and the naked genitalia of the offender or second victim	4 months custody + Compensation Order	Community Order to 6 months Custody + Compensation Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
69. More than one offender acting together 70. Abuse of trust / special relationship 71. Intimidating behaviour / threats of violence 72. Threats to prevent the victim from reporting an offence 73. Future / long term impact on victim 74. Serious nature of the indecency 75. Number of victims 76. Vulnerability of the victim 77. Prolonged activity or contact 10. Victim targeted, groomed, exploited 11. Substantial age difference	1. Youth and immaturity of the offender 2. Offender and victim are teenagers similar in age

Relevant Cases:

NI Cases:

R v SG [2010] NICA 32

R v Hume [2006] NICC 18

R v M [2002] NICA 49

R v JC [2003] NICA 19

English Cases:

R v Dove [1996] EWCA Crim 28

Notes:

1. This offence was repealed by the Sexual Offences (NI) Act 2008.

2. Notification requirements under Part 2 of the Sexual Offences Act 2003 apply the offender:

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

3. 'Children Barred List' and 'Vulnerable Adults Barred List' under the Safeguarding Vulnerable Groups (NI) Order 2007 apply.

INDECENT ASSAULT ON A FEMALE

Offences Against the Person Act 1861

52. – Whosoever shall be convicted of any indecent assault upon any female shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding ten years or to be fined or both.

Maximum Sentence:

Offences Against the Person Act 1861, s.52

Indictment: 10 years imprisonment and/or unlimited fine

Summary: 12 months imprisonment and/or the prescribed sum (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Contact between part of the offender's body (other than genitalia) with part of the victim's body (other than genitalia)	Community Order + Compensation Order	Fine to Community Order + Compensation Order
Contact between part of the offender's body and the victim's clothed genitalia	Community Order + Compensation Order	Community Order to 6 months Custody + Compensation Order
Contact between part of the offender's body and the victim's naked genitalia	4 months Custody + Compensation Order	3 - 12 months Custody + Compensation Order

Examples of Possible Aggravating Factors of Offence

1. Threats of violence or unpleasant consequences if victims disclosed abuse or did not comply.
2. Offender is in a position of trust or power over the victim.
3. Youth, innocence, and vulnerability of the victims.
4. Number of victims.
5. Physical harm caused.
6. Negative impact on the victims.
7. Deliberate practice of abuse over long period of time.
8. Victims targeted, groomed, exploited.
9. Offender shows no remorse.
10. Background of intimidation or coercion.
11. Use of drugs, alcohol or other substance to facilitate the offence.

Examples of Possible Mitigating Factor of Offence

1. Reasonably believed that victim consented.
2. Youth and immaturity of the offender.
3. Mutual consenting experimentation between teenagers.

Relevant Cases:

NI Cases

1. R v Lemon (20/12/96)
2. R v Charters [1989] NI 262
3. R v McCafferty 25.10.1991(JSB 2.35)
4. R v Larmour [2001] 6 BNIL 116 (CA)
5. AG's Reference (No 3 of 2001) (Hall) [2002] 2 BNIL 93 (CA)
6. Attorney General's Reference (No 9 of 2003) (Thompson) [2003] NICA 41

English Cases

N/A

Notes:

1. This offence was repealed by the Sexual Offences (Northern Ireland) Order 2008.
2. Indictable offence triable summarily with consent of the accused (Art.45 of, and Sch.2 to, the Magistrate's Court (NI) Order 1981).
3. Notification requirements under Part 2 of the Sexual Offences Act 2003 apply where:
 - (a) the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment of at least 12 months;
 - (b) in any other case –
 - (i) the victim was under 18; or
 - (ii) the offender, in respect of the offence, is or has been –
 - sentenced to a term of imprisonment;
 - detained in a hospital; or
 - made the subject of a community sentence of at least 12 months.
4. 'Vulnerable Adults Barred List' under the Safeguarding Vulnerable Groups (NI) Order 2007 applies; 'Children Barred List' applies where offence was committed against a child.

INDECENT ASSAULT ON A MALE

Criminal Justice (Northern Ireland) Order 2003

21. – (1) A person who makes an indecent assault on a man shall be guilty of an offence ...
 (2) In this Article man includes a male person of any age.

Maximum Sentence:

Criminal Justice (Northern Ireland) Order 2003, Art.21(1)
Indictment: 10 years imprisonment and/or an unlimited fine
Summarily: 12 months imprisonment and/or the prescribed sum (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Contact between part of the offender's body (other than genitalia) with part of the victim's body (other than genitalia)	Community Order + Compensation Order	Fine to Community Order + Compensation Order
Contact between part of the offender's body and the victim's clothed genitalia	Community Order + Compensation Order	Community Order to 6 months Custody + Compensation Order
Contact between part of the offender's body and the victim's naked genitalia	4 months Custody + Compensation Order	3 - 12 months Custody + Compensation Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Threats of violence or unpleasant consequences if victims disclosed abuse or did not comply. 2. Offender is in a position of trust or power over the victim. 3. Youth, innocence, and vulnerability of the victims. 4. Number of victims. 5. Physical harm caused. 6. Negative impact on the victims. 7. Deliberate practice of abuse over long period of time. 8. Victims targeted, groomed, exploited. 9. Offender shows no remorse. 10. Background of intimidation or coercion. 11. Use of drugs, alcohol or other substance to facilitate the offence. 	<ol style="list-style-type: none"> 1. Reasonably believed that victim consented. 2. Youth and immaturity of the offender. 3. Mutual consenting experimentation between teenagers.

Relevant Cases:

NI Cases

1. Attorney General's Reference (No.2 of 2002) [2002] NICA 40
2. Berry [1999] 1 BNIL 73.

English Cases

N/A

Notes:

1. This offence was repealed by the Sexual Offences (Northern Ireland) Order 2008.
2. Indictable offence triable summarily with consent of the accused (Art.45 of, and Sch.2 to, the Magistrate's Court (NI) Order 1981).
3. Notification requirements under Part 2 of the Sexual Offences Act 2003 apply where:
 - (a) the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment of at least 12 months;
 - (b) in any other case –
 - (i) the victim was under 18; or
 - (ii) the offender, in respect of the offence, is or has been –
 - sentenced to a term of imprisonment;
 - detained in a hospital; or
 - made the subject of a community sentence of at least 12 months.
4. 'Vulnerable Adults Barred List' under the Safeguarding Vulnerable Groups (NI) Order 2007 applies; 'Children Barred List' applies where offence was committed against a child.

INDECENT BEHAVIOUR IN A PUBLIC PLACE

Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968

9.- (1) Any person-

(a) guilty of any indecent behaviour in any street, road, highway or other public place, or in any place to which the public have access (whether as of right or by permission and whether subject to or free of charge) ... shall be guilty of an offence ...

Maximum Sentence:

Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968, s.9(1)

Summary only: 6 months and/or Level 3 fine (£1,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Urinating in a public place	Fine	Fine to Community Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
N/A	N/A

Relevant Cases:

NI Cases:

1. McCabe v Donnelly [1982] NI 153

English Cases:

1. R v May (John) 91 Cr. App.R. 157

2. R v Morris [1951] 1 K.B. 394, 34 Cr.App.R. 210

Notes:

SEXUAL ACTIVITY WITH A CHILD

Sexual Offences (NI) Order 2008

16. - (1) A person aged 18 or over (A) commits an offence if—
 (a) he intentionally touches another person (B),
 (b) the touching is sexual, and
 (c) either—
 (i) B is under 16 and A does not reasonably believe that B is 16 or over, or
 (ii) B is under 13.

Maximum Sentence:

Sexual Offences (NI) Order 2008, Art.16(2)-(3)

(1) Where the touching involved penetration of V’s anus or vagina with a part of D’s body or anything else; penetration of V’s mouth with D’s penis; penetration of D’s anus or vagina with a part of V’s body; or penetration of D’s mouth with V’s penis:

Indictment only: 14years imprisonment

(2) Any other touching:

Indictment: 14 yrs imprisonment

Summary: 6mths imprisonment and/or statutory maximum fine (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Contact between part of the offender’s body (other than genitalia) with part of the victim’s body (other than genitalia)	2 months Custody + Compensation Order	Community Order to 3 months Custody + Compensation Order
Contact between part of the victim’s body and the offender’s clothed genitalia	3 months Custody + Compensation Order	Community Order to 6 months Custody + Compensation Order
Contact between part of the victim’s body and the naked genitalia of the offender or second victim	4 months custody + Compensation Order	Community Order to 6 months Custody + Compensation Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
78. More than one offender acting together 79. Abuse of trust 80. Offence motivated by prejudice (race, religion, sexual orientation, physical disability) 81. Sustained attack 82. Negative impact on the victim(s) 83. More than one victim 84. Victims targeted, groomed, exploited 85. Physical or mental harm caused	4. Closeness in age between the victim and the offender 5. Mutual consenting experimentation between teenagers 6. Single isolated incident with minimal or fleeting contact

Relevant Cases:

NI Cases:

- R v SG [2010] NICA 32
R v McCormick [2015] NICA 14

English Cases:

- R v Shiers [2006] EWCA Crim 181
R. v JK [2009] EWCA Crim 2437
R v Frew [2008] EWCA Crim 1029
R v. Harrison [2008] EWCA Crim 3170

Notes:

- This offence replaced the offences of unlawful carnal knowledge of a girl under 17 (contrary to s.5 of the Criminal Law Amendment Act 1885), and also the offences of indecent assault on a female (contrary to s.52 of the Offences Against the Person Act 1861) and indecent assault on a male (contrary to art.21 of the Criminal Justice (NI) Order 2003) where the victim is under 16.
- The offence applies where the child has given ‘ostensible’ consent to the activity.
- Notification requirements under Part 2 of the Sexual Offences Act 2003 apply.
- ‘Children Barred List’ and ‘Vulnerable Adults Barred List’ under the Safeguarding Vulnerable Groups (NI) Order 2007 apply.

SEXUAL ASSAULT

Sexual Offences (Northern Ireland) Order 2008

7. – (1) A person (A) commits an offence if—
- (a) he intentionally touches another person (B),
 - (b) the touching is sexual,
 - (c) B does not consent to the touching, and
 - (d) A does not reasonably believe that B consents.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

Maximum Sentence:

Sexual Offences (NI) Order 2008, Art.7(4)

Indictment: 10 years imprisonment

Summary: 6 months imprisonment and/or statutory maximum fine (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Contact between part of the offender's body (other than genitalia) with part of the victim's body (other than genitalia)	Community Order + Compensation Order	Fine to 2 months Custody + Compensation Order
Contact between part of the offender's body and the victim's clothed genitalia	Community Order + Compensation Order	Fine to 6 months Custody + Compensation Order
Contact between part of the offender's body and the victim's naked genitalia	4 months custody + Compensation Order	3 - 6 months custody + Compensation Order

Examples of Possible Aggravating Factors of Offence

1. Threats of violence or unpleasant consequences if victims disclosed abuse or did not comply
2. Offender is in a position of trust or power over the victim
3. Youth, innocence, and vulnerability of the victim
4. Number of victims
5. Physical harm caused
6. Negative impact on the victims
7. Deliberate practice of abuse over long period of time
8. Victims targeted, groomed, exploited
9. Offender shows no remorse
10. Background of intimidation or coercion
11. Use of drugs, alcohol or other substance to facilitate the offence

Examples of Possible Mitigating Factor of Offence

1. Reasonably believed that victim consented
2. Youth and immaturity of the offender
3. Mutual consenting experimentation between teenagers

Relevant Cases:

NI Cases

1. R v Lemon (20 December 1996) (Unreported)
2. R v Charters [1989] NI 262
3. R v McCafferty (25 October 1991) (Unreported)
4. R v Larmour [2001] 6 BNIL 116
5. AG's Reference (No 3 of 2001) (Hall) [2002] 2 BNIL 93 (CA)
6. Attorney General's Reference (No 9 of 2003) (Thompson) [2003] NICA 41
7. Attorney General's Reference (No.2 of 2002) [2002] NICA 40

English Cases

N/A

Notes:

1. This offence replaced the offences of indecent assault on a female (contrary to s.52 of the Offences Against the Person Act 1861) and indecent assault on a male (contrary to art.21 of the Criminal Justice (NI) Order 2003).
3. Notification requirements under Part 2 of the Sexual Offences Act 2003 apply:
 - (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case –
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been –
 - (aa) sentenced to a term of imprisonment;
 - (bb) detained in a hospital, or
 - (cc) made the subject of a community sentence of at least 12 months.
4. 'Children Barred List' and 'Vulnerable Adults Barred List' under the Safeguarding Vulnerable Groups (NI) Order 2007 apply.

SEXUAL ASSAULT ON CHILD UNDER 13

Sexual Offences (NI) Order 2008

14. – (1) A person commits an offence if—
- (a) he intentionally touches another person,
 - (b) the touching is sexual, and
 - (c) the other person is under 13.

Maximum Sentence:

Sexual Offences (NI) Order 2008, Art.14(2)

Indictment: 10 years imprisonment

Summary: 6 months imprisonment and/or statutory maximum fine (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Contact between part of the offender's body (other than genitalia) with part of the victim's body (other than genitalia)	2 months Custody + Compensation Order	Community Order to 3 months Custody + Compensation Order
Contact between part of the offender's body and the victim's clothed genitalia	3 months Custody + Compensation Order	Community Order to 6 months Custody + Compensation Order
Contact between part of the offender's body and the victim's naked genitalia	4 months custody + Compensation Order	Community Order to 6 months Custody + Compensation Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
86. More than one offender acting together 87. Abuse of trust/special relationship 88. Offence motivated by prejudice (race, religion, sexual orientation, physical disability) 89. Sustained attack 90. Negative impact on the victim(s) 91. More than one victim 92. Victims targeted, groomed, exploited 93. Physical or mental harm caused 94. Vulnerability of the victim	3. Youth and immaturity of the offender 4. Single isolated incident with minimal or fleeting contact

Relevant Cases:

NI Cases:

1. Attorney General's Reference (No. 4 or 2005) (Kerr) [2005] NICA 33
2. R v Horrocks (07/02/97)
3. Attorney General's Reference (No.16 of 2003) (Deery) [2003] NICA 44
4. Attorney General's Reference (No. 3 of 2001) (Hall) [2002] 2 BNIL 93
5. R v Lavery [2001] 4 BNIL 20 (CA)
6. Attorney General's Reference (No. 1 of 2003) [2003] NICA 19

English Cases

N/A

Notes:

1. This is a newly created offence but replaces indecent assault on a female (contrary to s.52 of the Offences Against the Person Act 1861) and indecent assault on a male (contrary to art.21 of the Criminal Justice (NI) Order 2003), where V is under 13.
2. The act committed is the same as Article 7 of the Sexual Offences (NI) Order 2008 (sexual assault) but here CONSENT IS NOT AN ISSUE.
3. Notification requirements under Part 2 of the Sexual Offences Act 2003 apply where the offender—
 - (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
4. 'Children Barred List' and 'Vulnerable Adults Barred List' under the Safeguarding Vulnerable Groups (NI) Order 2007 apply.

FINES

Fines Act (Ireland) 1851
Criminal Justice Act (NI) 1945
Magistrates' Courts (NI) Order 1981
Fines and Penalties (NI) Order 1984
Criminal Justice (NI) Order 1996

<u>Description</u>	<u>Minimum Requirements</u>	<u>Permissible Duration/Conditions</u>	<u>Cases</u>	<u>Notes</u>																																																		
<p>A pecuniary penalty imposed on D and is deemed a civil debt to the Crown.</p> <p>“Fines are generally used in cases where a deterrent or punitive sentence is necessary, but either the inherent gravity of the offence is insufficient to justify a sentence of imprisonment, or the presence of mitigating factors justifies the sentence in avoiding a sentence of imprisonment.” [Thomas, Principles of Sentencing]</p>	<p><u>1. Conviction on Indictment:</u> Where the statute does not specify the maximum fine, then a fine of any amount can be imposed. [Art.3 of 1984 Order]</p> <p><u>2. Summary Conviction:</u> (a) <i>Summary only offences</i> are dictated by the ‘standard scale’:</p> <table border="1" style="margin-left: 20px;"> <thead> <tr> <th style="text-align: center;">Scale</th> <th style="text-align: center;">Max. Fine</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">£200</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">£500</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">£1,000</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">£2,500</td> </tr> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">£5,000</td> </tr> </tbody> </table> <p>[Art.5(1)&(2) of 1984 Order] Where the offence is punishable with imprisonment but silent as to a fine, a Magistrates’ Court may impose a level 3 fine (or such lesser amount so that the default imprisonment would not be greater than maximum term in prison for the given offence).[Art.54 of 1981 Order]</p> <p>(b) <i>Hybrid offences and indictable offences triable summarily</i> – Max. fine is the ‘prescribed sum’ (£5,000) unless statute states otherwise [Art.4(1)&(8) of 1984 Order]. Where the offence is</p>	Scale	Max. Fine	1	£200	2	£500	3	£1,000	4	£2,500	5	£5,000	<p>Before fixing the amount of a fine, the court shall inquire into D’s financial circumstances. The court shall take into account the circumstances of the case including the financial circumstances of D so far as they are known, or appear, to the court, and the fine shall be such as, in the opinion of the court, reflects the seriousness of the offence. (NB: Ability to proceed in specified circumstances) [Art.29(1)-(4) of 1996 Order]</p> <p><u>1. Conviction on Indictment:</u> The Crown Court when imposing a fine may: (a) allow time to pay; (b) direct the payment to be made by instalments; (c) fix a term of imprisonment for if D defaults on payment; (d) on the application of D, allow further time for payment or vary an order for payment by instalments. [(s.35(1) of 1945 Act)]</p> <p><u>2. Summary Conviction:</u> The Magistrates’ Court when imposing a fine may: (a) allow time to pay (which shall not be less than 28 days); (b) allow payment to be made by instalments (and shall allow such payment unless it is satisfied that it would not be reasonable in all the circumstances to do so); (c) on the application of D, allow further time for payment or vary an order for payment by instalments (in doing so, the court may remit any or part of the fine). (d) issue an immediate warrant for committal in</p>	<p><i>R v Markwick</i> (1953) 37 Cr App R 125 – General principles</p> <p><i>R Reeves</i> (1972) 56 Cr App R 366 – General Principles</p> <p><i>R v Ball</i> (1981) 3 Cr App R(S) 283 – General Principles</p> <p><i>R v Fairbairn</i> (1980) 2 Cr App R(S) 315 – General Principles</p> <p><i>Treasury v Harris</i> [1957] 2 QB 516 – Default period consecutive to custodial sentence.</p> <p><i>R v Chelmsford Crown Court ex p Birchall</i> (1989) 11 Cr App R(S) 510 – Principle of totality.</p> <p><i>Forrest v Brighton Justices</i> (1981) 73 Cr App R 267 – Default of multiple fines.</p> <p><i>R v Finkle</i> [1988] 7 NIJB 78 – D’s unemployment to be taken into consideration.</p> <p><i>R v Belfast City Council</i> [2009] NICC 3 – Fines against public authorities.</p> <p><i>R v McClelland</i> (1951) 35 Cr App R 22 – Should not impose fine with absolute/conditional discharge.</p>	<p>Art.30 of 1996 Order – Following conviction the court may make a ‘Financial Circumstances Order’ requiring D to give to the court such a statement of his financial circumstances as the court may require.</p> <p>Enforcement of fines – see s.3 of 1851 Act and Art.92 of 1981 Order.</p> <p><u>Imprisonment in default of payment of fine:</u> (a) If fine imposed by Crown Court:</p> <table border="1" style="margin-left: 20px;"> <thead> <tr> <th style="text-align: center;">Fine < £200</th> <th style="text-align: center;">7 days</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">£200 < Fine < £500</td> <td style="text-align: center;">14 days</td> </tr> <tr> <td style="text-align: center;">£500 < Fine < £1,000</td> <td style="text-align: center;">28 days</td> </tr> <tr> <td style="text-align: center;">£1,000 < Fine < £2,500</td> <td style="text-align: center;">45 days</td> </tr> <tr> <td style="text-align: center;">£2,500 < Fine < £5,000</td> <td style="text-align: center;">3 mths</td> </tr> <tr> <td style="text-align: center;">£5,000 < Fine < £10,000</td> <td style="text-align: center;">6 mths</td> </tr> <tr> <td style="text-align: center;">£10,000 < Fine < £20,000</td> <td style="text-align: center;">12 mths</td> </tr> <tr> <td style="text-align: center;">£20,000 < Fine < £50,000</td> <td style="text-align: center;">18 mths</td> </tr> <tr> <td style="text-align: center;">£50,000 < Fine < £100,000</td> <td style="text-align: center;">2 yrs</td> </tr> <tr> <td style="text-align: center;">£100,000 < Fine < £250,000</td> <td style="text-align: center;">3 yrs</td> </tr> <tr> <td style="text-align: center;">£250,000 < Fine < £1million</td> <td style="text-align: center;">5 yrs</td> </tr> <tr> <td style="text-align: center;">£1million < Fine</td> <td style="text-align: center;">10 yrs</td> </tr> </tbody> </table> <p>[s.35(2) of 1945 Act]</p> <p>(b) If fine imposed by Magistrates’ Court</p> <table border="1" style="margin-left: 20px;"> <thead> <tr> <th style="text-align: center;">Fine < £200</th> <th style="text-align: center;">7 days</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">£200 < Fine < £500</td> <td style="text-align: center;">14 days</td> </tr> <tr> <td style="text-align: center;">£500 < Fine < £1,000</td> <td style="text-align: center;">28 days</td> </tr> <tr> <td style="text-align: center;">£1,000 < Fine < £2,500</td> <td style="text-align: center;">45 days</td> </tr> <tr> <td style="text-align: center;">£2,500 < Fine < £5,000</td> <td style="text-align: center;">3 mths</td> </tr> <tr> <td style="text-align: center;">£5,000 < Fine < £10,000</td> <td style="text-align: center;">6 mths</td> </tr> <tr> <td style="text-align: center;">£10,000 < Fine</td> <td style="text-align: center;">12 mths</td> </tr> </tbody> </table>	Fine < £200	7 days	£200 < Fine < £500	14 days	£500 < Fine < £1,000	28 days	£1,000 < Fine < £2,500	45 days	£2,500 < Fine < £5,000	3 mths	£5,000 < Fine < £10,000	6 mths	£10,000 < Fine < £20,000	12 mths	£20,000 < Fine < £50,000	18 mths	£50,000 < Fine < £100,000	2 yrs	£100,000 < Fine < £250,000	3 yrs	£250,000 < Fine < £1million	5 yrs	£1million < Fine	10 yrs	Fine < £200	7 days	£200 < Fine < £500	14 days	£500 < Fine < £1,000	28 days	£1,000 < Fine < £2,500	45 days	£2,500 < Fine < £5,000	3 mths	£5,000 < Fine < £10,000	6 mths	£10,000 < Fine	12 mths
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<p style="text-align: center;"><u>Textbooks</u></p> <p>Blackstone (2010), E15.1-15.15</p> <p>Archbold (2010), 5-391 – 5-410</p> <p>Valentine (Feb 2010) Folder 7, Pg.42, 74-85 Folder 3, Pg.41-43</p>																																																						

<p>Allen & McAleenan, 1.48-1.90</p>	<p>punishable with imprisonment but silent as to a fine, a Magistrates' Court may impose a level 5 fine. [Art.54 of 1981 Order]</p>	<p>default of payment (but only if: (i) D appears to the court to have sufficient means to pay the sum forthwith; or (ii) on being asked by the court whether he wishes to have time for payment D does not ask for time; or (iii) the court is satisfied that D has no fixed abode in Northern Ireland; or (iv) there is some other special circumstance appearing to the court to justify immediate committal.) [Art.91&93 of 1981 Order]</p>	<p><i>R v Green</i> (1984) 6 Cr App R(S) 329 – Principle of totality when imposing default imprisonment. <i>R v King</i> (1970) 54 Crim App R 362 – May impose fine with suspended sentence. <i>R v Warden</i> [1996] Crim LR 443 – Time on remand when determining default period. <i>R v Rollco and Rivet Co Ltd</i> [1999] 2 Cr App R(S) 436 - Imposing fine on a company.</p>	<p>[Sch.3 to 1981 Order] Magistrates' Court may transfer enforcement of fine to other UK jurisdiction. [Art.95 of 1981 Order]</p>
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PROBATION ORDERS

Criminal Justice (NI) Order 1996

Description	Minimum Requirements	Permissible Duration/Conditions	Cases	Notes
<p>An order requiring D to be under the supervision of a probation officer for a period specified in the order of not less than 6 months nor more than 3 years</p> <p>A probation order is a 'community order'. [Art.2(1)]</p>	<p>The sentence for the offence must not be fixed by law (i.e. not a mandatory life sentence or a minimum custodial sentence under Article 70(2) of the Firearms (NI) Order 2004 or paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006). [Art.10(1)]</p> <p>Art. 10(1) - The Court must be of the opinion that the supervision of the offender by a probation officer is desirable in the interests of-</p> <ul style="list-style-type: none"> (a) securing the rehabilitation of the offender; or (b) protecting the public from harm from him or preventing the commission by him of further offences. 	<p>The duration of the order shall not be less than 6months nor more than 3 years. [Art.10(1)]</p> <p>(a) The order shall be such as in the opinion of the court is, or taken together are, the most suitable for the offender; and</p> <p>(b) The restrictions on liberty imposed by the order or orders shall be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it. [Art.8(2)]</p> <p>In forming any such opinion for (a) above, a court may take into account any information about the offender which is before it. In forming any such opinion for (b) above, a court shall take into account all such information about the circumstances of the offence (including any aggravating or mitigating factors) as is available to it. [Art.9(1)&(2)]</p> <p>A probation order may in addition require the offender to comply with such requirements as the court, having regard to the circumstances of the case, considers desirable in the interests of-</p> <ul style="list-style-type: none"> (a) securing the rehabilitation of the offender; or (b) protecting the public from harm from him or preventing the commission by him of further offences; <p>and may include those requirements stipulated in Sch.1 to the 1996 Order. However, a requirement to pay damages or compensation can not be an additional requirement of the order (but a separate Compensation Order can be made).[Art.11]</p> <p>Can not impose a probation order together with a community service order unless they both form part of a 'Combination Order' [Art.8(3)], but can be imposed at the same time as a fine, an order for costs, a forfeiture order, a restitution order or an order of disqualification [Art.10(10)].</p> <p>If D is under 18, then can be imposed at same time as a recognizance to be or good behaviour. [Art.7]</p> <p>s.18(2) of Treatment of Offenders Act (NI) 1968- Can not make a probation order at the same time as making a suspended sentence for another offence.</p>	<p><i>R v T</i> [1999] 2 Cr App R(S) 304 - Interpretation of offence being 'serious enough'.</p> <p><i>Thorpe v Griggs</i> (1984) 6 Cr App R(S) 286 - Service of order on D.</p> <p><i>R v Emmett</i> (1969) 53 Cr App R 203 - Simultaneous custodial sentence and probation order.</p> <p><i>R v Carr Thompson</i> [2002] Cr App R(S) 335 - Can not impose simultaneous custodial sentence and probation order.</p> <p><i>R v Fonteneau</i> [2001] 1 Cr App R(S) 15 - Imposing probation order when D is near end of custodial sentence.</p> <p><i>Gilding v DPP</i> (29 April 1998)(EWHC) - Can not imposed Probation Order at same time as Community Service Order.</p>	<p>Art.10(3) - Before making a probation order, the court shall-</p> <ul style="list-style-type: none"> (a) state in open court that it is of the opinion that Art.8(2)(a) and (b) apply and why it is of that opinion; and (b) explain to the offender in ordinary language- <ul style="list-style-type: none"> (i) why it is making a probation order; (ii) the effect of the order; (iii) the consequences if he fails to comply with any of the requirements of the order; and (iv) that the court has power to review the order on the application either of the offender or of the supervising officer. <p>(A magistrates' court is required to have such reasons entered in the Order Book. [Art.10(7)])</p> <p>Where, upon an application, the court considers the continuation of the probation order is no longer appropriate, it may substitute the order with a conditional discharge for the remainder of the probation period. [Art.12]</p> <p>Sch.3 to the Criminal Justice Act 1991 - Ability to impose probation order where D resides in E&W or Scotland.</p>
<p><u>Textbooks</u></p>	<p>The court must be of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence. [Art.8(1)]</p> <p>The court must obtain and consider a PSR [Art.9(3)] unless, in the circumstances of the case, it is of the opinion that a PSR is unnecessary. Where the court does not obtain a PSR, it shall state in open court that it is of that opinion and what the circumstances are [Art.9(4)]. NB. Difference if D under 18 [Art.9(5)].</p> <p>If D is over 14, he must express his willingness to comply with the requirements of the order [Art.10(3)]. If D fails to express his willingness, the court may consider the imposition of a custodial sentence [Art.19(3)].</p>			
<p>Blackstone (2010), E9.23-9.25, E9.33-9.47</p> <p>Valentine, Folder 7, pg.29-31</p> <p>Allen & McAleenan, 1.164-1.200</p>				

COMMUNITY SERVICE ORDERS

Criminal Justice (NI) Order 1996

<u>Description</u>	<u>Minimum Requirements</u>	<u>Permissible Duration/Conditions</u>	<u>Cases</u>	<u>Notes</u>
<p>An order requiring D to perform unpaid work for a specified number of hours.</p> <p>A community service order is a 'community order'. [Art.2(1)]</p>	<p>D must be 16 years old or over. [Art.13(1)]</p> <p>The offence for which D is being sentenced must be punishable with imprisonment. [Art.13(1)]</p> <p>The sentence for the offence must not be fixed by law (i.e. not a mandatory life sentence or a minimum custodial sentence under Article 70(2) of the Firearms (NI) Order 2004 or paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006). [Art.13(1)]</p> <p>D must consent to the order. Also, the court must be satisfied that D is a suitable person to perform work under such an order and that provision can be made by the Probation Board for him to do so. [Art.13(4)]</p> <p>The court must be of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence. [Art.8(1)]</p> <p>The court must obtain and consider a PSR [Art.9(3)] unless, in the circumstances of the case, it is of the opinion that a PSR is unnecessary. Where the court does not obtain a PSR, it shall state in open court that it is of that opinion and what the circumstances are [Art.9(4)]. NB. Difference if D under 18 [Art.9(5)].</p>	<p>The number of hours D is required to work under the order shall be specified in the order and shall be in the aggregate not less than 40 but not more than 240. [Art.13(2)]</p> <p>(a) The order shall be such as in the opinion of the court is, or taken together are, the most suitable for the offender; and (b) The restrictions on liberty imposed by the order or orders shall be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it. [Art.8(2)]</p> <p>In forming any such opinion for (a) above, a court may take into account any information about the offender which is before it. In forming any such opinion for (b) above, a court shall take into account all such information about the circumstances of the offence (including any aggravating or mitigating factors) as is available to it. [Art.9(1)&(2)]</p> <p>Community service orders can be imposed concurrently or consecutively to each other, but if consecutive the total length can not exceed 240 hours. [Art.13(5)]</p> <p>Can not impose a community service order together with a probation order unless they both form part of a 'Combination Order' [Art.8(3)], but can be imposed at the same time as a fine, an order for costs, a compensation order, a forfeiture order, a restitution order or an order of disqualification [Art.13(11)].</p>	<p><i>R v Rice</i> (15 April 1997) (NICC) - General principles</p> <p><i>R v Fergie</i> [2007] EWCA Crim 1883 - General Principles.</p> <p><i>Re Weatherall</i> [1984] 19 NIJB 1 - Legitimate expectation</p> <p><i>R v Moss</i> [1983] 5 Crim App R(S) 209 - Legitimate expectation</p> <p><i>R v Meredith</i> (1994) 15 Cr App R(S) 528 - Consecutive orders to be treated as single order.</p> <p><i>Thorpe v Griggs</i> (1984) 6 Cr App R(S) 286 - Service of order on D.</p> <p><i>R v Starie</i> (1979) 1 Cr App R(S) 172 - Should not impose community service order at same time as imprisonment or a suspended sentence.</p> <p><i>R v Fonteneau</i> [2001] 1 Cr App R(S) 15 - Imposing order when D is near end of custodial sentence.</p> <p><i>Gilding v DPP</i> (29 April 1998)(EWHC) - Can not imposed Probation Order at same time as Community Service Order.</p>	<p>Art.13(7) - Before making a community service order, the court shall-</p> <p>(a) state in open court that it is of the opinion that Art.8(2)(a) and (b) apply and why it is of that opinion; and (b) explain to the offender in ordinary language-</p> <p style="padding-left: 20px;">(i) why it is making a probation order; (ii) the effect of the order; (iii) the consequences if he fails to comply with any of the requirements of the order; and (iv) that the court has power to review the order on the application either of the offender or of the supervising officer.</p> <p>(A magistrates' court is required to have such reasons entered in the Order Book. [Art.13(7)])</p> <p>Sch.13 to the Criminal Justice Act 1982 – Ability to make community service order where D resides in E&W or Scotland.</p>
<u>Textbooks</u>				
<p>Blackstone (2010), E9.48-9.55</p> <p>Valentine, Folder 7, pg.31-32</p> <p>Allen & McAleenan, 1.201-1.220</p>				

COMBINATION ORDERS

Criminal Justice (NI) Order 1996

<u>Description</u>	<u>Minimum Requirements</u>	<u>Permissible Duration/Conditions</u>	<u>Cases</u>	<u>Notes</u>
<p>An order requiring D to be both: (a) under the supervision of a probation officer for a specified period and (b) perform unpaid work for a specified number of hours so specified.</p> <p>A combination order is a ‘community order’. [Art.2(1)]</p>	<p>D must 16 years old or over.[Art.15(1)]</p> <p>The offence for which the D is being sentenced must be punishable with imprisonment. [Art.15(1)]</p> <p>The sentence for the offence must not be fixed by law (i.e. not a mandatory life sentence or a minimum custodial sentence under Article 70(2) of the Firearms (NI) Order 2004 or paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006). [Art.15(1)]</p> <p>Art.15(2) - The court must be of the opinion that the making of a combination order is desirable in the interests of-</p> <p>(a) securing the rehabilitation of the offender; or (b) protecting the public from harm from him or preventing the commission by him of further offences.</p> <p>The court must be of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence. [Art.8(1)]</p> <p>The court must obtain and consider a PSR [Art.9(3)] unless, in the circumstances of the case, it is of the opinion that a PSR is unnecessary. Where the court does not obtain a PSR, it shall state in open court that it is of that opinion and what the circumstances are [Art.9(4)]. NB. Difference if D under 18 [Art.9(5)].</p>	<p>The duration of the supervision element must not be less than 12 months nor more than 3 years. [Art.15(1)]</p> <p>The duration of the unpaid work element must not be less than 40 hours nor more than 100 hours aggregate. [Art.15(1)]</p> <p>(a) The order shall be such as in the opinion of the court is, or taken together are, the most suitable for the offender; and (b) The restrictions on liberty imposed by the order or orders shall be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it. [Art.8(2)]</p> <p>In forming any such opinion for (a) above, a court may take into account any information about the offender which is before it. In forming any such opinion for (b) above, a court shall take into account all such information about the circumstances of the offence (including any aggravating or mitigating factors) as is available to it. [Art.9(1)&(2)]</p> <p><i>Quaere</i> - Can be imposed at the same time as a fine, an order for costs, a compensation order, a forfeiture order, a restitution order or an order of disqualification.</p>	<p>Re Weatherall [1984] 19 NIJB 1 - Legitimate expectation</p> <p><i>R v Moss</i> [1983] 5 Crim App R(S) 209 - Legitimate expectation</p> <p><i>Thorpe v Griggs</i> (1984) 6 Cr App R(S) 286 - Service of order on D.</p> <p><i>R v Starie</i> (1979) 1 Cr App R(S) 172 - Should not impose community service order at same time as imprisonment or a suspended sentence.</p> <p><i>R v Fonteneau</i> [2001] 1 Cr App R(S) 15 - Imposing order when D is near end of custodial sentence.</p>	<p>Art.15(3) - Before making a combination order, the court shall-</p> <p>(a) state in open court that it is of the opinion that Article 8(1) applies and why it is of that opinion; and (b) explain to the offender in ordinary language why it is making a combination order.</p> <p>(A magistrates’ court is required to have such reasons entered in the Order Book. [Art.15(4)])</p> <p>Art.15(5) - A combination order is treated as if it were a probation order (so far as it imposes requirements to be under the supervision of a probation order) and as if it were a community service order (so far as it imposes requirements to perform unpaid work).</p> <p><i>Quaere</i> – Sch.13 to the Criminal Justice Act 1982 and Sch.3 to the Criminal Justice Act 1991 permit making a combination order where D resides in E&W or Scotland.</p>
<p><u>Textbooks</u></p> <p>Valentine, Folder 7, pg.33</p> <p>Allen & McAleenan, 1.221-1.232</p>				

DETENTION IN YOUNG OFFENDERS' CENTRE (Pre-April 2009 Offences)

Treatment of Offenders Act (NI) 1968

Criminal Justice (NI) Order 1996

Description	Minimum Requirements	Permissible Duration/Conditions	Cases	Notes
<p>An order requiring D to be detained in the Young Offenders' Centre for a fixed term.</p>	<p>D must be aged not less than 16 but under 21. [s.5(1)]</p> <p>The offence must be punishable with imprisonment. [s.5(1)]</p> <p>The court must consider that D should serve a term of detention. [s.5(1)]</p> <p>D must not be serving a sentence of imprisonment at the date on which the order of detention is imposed. [s.1(3)]</p>	<p>Maximum of 4 years or the maximum penalty for the given offence, whichever is the lesser. [Art.5(1)]</p> <p>Art.20(2) of 1996 Order – An order of detention shall be: (a) for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence or the combination of the offence and one or more offences associated with it (a 'Commensurate Sentence'); or (b) where the offence is a violent or sexual offence, for such longer term (not exceeding the maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender (a 'Protective Sentence').</p>	<p><i>Hamlyn v Pearce</i> [1962] 2 All ER 436 - Age at date of sentence</p> <p><i>AG's Ref (2 of 2008) (McGinn)</i> [2008] NICA 40 - Reducing sentence to avoid D being sent to adult prison.</p> <p><i>R (McCann) v Belfast JJ</i> [1978] NI 153 - Legal Aid</p>	<p>A custodial sentence can not be imposed unless D has either applied for legal aid and been refused or he has refused to exercise his right to apply for legal aid [Art.18(1) of 1996 Order].</p> <p>The court must obtain and consider a PSR [Art.21(1) of 1996 Order] unless, in the circumstances of the case, it is of the opinion that a PSR is unnecessary. Where the court does not obtain a PSR, it shall state in open court that it is of that opinion and what the circumstances are [Art.21(2)]. NB. Difference if D under 18 [Art.21(3)].</p>
<p align="center"><u>Textbooks</u></p> <p>Valentine (Feb 2010), Folder 7, Pg.12-13</p> <p>Allen & McAleenan, 2.129-2.150</p>	<p>By virtue of Art.2(2) of the Criminal Justice (NI) Order 1996, detention in the YOC is a custodial sentence for the purposes of that Order. Therefore, a period of detention shall not be passed unless the court is satisfied: Art.19(2)(a) of 1996 Order - that the offence, or the combination of the offence and one or more offences associated with it, was so serious that only such a sentence can be justified for the offence; or Art.19(2)(b) of 1996 Order - where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him. OR Art.19(3) of 1996 Order - The offender has failed to express his willingness to comply with a proposed requirement in a probation order, supervision order, drug and rehabilitation order, a drug test or a youth conference order.</p> <p>Art.21(4) & 37 of 1996 Order – The Court's consideration of the 'seriousness' of the offence(s).</p>	<p>Where the court forms a view that detention of 12months or more should be imposed, it must consider whether a 'Custody-Probation Order' would be appropriate. [Art.24(1) of 1996 Order]</p> <p>Art. 26(1) of 1996 Order – Where an order of detention is imposed for a 'sexual offence' the court may order D to be subject to a licence for the period during which he is released on remission.</p> <p>An order of detention can be imposed consecutively to another order of detention [s.5(4)]</p> <p>A court can impose an order of detention after having deferred sentencing [Art.3(11) of 1996 Order].</p> <p>An order of detention can be suspended [s.18].</p> <p>An order of detention can be imposed simultaneously with, inter alia, an order for costs, compensation, restitution, forfeiture, confiscation and disqualification. However, it is wrong in principle to impose it simultaneously with a</p>	<p><i>R v Baker</i> [1998] NI 130 - Procedural requirements</p> <p><i>R v D</i> [2002] NICA 10 - Procedural Requirements</p> <p><i>R v McColgan</i> [2006] NICA 41 - Protective Sentences</p> <p><i>R v McArdle</i> [2008] NICA 29 - Protective Sentences</p> <p><i>R v Brown</i> [2002] NICA 45 -Requirement for a PSR</p> <p><i>AG's Ref (1 of 2004)(Pearson)</i> [2004] NICA 6 - Requirement for a PSR</p> <p><i>R v Larmour</i> [2001] NICA 29 - Release on licence for sexual offences.</p> <p><i>Re Cranston</i> [2002] NI 1 - Deferred Sentence</p> <p><i>R v Sapiano</i> (1968) 52 Cr App R 674</p>	<p>Art.23 of 1996 Order – Procedural requirements where D appears to suffer from a 'mental disorder'.</p> <p>Where a court orders detention in the YOC for a term which exceeds- (a) 18 months, in the case of a person who has previously served a sentence of imprisonment or a term of detention in the YOC; (b) 6 months, in any other case, it shall state the reason and cause it to be entered in the record of the proceedings along with the sentence. [s.5(2)]</p> <p>Where the Crown Court orders a person to be detained in the YOC for two or more terms of detention to run consecutively, the aggregate of those terms shall not exceed four years. [s.5(5)]</p> <p>Where a magistrates' court orders a person to be detained in the YOC for</p>

		<p>suspended sentence, a probation order, a community service order or a fine.</p> <p>Where the court passes a Protective Sentence under Art. 20(2)(b) of the 1996 Order, it must state in open court that it is of the opinion that Art.20(2)(b) applies and why it is of that opinion; and explain to the offender in open court and in ordinary language why the sentence is for such a term.[Art.20(3)]</p>	<p>- Simultaneous custodial sentence and suspended sentence.</p> <p><i>R v Emmett</i> (1969) 53 Cr App R 203</p> <p>- Simultaneous custodial sentence and probation order.</p> <p><i>R v Armstrong</i> [2001] NICA 33</p> <p>- Simultaneous custodial sentence and fine.</p>	<p>two or more terms of detention to run consecutively, the aggregate of those terms shall not exceed-</p> <p>(a) except as provided by paragraph (b) or any other enactment, 12 months;</p> <p>(b) in the case of terms of detention in respect of indictable offences tried summarily, eighteen months.</p> <p>[s.5(6)]</p>
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DETERMINATE CUSTODIAL SENTENCES (Pre-April 2009 Offences)

Criminal Justice (NI) Order 1996

<u>Description</u>	<u>Minimum Requirements</u>	<u>Permissible Duration/Conditions</u>	<u>Cases</u>	<u>Notes</u>
<p>A fixed term of imprisonment (only for offences committed before 1 April 2009).</p>	<p>A custodial sentence shall not be passed unless the court is satisfied: Art.19(2)(a) - that the offence, or the combination of the offence and one or more offences associated with it, was so serious that only such a sentence can be justified for the offence; or Art.19(2)(b) - where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him. OR Art.19(3) - The offender has failed to express his willingness to comply with a proposed requirement in a probation order, supervision order, drug and rehabilitation order, a drug test or a youth conference order.</p>	<p>Art.20(2) - A custodial sentence shall be: (a) for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence or the combination of the offence and one or more offences associated with it (a 'Commensurate Sentence'); or (b) where the offence is a violent or sexual offence, for such longer term (not exceeding the maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender (a 'Protective Sentence').</p>	<p><i>R (McCann) v Belfast JJ</i> [1978] NI 153 - Legal Aid</p>	<p>A custodial sentence can not be imposed unless D has either applied for legal aid and been refused or he has refused to exercise his right to apply for legal aid [Art.18(1)].</p>
<p align="center"><u>Textbooks</u></p> <p>Valentine (Feb 2010), Folder 7, Pg.33-37.</p> <p>Allen & McAleenan, 2.06-2.20, 2.50-2.53, 2.64-2.65, 2.151-2.155</p>	<p>Art.19(2)(b) - where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him. OR Art.19(3) - The offender has failed to express his willingness to comply with a proposed requirement in a probation order, supervision order, drug and rehabilitation order, a drug test or a youth conference order.</p> <p>Art.21(4) & Art.37 – The Court’s consideration of the ‘seriousness’ of the offence(s).</p> <p>(In a case falling within (a) or (b) above, the court must state in open court that it is of the opinion that either or both conditions apply and why it is of that opinion [Art.19(4)(a)]. In all cases the court must explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him [Art.19(4)(b)].</p> <p>If D is under 21 and the term of imprisonment does not exceed 4 years, the Court shall impose an order of detention in the YOC and not a term of imprisonment. [Art.1 & 5 of the Treatment of Offenders (NI) Order 1968]</p>	<p>Where the court forms a view that a custodial sentence of 12months or more should be imposed, it must consider whether a ‘Custody-Probation Order’ would be appropriate. [Art.24(1)]</p> <p>Art. 26(1) – Where the custodial sentence is imposed for a ‘sexual offence’ the court may order D to be subject to a licence for the period during which he is released on remission.</p> <p>A court can impose a determinate custodial sentence after having deferred sentencing [Art.3(11)].</p> <p>A determinate custodial sentence can be suspended [s.18 of the Treatment of Offender Act (NI) 1968].</p> <p>Where the court passes a Protective Sentences it must state in open court that it is of the opinion that Art.20(2)(b) applies and why it is of that opinion; and explain to the offender in open court and in ordinary language why the sentence is for such a term.</p> <p>A determinate custodial sentence can be imposed simultaneously with, inter alia, an order for costs, compensation, restitution, forfeiture, confiscation and disqualification. However, it is wrong in principle to impose it simultaneously with a suspended sentence, a probation order, a community service order or a fine. [Art.20(3)]</p>	<p><i>R v Baker</i> [1998] NI 130 - Procedural requirements</p> <p><i>R v D</i> [2002] NICA 10 - Procedural Requirements</p> <p><i>R v McColgan</i> [2006] NICA 41 - Protective Sentences</p> <p><i>R v McArdle</i> [2008] NICA 29 - Protective Sentences</p> <p><i>R v Brown</i> [2002] NICA 45 -Requirement for a PSR</p> <p><i>AG’s Ref (1 of 2004)(Pearson)</i> [2004] NICA 6 - Requirement for a PSR</p> <p><i>R v Larmour</i> [2001] NICA 29 - Release on licence for sexual offences.</p> <p><i>Re Cranston</i> [2002] NI 1 - Deferred Sentence</p> <p><i>R v Sapiano</i> (1968) 52 Cr App R 674 - Simultaneous custodial sentence and suspended sentence.</p> <p><i>R v Emmett</i> (1969) 53 Cr App R 203 - Simultaneous custodial sentence and probation order.</p> <p><i>R v Armstrong</i> [2001] NICA 33 - Simultaneous custodial sentence and fine.</p>	<p>The court must obtain and consider a PSR [Art.21(1)] unless, in the circumstances of the case, it is of the opinion that a PSR is unnecessary. Where the court does not obtain a PSR, it shall state in open court that it is of that opinion and what the circumstances are [Art.21(2)]. NB. Difference if D under 18 [Art.21(3)].</p> <p>Art.23 – Procedural requirements where D appears to suffer from a ‘mental disorder’.</p> <p>If D is under the age of 21 at the date of sentencing, the court can not impose a determinate custodial sentence unless it is for more than 4 years [s.1 of the Treatment of Offenders Act (NI) 1968].</p> <p>NB: Minimum custodial sentences to be imposed by virtue of Article 70(2) of the Firearms (NI) Order 2004 or paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006.</p>

SUSPENDED SENTENCES (Imposition)

Treatment of Offenders Act (NI) 1968

<u>Description</u>	<u>Minimum Requirements</u>	<u>Permissible Duration/Conditions</u>	<u>Cases</u>	<u>Notes</u>
<p>An order suspending a sentence of custody or detention in the YOC so that it shall not take effect unless D commits a further offence within the suspension period which is punishable with imprisonment.</p>	<p>The Court must first be satisfied that the offence requires a custodial sentence or detention in the YOC and, secondly, determine what length that sentence should be. Only then should it consider whether circumstances exist which would justify a suspension of the sentence.</p> <p>NB - Section 18(1C) and (1D) are <u>not</u> yet in force (as at 31/7/10).</p>	<p>1. Non-Serious Offences - A court which passes a sentence of imprisonment (or detention in the YOC) of not more than 2 years for a non-serious offence may suspend the sentence for not less than 1 year or more than 3 years from the date of the order. [s.18(1)]</p> <p>2. ‘Serious Offences’ - A court which passes a sentence of imprisonment (or detention in the YOC) of not more than 7 years for a ‘serious offence’ may suspend the sentence for not less than 1 year or more than 5 years from the date of the order. [s.18(1A)]</p> <p>s.18(1B) - “serious offence” means an offence for which a person aged 21 years or over may, on conviction on indictment, be sentenced to imprisonment for 5 years or more.</p> <p>s. 18(2) - Can not make a probation order for another offence at the same time as making a suspended sentence.</p> <p>A fine, compensation order, restitution order or forfeiture order can be imposed in addition to a suspended sentence.</p>	<p><i>AG’s Ref (2 of 1993)</i> [1993] 5 NIJB 75 - General Principles</p> <p><i>AG’s Ref (1&2 of 1996)</i> [1996] NI 456 - General Principles</p> <p><i>R v CK (a minor)</i> [2009] NICA 17 – Juvenile Justice Centre Order can not be suspended.</p> <p><i>R v Genese</i> [1976] 1 WLR 958 – Fine can be imposed in addition to a suspended sentence.</p> <p><i>R v Coleman</i> [1969] 2 QB 468 - Suspension of consecutive sentences</p> <p><i>R v Campbell</i> (1993) 14 Cr App R(S) 401 - Imposing suspended sentence and a community service order at same time is bad sentencing practice.</p> <p><i>R v Sapiano</i> (1968) 52 Cr App R 674 - Imposing suspended sentence at same time as immediate custody is wrong in principle.</p> <p><i>R v Hamilton</i> [1985] 1 QB 148 - Activating suspended sentence during period of suspension period of another suspended sentence.</p> <p><i>R v Russell</i> [1986] 5 NIJB - The custodial term should not be increased simply because it is being suspended.</p> <p><i>R v Price</i> [1997] 9 BNIL 85 - Time on remand does not count if suspended sentence activated.</p>	<p>The court must explain to D in ordinary language his liability if during the operational period he commits an offence punishable with imprisonment. [s.18(3)]</p> <p>For the purposes of other enactments, a suspended sentence is deemed to be a sentence of imprisonment (subject to express exceptions). [Art.18(5)]</p>
<u>Textbooks</u>				
<p>Blackstone (2010), E6.1-6.7</p> <p>Valentine, Folder 7, Pg.17</p> <p>Allen & McAleenan, 2.78-2.111</p>				

SUSPENDED SENTENCES (Activation)

Treatment of Offenders Act (NI) 1968

<u>Description</u>	<u>Minimum Requirements</u>	<u>Permissible Duration/Conditions</u>	<u>Cases</u>	<u>Notes</u>
<p>An order bringing into immediate effect a previous custodial sentence, or order of detention in the YOC, which had been suspended.</p>	<p>D must be convicted of a subsequent offence punishable with imprisonment which was committed during the suspension period of the suspended sentence.</p> <p>1. Where the suspended sentence was imposed by a Magistrates' Court, then any Magistrates' Court or the Crown Court can activate the sentence. [s.20(1)]</p>	<p>The court may:</p> <p>(a) order that the suspended sentence shall take effect with the original term unaltered;</p> <p>(b) order that the suspended sentence shall take effect with the substitution of a lesser term for the original term;</p> <p>(c) vary the original order by extending the suspension period:</p> <p style="padding-left: 20px;">(i) where the original offence was a <u>Non-Serious Offence</u>, by not more than 3 years from the date of the variation;</p> <p style="padding-left: 20px;">(ii) where the original offence was a <u>Serious Offence</u>, by not more than 5 years from the date of the variation; or</p> <p>(d) make no order with respect to the suspended sentence; [s.19(1)]</p>	<p><i>R v McQuade</i> [1974] Feb/March NIJB 2 - General Principles</p> <p><i>R v Hughes</i> [2003] NICA 17 - General principles</p> <p><i>R v Henderson</i> [1997] 2 BNIL 90 - Principle of totality</p> <p><i>R v Price</i> [1997] 9 BNIL 85 - Time on remand does not count if suspended sentence activated.</p>	<p>The court may order the activated sentence to run concurrently or consecutively to any other sentence. [s.19(2)]</p> <p>Where the suspended sentence is one of detention in YOC, and since the date of imposition D has attained the age of 21, the court may order that the order for detention shall be treated as a sentence of imprisonment. [s.19(3)]</p>
<p style="text-align: center;"><u>Textbooks</u></p> <p>Blackstone (2010), E6.8-6.9</p> <p>Valentine, Folder 7, Pg.15-16</p> <p>Allen & McAleenan, 2.112-2.128</p>	<p>2. Where the suspended sentence was imposed by the Crown Court:</p> <p>(a) the Crown Court may activate the sentence; or</p> <p>(b) any Magistrates' Court may commit D either in custody or on bail to appear before the Crown Court in order for the Crown Court to determine if the sentence should be activated. [s.20(3)]</p> <p><i>R v Hughes</i> [2003] NICA 17 - Quaere: County Court on appeal can NOT activate a suspended sentence which was not activated at first instance.</p>	<p>The court shall make an order under (a) above unless the it is of opinion that it would be unjust to do so in view of all the circumstances, including the facts of the subsequent offence. Where the court does not make an order under (a) above, it shall state its reasons. [s.19(1)]</p> <p>A "serious offence" is an offence for which a person aged 21 years or over may, on conviction on indictment, be sentenced to imprisonment for 5 years or more. [s.18(1B)]</p>	<p><i>R v Melbourne</i> (1980) Cr App R(S) 116 - Where subsequent offence is punishable with imprisonment on indictment but not on summary conviction.</p> <p><i>R v Moore</i> [1995] 4 All ER 843 - Where subsequent offence is dealt with by absolute/conditional discharge.</p> <p><i>R v Salmon</i> (1973) 57 Cr App R 953 - Where subsequent offence is dealt with by deferred sentence.</p> <p><i>R v Brooks</i> (1991) Cr App R(S) 756 - Where subsequent offence does not warrant custodial sentence.</p>	<p>Where the suspended sentence was imposed by the Crown Court and the Magistrates' Court does not commit D to appear before the Crown Court to determine if the sentence should be activated, then the Magistrates' Court must furnish written notice of the conviction to the appropriate officer of the court by which the suspended sentence was passed (in order to allow the Crown Court to issue a summons if appropriate). [s.20(3)]</p>

Disqualification from Driving

Road Traffic Offenders (NI) Order 1996:

Art.35 - (1) Where a person is convicted of an offence involving obligatory disqualification, the court must order him to be disqualified for such period not less than 12 months as the court thinks fit unless the court for special reasons thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.

(1A) Where a person is convicted of an offence under Article 172A or 172B of the 1981 Order (aggravated vehicle taking) the fact that he did not drive the vehicle in question at any particular time or at all shall not be regarded as a special reason for the purposes of paragraph (1).

(2) Where a person is convicted of an offence involving discretionary disqualification, and either-

- (a) the penalty points to be taken into account on that occasion number fewer than 12, or
- (b) the offence is not one involving obligatory endorsement, the court may order him to be disqualified for such period as the court thinks fit.

(3) Where a person convicted of an offence under any of the following provisions of the Order of 1995, that is-

- (a) Article 14 (causing death, or grievous bodily injury, by careless driving when under the influence of drink or drugs),
- (b) Article 15(1) (driving or attempting to drive while unfit),
- (c) Article 16(1)(a) (driving or attempting to drive with excess alcohol),
- (d) Article 18(7) (failing to provide a specimen), where that is an offence involving obligatory disqualification,
- (e) Article 18A(6) (failing to allow a specimen to be subjected to laboratory test) where that is an offence involving obligatory disqualification;

has within the 10 years immediately preceding the commission of the offence been convicted of any such offence, paragraph (1) shall apply in relation to him as if the reference to 12 months were a reference to 3 years.

This paragraph is subject to Article 96.

(4) Subject to paragraph (3), paragraph (1) shall apply as if the reference to 12 months were a reference to 2 years, in relation to-

- (a) a person convicted of-
 - (i) manslaughter, or
 - (ii) an offence under Article 9 of the Order of 1995 (causing death, or grievous bodily injury, by dangerous driving), or
 - (iii) an offence under Article 14 of that Order (causing death, or grievous bodily injury, by careless driving when under the influence of drink or drugs), and

- (b) a person on whom more than one disqualification for a fixed period of 56 days or more has been imposed within the 3 years immediately preceding the commission of the offence.

(4A) Where a person convicted of an offence under Article 54 of the Order of 1995 (using vehicle in dangerous condition etc.) has within the 3 years immediately preceding the commission of the offence been convicted of any such offence, paragraph (1) shall apply in relation to him as if the reference to 12 months were a reference to 6 months.

(5) For the purposes of paragraph (4)(b) there shall be disregarded any disqualification imposed under Article 28 of this Order or Article 8 of the Criminal Justice (Northern Ireland) Order 1980 (offences committed using a motor vehicle) and any disqualification imposed in respect of an offence of stealing a motor vehicle, an offence under section 12 or 24 of the Theft Act (Northern Ireland) 1969, an offence under Article 172 of the Order of 1981, or an attempt to commit such an offence.

(6) The preceding provisions of this Article shall apply in relation to a conviction of an offence committed by aiding, abetting, counselling or procuring, or inciting [encouraging, assisting] to the commission of, an offence involving obligatory disqualification as if the offence were an offence involving discretionary disqualification.

Art.40 - (1) Where-

- (a) a person is convicted of an offence to which this paragraph applies, and
- (b) the penalty points to be taken into account on that occasion number 12 or more,

the court must order him to be disqualified for not less than the minimum period unless the court is satisfied, having regard to all the circumstances, that there are grounds for mitigating the normal consequences of the conviction and thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.

...

(3) The minimum period referred to in paragraph (1) is-

- (a) 6 months if no previous disqualification imposed on the offender is to be taken into account, and
- (b) one year if one, and 2 years if more than one, such disqualification is to be taken into account,

and a previous disqualification imposed on an offender is to be taken into account if it was for a fixed period of 56 days or more and was imposed within the 3 years immediately preceding the commission of the latest offence in respect of which penalty points are taken into account under Article 31.

...

(5) No account is to be taken under paragraph (1) of any of the following circumstances-

- (a) any circumstances that are alleged to make the offence or any of the offences not a serious one,
- (b) hardship, other than exceptional hardship, or

- (c) any circumstances which, within the 3 years immediately preceding the conviction, have been taken into account under that paragraph in ordering the offender to be disqualified for a shorter period or not ordering him to be disqualified.

General (English Cases)¹⁹:

<u>R v Tantrum</u> (1989) 11 Cr App R(S) 348 <u>R v McCluskie</u> (1992) 13 Cr App R(S) 334	Extremely long periods of disqualification should be avoided so far as possible.
<u>R v Lobley</u> (1974) 59 Cr App R 63	In determining the length of a period of disqualification, the court should not have regard to the provisions enabling the offender to apply for the restoration of his licence after the relevant period.
<u>R v Weston</u> (1982) 4 Cr App R(S) 51 <u>R v Hansel</u> (1982) 4 Cr App R(S) 368 <u>R v West</u> (1986) 8 Cr App R(S) 266 <u>R v Gibbons</u> (1987) 9 Cr App R(S) 21 <u>R v Mathews</u> (1987) 9 Cr App R(S) 1	A sentencer imposing a period of disqualification from driving should have regard to the effect of the disqualification on the offender's prospects of employment.
<u>R v Donnelly</u> (1975) 60 Cr App R 250 <u>Hughes v Challes</u> (1983) 5 Cr App R(S) 374 <u>R v Lazzari</u> (1984) 6 Cr App R(S) 83 <u>R v Peat</u> (1984) 6 Cr App R(S) 311 <u>R v Buckley</u> (1988) 10 Cr App R(S) 477 <u>R v Bannister</u> (1990) 12 Cr App R(S) 314 <u>R v Miller</u> (1994) 15 Cr App R(S) 505	The power to disqualify an offender until he has passed the driving test should not be used punitively; it should be used only where the offender's competence to drive is in doubt.
<u>R v Rowe</u> (23 January 1975)(Unreported)	The power to require an offender to take a driving test before driving again may be used where the nature of the offence suggests that his driving skills may be failing due to age.

'Special Reasons' Not to Disqualify [Article 35(1)] (NI Cases):

<u>R(Magill) v Crossan</u> [1939] NI 106 <u>Kerr v McNeill</u> [1949] NI 19)	'Special reasons' to disqualify for less than 12 months or not at all must relate to the circumstances of the offence, not the offender.
<u>Fleming v Mayne</u> [2000] NIJB 21	1. Offender must prove the facts amounting to 'special reasons' on the balance of probabilities; 2. It will normally be circumstances where there was personal danger to the offender or an emergency which required him to drive; 3. Objective test: whether a sober, reasonable and responsible friend of the offender present at the time would have advised him in the circumstances to drive or not to drive; 4. Even when proved, it merely provides the court with a discretion not to disqualify.
<u>Chief Constable v Cassells</u> [2007] NICA 12	Once the danger has been successfully avoided, the need to continue driving should be reviewed.
<u>PSNI v Mullan</u> [2008] NICA 10	Were there are alternatives to the offender driving which could have been explored and followed?

'Special Reasons' Not to Disqualify (English Cases)²⁰:

¹⁹ Sweet & Maxwell, *Current Sentencing Practice*, Part H
²⁰ Sweet & Maxwell, *Current Sentencing Practice*, Part H

<u>R v Newton</u> [1974] RTR 451	The fact that an offender has satisfied the court of the existence of special reasons does not necessarily mean that he should not be disqualified from driving; the effect of establishing special reasons is merely to release the court from the statutory obligation to disqualify.
<u>Bolliston v Gibbons</u> (1984) 6 Cr App R(S) 134	Where an offender is liable to a minimum of 3 years disqualification by reason of a previous conviction within 10 years of the commission of the latest offence, the court may have regard to special reasons only relating to the latest offence.
<u>Whittal v Kirby</u> [1947] KB 194	A special reason is an extenuating circumstance directly connected with the commission of the offence.
<u>Holroyd v Berry</u> [1973] RTR 145	Personal hardship arising from disqualification cannot amount to a special reason for not disqualifying.
<u>Delaroy-Hall v Tadman</u> (1969) 53 Cr App R 143	The fact that the offender's blood alcohol level is only just in excess of the permitted level is not capable of being a special reason.
<u>Taylor v Austin</u> [1969] 1 All ER 544	The fact that the alcohol which the offender has consumed did not affect his capacity to drive is not capable of amounting to a special reason.
<u>R v Jackson</u> [1970] 1 QB 647	The fact that the offender's metabolism is such that the alcohol is retained in his blood for a longer period than is usual is not capable of amounting to a special reason.
<u>Milliner v Thorne</u> [1972] RTR 279	The fact that no other road user was endangered by the driving of the offender cannot amount to special reason for not disqualifying for a blood alcohol offence.
<u>James v Hall</u> [1972] 2 All ER 59 <u>Coombs v Kehoe</u> [1972] 2 All ER 55 <u>Haime v Walklett</u> (1983) 5 Cr App R(S) 165 <u>Chatters v Burke</u> (1986) 8 Cr App R(S) 222 <u>DPP v Corcoran</u> (1991) 12 Cr App R(S) 652 <u>CPS v Humphries</u> [2000] 2 Cr App R(S) 1 <u>DPP v Conroy</u> [2004] 1 Cr App R(S) 37	The fact that the offender has driven only a short distance will amount to a special reason only in extreme cases.
<u>R v Baines</u> (1970) 54 Cr App R 481 <u>Taylor v Rajan</u> [1974] 1 All ER 1087 <u>Evans v Bray</u> [1977] RTR 24 <u>Powel v Gliha</u> [1979] RTR 126	Where an offender has consumed alcohol in the expectation that he would not be driving again that day, and is then required to drive by an unforeseen emergency, the facts may amount to special reason if the emergency was sufficiently grave and could not reasonably have been foreseen, and if there was no alternative means of transport in the circumstances, and the degree of excess of the offender's blood alcohol level was moderate.
<u>Alexander v Latter</u> [1972] RTR 441 <u>R v Messom</u> (1973) 57 Cr App R 481 <u>Pugsley v Hunter</u> [1973] 2 All ER 10 <u>DPP v O'Connor</u> (1992) 13 Cr App R(S) 188	Where an offender has consumed some alcohol, but as the result of an act of another person has consumed far more alcohol than he intended or was aware of doing, and the fact that his blood alcohol level is excessive can be shown to be the result of the additional alcohol which he has consumed unintentionally, the court may find that a special reason exists.
<u>DPP v O'Meara</u> (1988) 10 Cr App R(S) 56	The fact that an offender has consumed alcohol during the evening, and is found to have an

	excess alcohol level the following morning, is not a special reason for not disqualifying.
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SENTENCING - ANCILLARY ORDERS

Offences which are both 'Serious' and 'Specified' offences for the purpose of the Criminal Justice (NI) Order 2008 are printed in red.

Offences which are only 'Specified' offences for the purpose of the Criminal Justice (NI) Order 2008 are printed in green.

All other offences are printed in black.

OFFENCE	SEXUAL OFFENCES NOTIFICATION REQUIREMENTS (Appendix A)	CHILDREN'S BARRED LIST (Appendix B)	VULNERABLE ADULT'S BARRED LIST (Appendix B)	DISQUALIFICATION ORDER (INDICT. ONLY) (Appendix C)	COUNTER-TERRORISM NOTIFICATION REQUIREMENTS (Appendix D)	SERIOUS CRIME PREVENTION ORDERS (Appendix E)	VIOLENT OFFENCES PREVENTION ORDERS (Appendix F)
Common Law - Affray	No	No	No	No	No	No	Yes
Common Law – Assault with intent to rob	No	No	No	No	No	Only where the assault involves a firearm, imitation firearm or an offensive weapon	No
Common Law – Cheating the public revenue	No	No	No	No	No	Yes	No
Common Law – Conspiracy to defraud	No	No	No	No	No	Yes	No
Common Law – False Imprisonment	No	No	No	Only where offence was committed against a child	No	No	Yes
Common Law - Infanticide	No	D "may" be barred	D "may" be barred	No	No	No	No
Common Law - Kidnapping	No	D "may" be barred	D "may" be barred	Only where offence was committed against a child	No	No	Yes
Common Law - Manslaughter	No	No	No	Only where offence was committed against a child	No	No	Yes
Common Law - Murder	No	D "may" be barred	D "may" be barred	Only where offence was committed against a child	No	No	No
Common Law - Rape	Yes	D "will" be barred where offence was committed against a child D "may" be barred where offence committed against an adult	D "may" be barred where offence was committed against a child	Only where offence was committed against a child	No	No	No
Common Law - Riot	No	No	No	No	No	No	Yes
Anti-Terrorism, Crime and Security Act 2001 Sections 47 and 50	No	No	No	No	No	No	Yes
Section 113	No	No	No	No	Only where offender is 16 or over at time of being 'dealt with' and is sentenced to either: (a) Life imprisonment, an Indeterminate Custodial Sentence or an Extended Custodial Sentence; (b) Imprisonment (or detention in YOC) for 12 months or more; (c) A JJC Order for 12 months or more (d) Detention under Article 45 of the Criminal Justice (Children)(NI) Order 1998 for 12 months or more or at the Secretary of State's pleasure; or (e) A hospital order and: - the offence carries a max sentence of 12 months or more, - the offender was found not guilty by reason of insanity, or - the offender was found unfit to be tried but found to have done the acts charged.	No	Yes
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, Section 4	No	D "may" be barred	D "may" be barred	Only where offence was committed against a child	No	Yes	No
Aviation and Maritime Security Act 1990, Sections 1, 9, 10, 11, 12 and 13	No	No	No	No	No	No	Yes
Aviation Security Act 1982 Sections 1, 2, 3 and 4	No	No	No	No	No	No	Yes
Bribery Act 2010 Sections 1, 2 and 6	No	No	No	No	No	Yes	No
Channel Tunnel (Security) Order 1994 Articles 4, 5, 6, 7 and 8	No	No	No	No	No	No	Yes
Child Abduction (Northern Ireland) Order 1985, Articles 3 Article 4	No	D "may" be barred	D "may" be barred	Yes	No	No	No
Children and Young Persons Act (Northern Ireland) 1968, Section 20	No	D "may" be barred	D "may" be barred	Yes	No	No	Yes
Sections 21 and 22	Only where the offender: (a) was 18 or over; or (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.	D "may" be barred	D "may" be barred	Yes	No	No	No

<u>OFFENCE</u>	<u>SEXUAL OFFENCES NOTIFICATION REQUIREMENTS (Appendix A)</u>	<u>CHILDREN'S BARRED LIST (Appendix B)</u>	<u>VULNERABLE ADULT'S BARRED LIST (Appendix B)</u>	<u>DISQUALIFICATION ORDER (INDICT. ONLY) (Appendix C)</u>	<u>COUNTER-TERRORISM NOTIFICATION REQUIREMENTS (Appendix D)</u>	<u>SERIOUS CRIME PREVENTION ORDERS (Appendix E)</u>	<u>VIOLENT OFFENCES PREVENTION ORDERS (Appendix F)</u>
Section 23	No	No	No	Yes	No	No	No
Coroners and Justice Act 2009 Section 62(1)	Only where- (a) the offender was 18 or over; and (b) the offender is sentenced in respect of the offence to imprisonment for a term of at least two years.	D "may" be barred	D "may" be barred	No	No	No	No
Criminal Damage (NI) Order 1977 Article 3 (Only 'Serious' or 'Specified' offence if charged as arson)	No	No	No	No	No	No	Only where offence is arson
Article 3(2)	No	No	No	No	No	No	Yes
Computer Misuse Act 1990 Sections 1, 2, 3, 3ZA and 3A	No	No	No	No	No	Yes	No
Copyright, Designs and Patents Act 1988 Sections 107, 198 and 297A	No	No	No	No	No	Yes	No
Criminal Jurisdiction Act 1975 Section 2	No	No	No	No	No	No	Yes
Criminal Justice Act 1988, Section 134	No	No	No	No	No	No	Yes
Section 160	No	D "may" be barred	D "may" be barred	No	No	No	No
Criminal Justice Act (NI) 1945 Section 25	No	No	No	No	No	No	Yes
Criminal Justice and Immigration Act 2008 Section 63	Only where- (a) the offender was 18 or over, and (b) is sentenced in respect of the offence to imprisonment for a term of at least 2 years.	D "may" be barred	D "may" be barred	No	No	No	No
Criminal Justice (Evidence etc.)(Northern Ireland) Order 1988, Article 15	Only where the offender: (a) was 18 or over; or (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.	D "may" be barred	D "may" be barred	Yes	No	No	No
Criminal Justice (International Co-operation) Act 1990 Sections 12 and 19	No	No	No	Mo	No	Yes	No
Criminal Justice (Northern Ireland) Order 1980, Article 9	Only where the offender: (a) was 18 or over; or (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.	D "may" be barred	D "may" be barred	Yes	No	No	No
Criminal Justice (Northern Ireland) Order 2003, Article 19	Only where- (a) the offender was 20 or over; <u>AND</u> (b) where the victim or (as the case may be) other party was under 17.	D "may" be barred	D "may" be barred	No	No	No	No
Article 20	Only where the victim was under 18, and the offender (a) was 18 or over; or (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.	D "may" be barred	D "may" be barred	No	No	No	No
Article 21	Only where- (a) the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment of at least 12 months; (b) in any other case – (i) the victim was under 18; or (ii) the offender, in respect of the offence, is or has been – - sentenced to a term of imprisonment; - detained in a hospital; or - made the subject of a community sentence of at least 12 months.	D "may" be barred where offence was committed against a child	D "may" be barred	No	No	No	No
Criminal Justice (Miscellaneous Provisions) Act (NI) 1968 Section 7(1)(b)	No	No	No	No	No	No	Yes
Criminal Law Amendment Act 1885, Sections 2 and 3	Only where the offender: (a) was 18 or over; or (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.	D "may" be barred	D "may" be barred	Only where offence was committed against a child	No	No	No
Section 4	Only where the offender: (a) was 18 or over; or	D "will" be barred	D "may" be barred	Yes	No	No	No

OFFENCE	SEXUAL OFFENCES NOTIFICATION REQUIREMENTS (Appendix A)	CHILDREN'S BARRED LIST (Appendix B)	VULNERABLE ADULT'S BARRED LIST (Appendix B)	DISQUALIFICATION ORDER (INDICT. ONLY) (Appendix C)	COUNTER-TERRORISM NOTIFICATION REQUIREMENTS (Appendix D)	SERIOUS CRIME PREVENTION ORDERS (Appendix E)	VIOLENT OFFENCES PREVENTION ORDERS (Appendix F)
	<i>(b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.</i>						
Section 5	<i>Only where the offender was 20 or over</i>	<i>D "may" be barred</i>	<i>D "may" be barred</i>	<i>Yes</i>	<i>No</i>	<i>No</i>	<i>No</i>
Section 6	<i>No</i>	<i>D "may" be barred</i>	<i>D "may" be barred</i>	<i>Yes</i>	<i>No</i>	<i>No</i>	<i>No</i>
Section 7	<i>Only where the offender: (a) was 18 or over; or (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.</i>	<i>D "may" be barred</i>	<i>D "may" be barred</i>	<i>Yes</i>	<i>No</i>	<i>No</i>	<i>No</i>
Section 8	<i>No</i>	<i>D "may" be barred</i>	<i>D "may" be barred</i>	<i>Only where offence was committed against a child</i>	<i>No</i>	<i>No</i>	<i>No</i>
Section 11	<i>Only where- (a) the offender was 20 or over; AND (b) where the victim or (as the case may be) other party was under 18.</i>	<i>D "may" be barred where the person with whom the offence was committed was under the age of 16 or did not consent to the act and the conviction or caution is not a disregarded conviction or caution within the meaning of Chpt 4 of Pt.5 of the Protection of Freedoms Act 2012.</i>	<i>D "may" be barred where the person with whom the offence was committed was under the age of 16 or did not consent to the act and the conviction or caution is not a disregarded conviction or caution within the meaning of Chpt 4 of Pt.5 of the Protection of Freedoms Act 2012.</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>
Section 13	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>Yes</i>	<i>No</i>
Customs and Excise Management Act 1979 Section 50	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>Only where the offence is committed in connection with a prohibition or restriction on importation or exportation which has effect by virtue of section 3 of the Misuse of Drugs Act 1971</i>	<i>No</i>
Section 68	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>Only where the offence is committed in connection with: (i) a prohibition or restriction on importation or exportation which has effect by virtue of section 3 of the Misuse of Drugs Act 1971; or (ii) a firearm or ammunition</i>	<i>No</i>
Section 170 (Only a 'Specified' offence if relating to goods prohibited to be imported under s.42 of the Customs Consolidation Act 1876)	<i>Only where the prohibited goods specified in the offence included indecent photographs of persons who were under the age of 16, and the offender (a) was 18 or over; or (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.</i>	<i>D "may" be barred where the relevant goods were goods which were prohibited to be imported or brought into the United Kingdom, pursuant to section 42 of the Customs Consolidation Act 1876</i>	<i>D "may" be barred where the relevant goods were goods which were prohibited to be imported or brought into the United Kingdom, pursuant to section 42 of the Customs Consolidation Act 1876</i>	<i>No</i>	<i>No</i>	<i>Only where the offence is committed in connection with: (i) a prohibition or restriction on importation or exportation which has effect by virtue of section 3 of the Misuse of Drugs Act 1971; or (ii) a firearm or ammunition; or insofar as not falling within (i) or (ii) above.</i>	<i>No</i>
Domestic Violence, Crime and Victims Act 2004 Section 5	<i>No</i>	<i>D "may" be barred</i>	<i>D "may" be barred</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>Yes</i>
Explosive Substances Act 1883 Sections 2, 3, and 4	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>Yes</i>
Female Genital Mutilation Act 2003 Sections 1, 2 and 3	<i>No</i>	<i>D "may" be barred where offence was committed against a child</i>	<i>D "may" be barred where offence was committed against a child</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>Yes</i>
Firearms (NI) Order 2004 Articles 3, 24 and 45	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>Yes</i>	<i>No</i>
Articles 58, 59, 60 and 64	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>Yes</i>
Fisheries Act (Northern Ireland) 1966 Sections 62 and 63	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>Yes</i>	<i>No</i>
Forgery and Counterfeiting Act 1981 Sections 14, 15, 16 and 17	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>Yes</i>	<i>No</i>
Fraud Act 2006 Sections 1, 6, 7, 9 11	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>Yes</i>	<i>No</i>
Gangmasters (Licensing) Act 2004 Section 12	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>Yes</i>	<i>No</i>
Homosexual Offences (Northern Ireland) Order 1982, Article 7	<i>No</i>	<i>D "may" be barred</i>	<i>D "may" be barred</i>	<i>Only where D: (a) procured a child to commit an act of buggery with any person; or (b) procured any person to commit an act of buggery with a child.</i>	<i>No</i>	<i>No</i>	<i>No</i>
Article 8	<i>No</i>	<i>D "may" be barred</i>	<i>D "may" be barred</i>	<i>Only where D is living wholly or in part on the earnings of prostitution of a child</i>	<i>No</i>	<i>No</i>	<i>No</i>
Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 Section 1	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>Yes</i>	<i>Yes</i>
Section 2 (Only a 'specified sexual offence' if	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>Yes</i>	<i>Yes</i>

<u>OFFENCE</u>	<u>SEXUAL OFFENCES NOTIFICATION REQUIREMENTS (Appendix A)</u>	<u>CHILDREN'S BARRED LIST (Appendix B)</u>	<u>VULNERABLE ADULT'S BARRED LIST (Appendix B)</u>	<u>DISQUALIFICATION ORDER (INDICT. ONLY) (Appendix C)</u>	<u>COUNTER-TERRORISM NOTIFICATION REQUIREMENTS (Appendix D)</u>	<u>SERIOUS CRIME PREVENTION ORDERS (Appendix E)</u>	<u>VIOLENT OFFENCES PREVENTION ORDERS (Appendix F)</u>
committed with a view to exploitation that consists of or includes behavior within section 3(3) of the 2015 Act (sexual exploitation); where it is not a 'specified sexual offence' then it is a 'specified violent offence'.							
Immigration Act 1971 Sections 25, 25A and 25B	No	No	No	No	No	Yes	No
Infanticide Act (Northern Ireland) 1939, Section 1	No	D "may" be barred	D "may" be barred	Yes	No	No	Yes
International Criminal Court Act 2001 Sections 51 and 52 (Only 'Serious' or 'Specified' offence when NOT involving murder)	No	No	No	No	No	No	Only where offence does not involve murder
Mental Health (Northern Ireland) Order 1986, Articles 119 Article 121	No	D "may" be barred	D "may" be barred	No	No	No	No
Article 122	No	D "may" be barred	D "may" be barred	No	No	No	Yes
Article 122	Yes	D "will" be barred where offence under Article 122(1)(a) was committed against a child. D "may" be barred where offence was committed against an adult or where an offence under Article 122(b) to (e) was committed against a child.	D "will" be barred where offence under Article 122(1)(a) D "may" be barred where offence under Article 122(1)(b) to (e)	Only where the offence was in relation to a child	No	No	No
Article 123	Only where- (a) the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment of at least 12 months; (b) in any other case the offender, in respect of the offence or finding, is or has been – - sentenced to a term of imprisonment; - detained in a hospital; or - made the subject of a community sentence of at least 12 months.	D "will" be barred where offence was committed against a child D "may" be barred where offence was committed against an adult	D "will" be barred	Only where the offence was in relation to a child	No	No	No
Articles 124 and 125	No	D "may" be barred	D "may" be barred	No	No	No	No
Misuse of Drugs Act 1971, Section 4(3)	No	D "may" be barred where the person to whom controlled drugs were supplied or offered to be supplied was a child	D "may" be barred where the person to whom controlled drugs were supplied or offered to be supplied was a child	Only where D: (a) supplied or offered to supply a Class A drug to a child; (b) was concerned in supplying a Class A drug to a child; or (c) was concerned in making to a child an offer to supply a Class A drug.	No	Yes	No
Sections 5, 6, 8 and 20	No	No	No	No	No	Yes	No
Nationality, Immigration and Asylum Act 2002, Section 145	No	D "may" be barred	D "may" be barred	No	No	No	No
Offences Against the Person Act 1861, Section 4	No	No	No	No	No	No	Yes
Section 16	No	No	No	Only where threats are made to kill a child	No	No	Yes
Sections 18 and 20	No	No	No	Only where offence was committed against a child	No	No	Yes
Section 21	No	D "may" be barred	D "may" be barred	No	No	No	Yes
Sections 22 and 23	No	No	No	No	No	No	Yes
Section 27	No	No	No	No	No	No	Yes
Sections 28, 29 and 30	No	No	No	No	No	No	Yes
Section 31	No	No	No	No	No	No	Yes
Section 32	No	No	No	No	No	No	Yes
Sections 35 and 37	No	No	No	No	No	No	Yes
Section 47 (AOABH)	No	No	No	Only where offence was committed against a child	No	No	Only where the offence was committed against: (a) a vulnerable adult (within the meaning of Article 2(2) of the Safeguarding Vulnerable Groups (NI) Order 2007; (b) a person under the age of 18; (c) a person living in the same household as the offender

<u>OFFENCE</u>	<u>SEXUAL OFFENCES NOTIFICATION REQUIREMENTS (Appendix A)</u>	<u>CHILDREN'S BARRED LIST (Appendix B)</u>	<u>VULNERABLE ADULT'S BARRED LIST (Appendix B)</u>	<u>DISQUALIFICATION ORDER (INDICT. ONLY) (Appendix C)</u>	<u>COUNTER-TERRORISM NOTIFICATION REQUIREMENTS (Appendix D)</u>	<u>SERIOUS CRIME PREVENTION ORDERS (Appendix E)</u>	<u>VIOLENT OFFENCES PREVENTION ORDERS (Appendix F)</u>
							OR Only where the court in sentencing the offender for the offence treated the offence as aggravated by hostility (within the meaning of Article 2 of the Criminal Justice (No.2) (NI) Order 2004)
Section 52	Only where- (a) the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment of at least 12 months; (b) in any other case – (i) the victim was under 18; or (ii) the offender, in respect of the offence, is or has been – - sentenced to a term of imprisonment; - detained in a hospital; or - made the subject of a community sentence of at least 12 months.	D "may" be barred	D "may" be barred	Only where offence was committed against a child	No	No	No
Sections 53 and 54	Only where the offender: (a) was 18 or over; or (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.	D "may" be barred	D "may" be barred	Only where offence was committed against a child	No	No	No
Section 55	No	D "may" be barred	D "may" be barred	Only where offence was committed against a child	No	No	No
Section 61	Only where- (a) the offender was 20 or over; AND (b) where the victim or (as the case may be) other party was under 18.	D "may" be barred where the person with whom the offence was committed was under the age of 16 or did not consent to the act.	D "may" be barred where the person with whom the offence was committed was under the age of 16 or did not consent to the act.	Only where offence was committed against a child	No	No	No
Section 62 (Assault with intent to commit buggery)	Only where the victim/other party was under 18; and the offender (a) was 18 or over, or (b) is or has been sentenced in respect of the offence, to imprisonment for a term of at least 12 months.	D "may" be barred where the person with whom the offence was committed was under the age of 16 or did not consent to the act.	D "may" be barred where the person with whom the offence was committed was under the age of 16 or did not consent to the act.	Only where offence was committed against or involving a child	No	No	No
Section 62 (Indecent assault on a male)	Only where- (a) the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment of at least 12 months; (b) in any other case – (i) the victim was under 18; or (ii) the offender, in respect of the offence, is or has been – - sentenced to a term of imprisonment; - detained in a hospital; or - made the subject of a community sentence of at least 12 months.	D "may" be barred where the person with whom the offence was committed was under the age of 16 or did not consent to the act.	D "may" be barred where the person with whom the offence was committed was under the age of 16 or did not consent to the act.	Only where offence was committed against a child or involving a child	No	No	No
Police (NI) Act 1998 Section 66 (Only a 'Specified' offence if assaulting or obstructing a Constable)	No	No	No	No	No	No	Only where offence is assaulting or obstructing a Constable
Proceeds of Crime Act 2002 Sections 327, 328 and 329	No	No	No	No	No	Yes	No
Protection from Harassment (NI) Order 1997 Article 6	No	No	No	No	No	No	Yes
Protection of Children (Northern Ireland) Order 1978, Article 3	Only where the offender: (a) was 18 or over; or (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.	D "may" be barred	D "may" be barred	Yes	No	No	No
Psychoactive Substances Act 2016 Sections 4, 5, 7, and 8	No	No	No	No	No	Yes	No
Punishment of Incest Act 1908, Sections 1 and 2	Only where- (a) the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment of at least 12 months; (b) in any other case – (i) the victim or (as the case may be) other party was under 18; or (ii) the offender, in respect of the offence, is or has been – - sentenced to a term of imprisonment; or	D "may" be barred where offence was committed against a child	D "may" be barred where offence was committed against a child or the other party to the offence did not consent to the act	Only where sexual intercourse is with a child	No	No	No

<u>OFFENCE</u>	<u>SEXUAL OFFENCES NOTIFICATION REQUIREMENTS</u> (Appendix A)	<u>CHILDREN'S BARRED LIST</u> (Appendix B)	<u>VULNERABLE ADULT'S BARRED LIST</u> (Appendix B)	<u>DISQUALIFICATION ORDER</u> (INDICT. ONLY) (Appendix C)	<u>COUNTER-TERRORISM NOTIFICATION REQUIREMENTS</u> (Appendix D)	<u>SERIOUS CRIME PREVENTION ORDERS</u> (Appendix E)	<u>VIOLENT OFFENCES PREVENTION ORDERS</u> (Appendix F)
	- detained in a hospital.						
Road Traffic (NI) Order 1981 Article 172B	No	No	No	No	No	No	Yes
Road Traffic (NI) Order 1995 Articles 9 and 14	No	No	No	No	No	No	Yes
Serious Crime Act 2015 Section 69	Only where the offender: (a) was 18 or over; or (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.	No	No	No	No	No	No
Sexual Offences Act 2003, Section 15	Yes	D "may" be barred	D "may" be barred	Yes	No	No	No
Sections 16, 17, 18 and 19	Only where the offender, in respect of the offence, is or has been – - sentenced to a term of imprisonment; - detained in a hospital; or - made the subject of a community sentence of at least 12 months.	D "may" be barred	D "may" be barred	Yes	No	No	No
Section 20	No	D "may" be barred	D "may" be barred	Yes	No	No	No
Section 21	No	No	No	Yes	No	No	No
Sections 47	Only where the victim was under 17, and the offender (a) was 18 or over; or (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.	D "may" be barred	D "may" be barred	Yes	No	No	No
Sections 48, 49 and 50	Only where the offender– (a) was 18 or over, or (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.	D "may" be barred	D "may" be barred	Yes	No	Yes	No
Sections 52, 53, 57 and 58	No	D "may" be barred	D "may" be barred	No	No	Yes	No
Section 58A	No	No	No	No	No	No	No
Section 59	No	D "may" be barred	D "may" be barred	No	No	Yes	No
Section 59A	No	D "may" be barred	D "may" be barred	No	No	No	No
Sections 66 and 67	Only where- (a) the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment of at least 12 months; (b) in any other case – (i) the victim was under 18; or (ii) the offender, in respect of the offence, is or has been – - sentenced to a term of imprisonment; - detained in a hospital; or - made the subject of a community sentence of at least 12 months.	D "may" be barred where offence was committed against a child under the age of 16	D "may" be barred where offence was committed against a child under the age of 16	No	No	No	No
Sections 69 and 70	Only where- (a) the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment of at least 12 months; (b) in any other case the offender, in respect of the offence or finding, is or has been – - sentenced to a term of imprisonment; or - detained in a hospital.	No	No	No	No	No	No
Sections 91, 113, 122 and 128	No	No	No	No	No	No	No
Sexual Offences (Amendment) Act 2000, Section 3	Only where the offender, in respect of the offence, is or has been – - sentenced to a term of imprisonment; - detained in a hospital; or - made the subject of a community sentence of at least 12 months.	D "may" be barred	D "may" be barred	Yes	No	No	No
Sexual Offences (Northern Ireland) Order 2008, Article 5	Yes	D "will" be barred where offence was committed against a child	D "may" be barred where offence was committed against a child	Only where offence was committed against a child	No	No	No
Article 6	Yes	D "will" be barred where offence was committed against a child	D "may" be barred	Only where offence was committed against a child	No	No	No

<u>OFFENCE</u>	<u>SEXUAL OFFENCES NOTIFICATION REQUIREMENTS (Appendix A)</u>	<u>CHILDREN'S BARRED LIST (Appendix B)</u>	<u>VULNERABLE ADULT'S BARRED LIST (Appendix B)</u>	<u>DISQUALIFICATION ORDER (INDICT. ONLY) (Appendix C)</u>	<u>COUNTER-TERRORISM NOTIFICATION REQUIREMENTS (Appendix D)</u>	<u>SERIOUS CRIME PREVENTION ORDERS (Appendix E)</u>	<u>VIOLENT OFFENCES PREVENTION ORDERS (Appendix F)</u>
		<i>D "may" be barred where offence was committed against an adult</i>					
Article 7	Only where— (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months; (b) in any other case – (i) the victim was under 18, or (ii) the offender, in respect of the offence or finding, is or has been – (aa) sentenced to a term of imprisonment; (bb) detained in a hospital, or (cc) made the subject of a community sentence of at least 12 months.	<i>D "may" be barred</i>	<i>D "may" be barred</i>	Only where offence was committed against a child	No	No	No
Article 8	Yes	<i>D "may" be barred</i>	<i>D "may" be barred</i>	Only where offence was committed against a child	No	No	No
Articles 12 and 13	Yes	<i>D "will" be barred</i>	<i>D "may" be barred</i>	Yes	No	No	No
Article 14	Only where the offender— (a) was 18 or over, or (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.	<i>D "will" be barred</i>	<i>D "may" be barred</i>	Yes	No	No	No
Article 15	Yes	<i>D "will" be barred</i>	<i>D "may" be barred</i>	Yes	No	No	No
Articles 16, 17, 18 and 19	Yes	<i>D "may" be barred</i>	<i>D "may" be barred</i>	Yes	No	No	No
Article 20	Only where the offender is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.	No	No	Yes	No	No	No
Article 21	Only where the offender— (a) was 18 or over, or (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.	<i>D "may" be barred</i>	<i>D "may" be barred</i>	Yes	No	No	No
Article 22	Yes	<i>D "may" be barred</i>	<i>D "may" be barred</i>	Yes	No	No	No
Article 22A	Yes	No	No	No	No	No	No
Articles 23, 24, 25 and 26	Only where the offender, in respect of the offence, is or has been— (a) sentenced to a term of imprisonment, (b) detained in a hospital, or (c) made the subject of a community sentence of at least 12 months.	<i>D "may" be barred</i>	<i>D "may" be barred</i>	Yes	No	No	No
Article 27	No	<i>D "may" be barred</i>	<i>D "may" be barred</i>	Yes	No	No	No
Articles 32 and 33	Only where the offender— (a) was 18 or over, or (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.	<i>D "may" be barred</i>	<i>D "may" be barred</i>	Yes	No	No	No
Article 37	Only where the victim or (as the case may be) other party was under 16, and the offender— (a) was 18 or over, or (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.	<i>D "may" be barred</i>	<i>D "may" be barred</i>	Yes	No	NoNo	No
Article 38, 39 and 40	Only where the offender— (a) was 18 or over, or (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.	<i>D "may" be barred</i>	<i>D "may" be barred</i>	Yes	No	No	No
Articles 43, 44, 45, 46, 47, 48, 49 and 50	Yes	<i>D "will" be barred where offence was committed against a child</i> <i>D "may" be barred where offence was committed against an adult</i>	<i>D "will" be barred</i>	Only where offence was committed against a child	No	No	No
Article 51, 52, 53 and 54	Only where— (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months; (b) in any other case, the offender, in respect of the offence or finding, is or has been— (i) sentenced to a term of imprisonment, (ii) detained in a hospital, or (iii) made the subject of a community	<i>D "will" be barred where offence was committed against a child</i> <i>D "may" be barred where offence was committed against an adult</i>	<i>D "will" be barred</i>	Only where offence was committed against a child	No	No	No

OFFENCE	SEXUAL OFFENCES NOTIFICATION REQUIREMENTS (Appendix A)	CHILDREN'S BARRED LIST (Appendix B)	VULNERABLE ADULT'S BARRED LIST (Appendix B)	DISQUALIFICATION ORDER (INDICT. ONLY) (Appendix C)	COUNTER-TERRORISM NOTIFICATION REQUIREMENTS (Appendix D)	SERIOUS CRIME PREVENTION ORDERS (Appendix E)	VIOLENT OFFENCES PREVENTION ORDERS (Appendix F)
	<i>sentence of at least 12 months.</i>						
Articles 62 and 63	No	D "may" be barred	D "may" be barred	No	No	No	No
Article 65	Yes	D "may" be barred	D "may" be barred	Only where offence was committed against a child	No	No	No
Articles 66 and 67	Only where— (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months; (b) in any other case— (i) the intended offence was an offence against a person under 18, or (ii) the offender, in respect of the offence or finding, is or has been— (aa) sentenced to a term of imprisonment; (bb) detained in a hospital, or (cc) made the subject of a community sentence of at least 12 months.	Only where the relevant sexual offence was one specified in this Schedule and was intended to be committed in relevant circumstances, if any, specified in this Schedule in relation to that offence	D "may" be barred	Only where intended victim was a child	No	No	No
Articles 68 and 69	Only where— (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months; (b) in any other case, the offender, in respect of the offence or finding, is or has been— (i) sentenced to a term of imprisonment or (ii) detained in a hospital..	No	No	No	No	No	No
Articles 70 and 71	Only where— (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months; (b) in any other case— (i) the victim was under 18, or (ii) the offender, in respect of the offence or finding, is or has been— (aa) sentenced to a term of imprisonment; (bb) detained in a hospital, or (cc) made the subject of a community sentence of at least 12 months.	D "may" be barred where offence was committed against a child under the age of 16	D "may" be barred where offence was committed against a child under the age of 16	No	No	No	No
Article 72	No	No	No	No	No	No	No
Articles 73 and 74	Only where— (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months; (b) in any other case, the offender, in respect of the offence or finding, is or has been— (i) sentenced to a term of imprisonment, or (ii) detained in a hospital.	No	No	No	No	No	No
Article 75	No	No	No	No	No	No	No
Tax Credits Act 2002 Section 35	No	No	No	No	No	Yes	No
Taxes Management Act 1970 Section 106A	No	No	No	No	No	Yes	No
Taking of Hostages Act 1982 Section 1	No	No	No	No	No	No	Yes
Terrorism Act 2000 Sections 11, 12, 15, 16, 17, 18, 38B,	No	No	No	No	Only where offender is 16 or over at time of being 'dealt with' and is sentenced to either: (a) Life imprisonment, an Indeterminate Custodial Sentence or an Extended Custodial Sentence; (b) Imprisonment (or detention in YOC) for 12 months or more; (c) A JJC Order for 12 months or more (d) Detention under Article 45 of the Criminal Justice (Children)(NI) Order 1998 for 12 months or more or at the Secretary of State's pleasure; or (e) A hospital order and: - the offence carries a max sentence of 12 months or more, - the offender was found not guilty by reason of	No	

<u>OFFENCE</u>	<u>SEXUAL OFFENCES NOTIFICATION REQUIREMENTS</u> (Appendix A)	<u>CHILDREN'S BARRED LIST</u> (Appendix B)	<u>VULNERABLE ADULT'S BARRED LIST</u> (Appendix B)	<u>DISQUALIFICATION ORDER</u> (INDICT. ONLY) (Appendix C)	<u>COUNTER-TERRORISM NOTIFICATION REQUIREMENTS</u> (Appendix D)	<u>SERIOUS CRIME PREVENTION ORDERS</u> (Appendix E)	<u>VIOLENT OFFENCES PREVENTION ORDERS</u> (Appendix F)
					insanity, or - the offender was found unfit to be tried but found to have done the acts charged.		
Sections 54, 56 and 57	No	No	No	No	Only where offender is 16 or over at time of being 'dealt with' and is sentenced to either: (a) Life imprisonment, an Indeterminate Custodial Sentence or an Extended Custodial Sentence; (b) Imprisonment (or detention in YOC) for 12 months or more; (c) A JJC Order for 12 months or more (d) Detention under Article 45 of the Criminal Justice (Children)(NI) Order 1998 for 12 months or more or at the Secretary of State's pleasure; or (e) A hospital order and: - the offence carries a max sentence of 12 months or more, - the offender was found not guilty by reason of insanity, or - the offender was found unfit to be tried but found to have done the acts charged.	No	Yes
Section 58	No	No	No	No	Only where offender is 16 or over at time of being 'dealt with' and is sentenced to either: (a) Life imprisonment, an Indeterminate Custodial Sentence or an Extended Custodial Sentence; (b) Imprisonment (or detention in YOC) for 12 months or more; (c) A JJC Order for 12 months or more (d) Detention under Article 45 of the Criminal Justice (Children)(NI) Order 1998 for 12 months or more or at the Secretary of State's pleasure; or (e) A hospital order and: - the offence carries a max sentence of 12 months or more, - the offender was found not guilty by reason of insanity, or - the offender was found unfit to be tried but found to have done the acts charged.	No	No
Section 59	No	No	No	No	Only where offender is 16 or over at time of being 'dealt with' and is sentenced to either: (a) Life imprisonment, an Indeterminate Custodial Sentence or an Extended Custodial Sentence; (b) Imprisonment (or detention in YOC) for 12 months or more; (c) A JJC Order for 12 months or more (d) Detention under Article 45 of the Criminal Justice (Children)(NI) Order 1998 for 12 months or more or at the Secretary of State's pleasure; or (e) A hospital order and: - the offence carries a max sentence of 12 months or more, - the offender was found not guilty by reason of insanity, or - the offender was found unfit to be tried but found to have done the acts charged.	No	Yes
Sections 60, 61, 62, 63A, 63B, 63C and 63D	No	No	No	No	Only where offender is 16 or over at time of being 'dealt with' and is sentenced to either: (a) Life imprisonment, an Indeterminate Custodial Sentence or an Extended Custodial Sentence; (b) Imprisonment (or detention in YOC) for 12 months or more; (c) A JJC Order for 12 months or more (d) Detention under Article 45 of the Criminal Justice (Children)(NI) Order 1998 for 12 months or more or at the Secretary of State's pleasure; or (e) A hospital order and: - the offence carries a max sentence of 12 months or more, - the offender was found not guilty by reason of insanity, or - the offender was found unfit to be tried but found to have done the acts charged.	No	No
Terrorism Act 2006 Sections 1, 2, 5, 6, 8, 9, 10, 11 and 17	No	No	No	No	Only where offender is 16 or over at time of being 'dealt with' and is sentenced to either: (a) Life imprisonment, an Indeterminate Custodial Sentence or an Extended Custodial Sentence; (b) Imprisonment (or detention in YOC) for 12 months or more; (c) A JJC Order for 12 months or more	No	No

<u>OFFENCE</u>	<u>SEXUAL OFFENCES NOTIFICATION REQUIREMENTS</u> (Appendix A)	<u>CHILDREN'S BARRED LIST</u> (Appendix B)	<u>VULNERABLE ADULT'S BARRED LIST</u> (Appendix B)	<u>DISQUALIFICATION ORDER (INDICT. ONLY)</u> (Appendix C)	<u>COUNTER-TERRORISM NOTIFICATION REQUIREMENTS</u> (Appendix D)	<u>SERIOUS CRIME PREVENTION ORDERS</u> (Appendix E)	<u>VIOLENT OFFENCES PREVENTION ORDERS</u> (Appendix F)
					(d) Detention under Article 45 of the Criminal Justice (Children)(NI) Order 1998 for 12 months or more or at the Secretary of State's pleasure; or (e) A hospital order and: - the offence carries a max sentence of 12 months or more, - the offender was found not guilty by reason of insanity, or - the offender was found unfit to be tried but found to have done the acts charged.		
Sections 5 and 6	No	No	No	No	Only where offender is 16 or over at time of being 'dealt with' and is sentenced to either: (a) Life imprisonment, an Indeterminate Custodial Sentence or an Extended Custodial Sentence; (b) Imprisonment (or detention in YOC) for 12 months or more; (c) A JJC Order for 12 months or more (d) Detention under Article 45 of the Criminal Justice (Children)(NI) Order 1998 for 12 months or more or at the Secretary of State's pleasure; or (e) A hospital order and: - the offence carries a max sentence of 12 months or more, - the offender was found not guilty by reason of insanity, or - the offender was found unfit to be tried but found to have done the acts charged.	No	Yes
Section 8	No	No	No	No	Only where offender is 16 or over at time of being 'dealt with' and is sentenced to either: (a) Life imprisonment, an Indeterminate Custodial Sentence or an Extended Custodial Sentence; (b) Imprisonment (or detention in YOC) for 12 months or more; (c) A JJC Order for 12 months or more (d) Detention under Article 45 of the Criminal Justice (Children)(NI) Order 1998 for 12 months or more or at the Secretary of State's pleasure; or (e) A hospital order and: - the offence carries a max sentence of 12 months or more, - the offender was found not guilty by reason of insanity, or - the offender was found unfit to be tried but found to have done the acts charged.	No	No
Sections 9, 10 and 11	No	No	No	No	Only where offender is 16 or over at time of being 'dealt with' and is sentenced to either: (a) Life imprisonment, an Indeterminate Custodial Sentence or an Extended Custodial Sentence; (b) Imprisonment (or detention in YOC) for 12 months or more; (c) A JJC Order for 12 months or more (d) Detention under Article 45 of the Criminal Justice (Children)(NI) Order 1998 for 12 months or more or at the Secretary of State's pleasure; or (e) A hospital order and: - the offence carries a max sentence of 12 months or more, - the offender was found not guilty by reason of insanity, or - the offender was found unfit to be tried but found to have done the acts charged.	No	Yes
Section 17	No	No	No	No	Only where offender is 16 or over at time of being 'dealt with' and is sentenced to either: (a) Life imprisonment, an Indeterminate Custodial Sentence or an Extended Custodial Sentence; (b) Imprisonment (or detention in YOC) for 12 months or more; (c) A JJC Order for 12 months or more (d) Detention under Article 45 of the Criminal Justice (Children)(NI) Order 1998 for 12 months or more or at the Secretary of State's pleasure; or (e) A hospital order and: - the offence carries a max sentence of 12 months or more, - the offender was found not guilty by reason of insanity, or - the offender was found unfit to be tried but found to have done the acts charged.	No	No

<u>OFFENCE</u>	<u>SEXUAL OFFENCES NOTIFICATION REQUIREMENTS (Appendix A)</u>	<u>CHILDREN'S BARRED LIST (Appendix B)</u>	<u>VULNERABLE ADULT'S BARRED LIST (Appendix B)</u>	<u>DISQUALIFICATION ORDER (INDICT. ONLY) (Appendix C)</u>	<u>COUNTER-TERRORISM NOTIFICATION REQUIREMENTS (Appendix D)</u>	<u>SERIOUS CRIME PREVENTION ORDERS (Appendix E)</u>	<u>VIOLENT OFFENCES PREVENTION ORDERS (Appendix F)</u>
Theft Act (Northern Ireland) 1969 Section 8	No	No	No	No	No	Only where the use or threat of force involved a firearm, an imitation firearm or an offensive weapon	Yes
Section 9 (Only 'Serious' or 'Specified' offence if committed with intent to inflict GBH, commit rape or do unlawful damage)	No	D "may" be barred where offence was committed with intent to commit rape before section 9 was amended by the Sexual Offences (NI) Order 2008.	D "may" be barred where offence was committed with intent to commit rape before section 9 was amended by the Sexual Offences (NI) Order 2008.	Only where building (or part of) was entered with intent to rape a child	No	No	Only where offence was committed with intent to inflict GBH, commit rape or do unlawful damage
Section 10	No	No	No	No	No	No	Yes
Section 17	No	No	No	No	No	Yes	No
Section 20	No	No	No	No	No	Yes	No
Trade Marks Act 1994 Section 92	No	No	No	No	No	Yes	No
Vagrancy Act 1898 Section 1	No	D "may" be barred	D "may" be barred	No	No	No	No
Value Added Tax Act 1994 Section 72	No	No	No	No	No	Yes	No
Waste and Contaminated Land (Northern Ireland) Order 1997 Article 4	No	No	No	No	No	Yes	No
Wildlife (Northern Ireland) Order 1985 Article 15	No	No	No	No	No	Yes	No

APPENDIX A

Sexual Offences Act 2003, Section 82

The notification period

(1) The notification period for a person within section 80(1) or 81(1) is the period in the second column of the following Table opposite the description that applies to him.

TABLE	
Description of relevant offender	Notification period
A person who, in respect of the offence, is or has been sentenced to imprisonment for life ... to an indeterminate custodial sentence under Article 13(4)(a) of the Criminal Justice (Northern Ireland) Order 2008 or to imprisonment for a term of 30 months or more	An indefinite period beginning with the relevant date
A person who, in respect of the offence, has been made the subject of an order under section 210F(1) of the Criminal Procedure (Scotland) Act 1995 (order for lifelong restriction)	An indefinite period beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital subject to a restriction order	An indefinite period beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of more than 6 months but less than 30 months	10 years beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of 6 months or less	7 years beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital without being subject to a restriction order	7 years beginning with that date
A person within section 80(1)(d)	2 years beginning with that date
A person in whose case an order for conditional discharge or, in Scotland, a probation order, is made in respect of the offence	The period of conditional discharge or, in Scotland, the probation period
A person of any other description	5 years beginning with the relevant date

(2) Where a person is under 18 on the relevant date, subsection (1) has effect as if for any reference to a period of 10 years, 7 years, 5 years or 2 years there were substituted a reference to one-half of that period.

(3) Subsection (4) applies where a relevant offender within section 80(1)(a) or 81(1)(a) is or has been sentenced, in respect of two or more offences listed in Schedule 3--

- (a) to consecutive terms of imprisonment; or
- (b) to terms of imprisonment which are partly concurrent.

(4) Where this subsection applies, subsection (1) has effect as if the relevant offender were or had been sentenced, in respect of each of the offences, to a term of imprisonment which--

- (a) in the case of consecutive terms, is equal to the aggregate of those terms;
- (b) in the case of partly concurrent terms (X and Y, which overlap for a period Z), is equal to X plus Y minus Z.

(5) Where a relevant offender the subject of a finding within section 80(1)(c) or 81(1)(c) is subsequently tried for the offence, the notification period relating to the finding ends at the conclusion of the trial.

(6) In this Part, "relevant date" means--

- (a) in the case of a person within section 80(1)(a) or 81(1)(a), the date of the conviction [21];
- (b) in the case of a person within section 80(1)(b) or (c) or 81(1)(b) or (c), the date of the finding;
- (c) in the case of a person within section 80(1)(d) or 81(1)(d), the date of the caution;
- (d) in the case of a person within section 81(7), the date which, for the purposes of Part 1 of the Sex Offenders Act 1997 (c 51), was the relevant date in relation to that person.

(7) Schedule 3A (which provides for the review and discharge of indefinite notification requirements) has effect.

²¹ For the purposes of section 82(6), where notification requirements are subject to a sentencing threshold the offender is to be regarded as being convicted of the offence at the time when the sentencing threshold condition is met [Section 132(3)].

General Points to Note:

- *Suspended Sentence* – treated as a sentence of imprisonment²²;
- *Custody Probation Order* – use custodial element only²³;
- *Determinate Custodial Sentence* – use total sentence (custody & licence parts)²⁴;
- *Extended Custodial Sentence* – use total sentence (custody and extended licence parts)²⁵;
- *Indeterminate custodial sentence* – falls into the first category resulting in an indefinite period²⁶
- *Consecutive sentences* – should be added up and treated as a single sentence only where sentences are in respect of Schedule 3 offences²⁷

The Notification Requirements

N.B. These requirements apply from the date of the conviction/finding (unless they apply from the date of sentence because of a sentencing threshold to the offence of which the offender has been convicted).

The offender is required by law to:

- **Notify the Police** within the next 3 days (or if he is in custody or otherwise detained, within 3 days of his release) of his name, any other names he uses or has used, his date of birth, his national insurance number and his home address (i.e. his sole or main residence in the UK and/or if he has no such residence, any premises in the UK at which he regularly resides or stays).
- **Notify the Police** of any change of name or home address within 3 days of the date of any change.
- **Notify the Police** of any address where he resides or stays for 7 days or longer. This means either 7 days at a time or a total of 7 days in any 12 month period.
- **Notify the Police** of his details every 12 months even if there is no change to those details.
- **Notify the police** of any plans to travel abroad for a period of 3 days or longer.

If the offender is already subject to the notification requirements because of a previous conviction, caution or finding for a relevant offence then it is not necessary to make another initial notification. However, he will have to comply with all other notification requirements (including the requirement to notify the police within three days of any release from imprisonment, service detention or detention in a hospital).

²² Section 18(5) of the Treatment of Offenders Act (NI) 1968

²³ Articles 2(2) and 24 of the Criminal Justice (NI) Order 1996

²⁴ Article 8 of the Criminal Justice (NI) Order 2008

²⁵ Article 14(3) and (5) of the Criminal Justice (NI) Order 2008

²⁶ Paragraph 10(1) of Schedule 5 to the Criminal Justice (N) Order 2008

²⁷ Section 82(3) and (4) of the Sexual Offences Act 2003

APPENDIX B

Safeguarding Vulnerable Groups (NI) Order 2007 Barring Lists

The Safeguarding Vulnerable Groups Act 2006 established the Independent Safeguarding Authority (ISA)²⁸. By virtue of Article 6 of the Safeguarding Vulnerable Groups (NI) Order 2007 the ISA is responsible for establishing and maintaining a 'Children's Barred List' and a '[Vulnerable] Adult's Barred List'. A person included in a list is barred from "regulated activity"²⁹ relating to children or vulnerable adults, respectively³⁰. By virtue of Paragraph 24(1) of Schedule 1 to the 2007 Order the criteria for inclusion in a list includes:

- (a) that a person has been convicted of, or cautioned in relation to, a relevant offence³¹ (except for any offence committed before he attained the age of 18)³²; or
- (b) that a relevant order³³ requiring the person to do or not to do anything [namely, a disqualification order or a risk of sexual harm order] has been made against him (except for any order or direction made against him before he attained the age of 18)³⁴;

Relevant offences fall into one of two categories:

- (i) offences where, upon conviction, the ISA **will** automatically place the person on the relevant barred list(s); or
- (ii) offences where, upon conviction, the ISA **may** place the person on the relevant Barred List(s) but only after giving him the opportunity to make representations as to why he should not be included on the barred list(s).

Paragraph 25(1) of Schedule 1 further stipulates:

"A court by or before which a person is convicted of [a relevant] offence..., or which makes [a relevant] order, must inform the person at the time he is convicted or the order is made that ISA will or (as the case may be) may include him in the barred list concerned."

[Emphasis added]

Recommended Wording:

WILL be barred - *"By virtue of your conviction the Independent Safeguarding Authority **will** include you on the 'Barred List' relating to children/adults."*

MAY be barred - *"By virtue of your conviction the Independent Safeguarding Authority **may** include you on the 'Barred List' relating to children/adults."*

²⁸ Section 1

²⁹ For definition of 'regulated activity' see Schedule 2 to the 2007 Order.

³⁰ Article 7

³¹ A 'relevant offence' is an offence of a description specified for the purposes of paragraph 24(1)(a) of Schedule 1 to the 2007 Order. See further Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) Regulations (NI) 2009; Safeguarding Vulnerable Groups (Miscellaneous Provisions) Regulations (NI) 2009; Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) (Amendment) Regulations (NI) 2010; and the Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) (Amendment) Regulations (NI) 2012.

³² Paragraph 24(4) of Schedule 1 to the 2007 Order

³³ A 'relevant order' is an order of a description specified for the purposes of paragraph 24(1)(b) of Schedule 1 to the 2007 Order. See further Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009.

³⁴ Paragraph 24(4) of Schedule 1 to the 2007 Order

APPENDIX C

Protection of Children and Vulnerable Adults (NI) Order 2003 Disqualification Orders

Where the Defendant is an Adult at the time of committing the offence:

Where a person has been convicted on indictment³⁵ of committing a relevant offence³⁶ when an adult against a child (under 18) and the court imposes either: ³⁷

- (a) a sentence of imprisonment of 12 months or more (including a suspended sentence); or
- (b) a sentence of detention in the YOC of 12 months or more (including a suspended sentence); or
- (c) a sentence of detention under Article 45 of the Criminal Justice (Children)(NI) Order 1998; or
- (d) a hospital order or guardianship order within the meaning of the Mental Health (NI) Order 1986;

then the court **MUST** order him to be disqualified from working with children UNLESS the court is satisfied that it is unlikely that D will commit any further offence against a child.³⁸ If the court does not make a Disqualification order then it must state its reasons for doing so and cause those reasons to be included in the record of the proceedings.³⁹

NB – The power to impose a Disqualification order does NOT exist in relation to a defendant who is barred from regulated activity by virtue of Article 7(2) of the Safeguarding Vulnerable Groups (NI) Order 2007 ('Children's Barred List').⁴⁰

Where the Defendant is a Child at the time of committing the offence:

Where a person has been convicted on indictment⁴¹ of a relevant offence⁴² against a child (under 18) when himself a child and the court imposes either: ⁴³

- (a) a sentence of imprisonment of 12 months or more (including a suspended sentence); or
- (b) a sentence of detention in the YOC of 12 months or more (including a suspended sentence); or
- (c) a sentence of detention under Article 45 of the Criminal Justice (Children)(NI) Order 1998; or
- (d) a hospital order or guardianship order within the meaning of the Mental Health (NI) Order 1986;

the court **MUST** order him to be disqualified from working with children if it is satisfied that it is likely that the defendant will commit further offences against a child.⁴⁴ If the court makes a disqualification order it must state its reasons for doing so and cause those reasons to be included in the record of the proceedings.⁴⁵

³⁵ The provisions also apply where a person has been charged on indictment with an offence against a child and the court orders him to be admitted to hospital or a guardianship order within the meaning of the Mental Health (NI) Order 1986 to be imposed.

³⁶ See the Schedule to the 2003 Order

³⁷ Article 25(1)

³⁸ Article 23(4) and (5)

³⁹ Article 23(6)

⁴⁰ Article 4 of the Safeguarding Vulnerable Groups (2007 Order) (Commencement No.5, Transitional Provisions and Savings) Order (NI) 2009. See the Safeguarding Vulnerable Groups (Miscellaneous Provisions) Order (NI) 2009 and Safeguarding Vulnerable Groups (Barred Lists: Scotland) Order (NI) 2010 in relation to inclusion on the English and Scottish 'Children's Barred Lists'.

⁴¹ The provisions also apply where a person has been charged on indictment with an offence against a child and the court orders him to be admitted to hospital or a guardianship order within the meaning of the Mental Health (NI) Order 1986 to be imposed.

⁴² See the Schedule to the 2003 Order

⁴³ Article 25(1)

⁴⁴ Article 24(4)

⁴⁵ Article 24(5)

NB – The power to impose a Disqualification order does NOT exist in relation to a defendant who is barred from regulated activity by virtue of Article 7(2) of the Safeguarding Vulnerable Groups (NI) Order 2007 ('Children's Barred List').⁴⁶

⁴⁶ Article 4 of the Safeguarding Vulnerable Groups (2007 Order) (Commencement No.5, Transitional Provisions and Savings) Order (NI) 2009. See the Safeguarding Vulnerable Groups (Miscellaneous Provisions) Order (NI) 2009 and Safeguarding Vulnerable Groups (Barred Lists: Scotland) Order (NI) 2010 in relation to inclusion on the English and Scottish 'Children's Barred Lists'.

- (1) The period for which the notification requirements apply is--
- (a) 30 years in the case of a person who--
- (i) is aged 18 or over at the time of conviction for the offence, and
- (ii) receives in respect of the offence a sentence within subsection (2);
- (b) 15 years in the case of a person who--
- (i) is aged 18 or over at the time of conviction for the offence, and
- (ii) receives in respect of the offence a sentence within subsection (3);
- (c) 10 years in any other case.
- (2) The sentences in respect of which a 30 year period applies are--
- ...
- (c) in Northern Ireland--
- (i) imprisonment for life,
- (ii) imprisonment for a term of 10 years or more,
- (iii) an indeterminate custodial sentence under Article 13 of the Criminal Justice (Northern Ireland) Order 2008 (SI 2008/1216 (NI 1)),
- (iv) an extended custodial sentence for a term of 10 years or more under Article 14(5) of that Order (offenders under 21 convicted of certain offences),
- (v) detention during the pleasure of the [Minister in charge of the Department of Justice] under Article 45(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (SI 1998/1504 (NI 9)).
- (3) The sentences in respect of which a 15 year period applies are--
- ...
- (c) in Northern Ireland--
- (i) imprisonment for a term of 5 years or more but less than 10 years,
- (ii) an extended custodial sentence for a term of 5 years or more but less than 10 years under Article 14(5) of the Criminal Justice (Northern Ireland) Order 2008 (SI 2008/1216 (NI 1)) (offenders under 21 convicted of certain offences).
- (4) The period begins with the day on which the person is dealt with for the offence.
- (5) If a person who is the subject of a finding within section 45(1)(b)(iii), (2)(b)(iii) or (3)(b)(iii) (finding of disability, etc) is subsequently tried for the offence, the period resulting from that finding ends--
- (a) if the person is acquitted, at the conclusion of the trial;
- (b) if the person is convicted, when the person is again dealt with in respect of the offence.
- (6) For the purposes of determining the length of the period--
- (a) a person who has been sentenced in respect of two or more offences to which this Part applies to consecutive terms of imprisonment is treated as if sentenced, in respect of each of the offences, to a term of imprisonment equal to the aggregate of the terms; and
- (b) a person who has been sentenced in respect of two or more such offences to concurrent terms of imprisonment (X and Y) that overlap for a period (Z) is treated as if sentenced, in respect of each of the offences, to a term of imprisonment equal to X plus Y minus Z.
- (7) In determining whether the period has expired, there shall be disregarded any period when the person was--
- (a) remanded in or committed to custody by an order of a court,
- (b) serving a sentence of imprisonment or detention,
- (c) detained in a hospital, or
- (d) detained under the Immigration Acts.

The Notification Requirements

The offender is required by law to⁴⁷:

- **Notify the Police** within the next 3 days (or if he is in custody or otherwise detained, within 3 days of his release) of his:

- (a) date of birth;
- (b) national insurance number;
- (c) name on the date on which the person was dealt with in respect of the offence (where the person used one or more other names on that date, each of those names);
- (d) home address on that date;
- (e) name on the date on which notification is made (where the person uses one or more other names on that date, each of those names);
- (f) home address on the date on which notification is made;
- (g) address of any other premises in the United Kingdom at which, at the time the notification is made, the person regularly resides or stays;
- (h) any other information as prescribed by the Secretary of State.

- **Notify the Police** of any change of name or home address within 3 days of the date of any change.
- **Notify the Police** of any address where he resides or stays for 7 days or longer. This means either 7 days at a time or a total of 7 days in any 12 month period.
- **Notify the Police** of his details every 12 months even if there is no change to those details.
- **Notify the Police** of any plans to travel abroad for a period of 3 days or longer.
- **Notify the Police** of any changes to the prescribed information.

If the offender is already subject to the notification requirements because of a previous conviction, caution or finding for a relevant offence then it is not necessary to make another initial notification. However, he will have to comply with all other notification requirements (including the requirement to notify the police within three days of any release from imprisonment, service detention or detention in a hospital).

⁴⁷ Sections 47-52

APPENDIX E

Serious Crime Act 2007 Serious Crime Prevention Orders

The Crown Court may impose a Serious Crime Prevention Order (“SCPO”) on an offender if:

- (i) The offender is over the age of 18⁴⁸;
- (ii) The offender has been convicted by or before the Crown Court of committing a ‘serious offence’⁴⁹ in Northern Ireland;
- (iii) The Crown Court has imposed a sentence or conditional discharge⁵⁰; and
- (iv) The Crown Court has reasonable grounds to believe that the terms of the order would protect the public by preventing, restricting or disrupting involvement by the offender in serious crime in Northern Ireland⁵¹.

A SCPO may include such provisions as the Crown Court thinks appropriate for the purposes of protecting the public by preventing, restricting or disrupting the offender’s involvement in serious crime.⁵² Examples of prohibitions, restrictions or requirements which may be imposed upon the offender by a SCPO include prohibitions or restrictions on, or requirements in relation to⁵³ –

- The offender’s financial, property or business dealings or holdings;
- The offender’s working arrangements;
- the means by which the offender communicates or associates with others, or the persons with whom he communicates or associates;
- the premises to which the offender has access;
- the use of any premises or item by the offender;
- the offender’s travel (whether within the United Kingdom, between the United Kingdom and other places or otherwise).

Prohibitions, restrictions or requirements may be imposed in relation to the offender’s private dwelling.⁵⁴

A SCPO, however, cannot require an offender to:

- answer questions, or provide information, orally⁵⁵;
- answer questions, provide information or produce documents which are subject to legal professional privilege⁵⁶;
- produce any ‘excluded material’ (as defined by Article 13 of the Criminal Evidence (NI) Order 1989)⁵⁷;
- disclose any information or produce any document which is the subject of a duty of confidence from a banking business, unless specified conditions are met⁵⁸;
- either answer questions, provide any information or produce any documents if he is prohibited from doing so under any other enactment⁵⁹;

A SCPO can specify that its provisions come into force, or cease to have effect, at different times. The maximum length of a SCPO is 5 years from the date of the first provision coming into force.⁶⁰ Subject to below, the Crown Court cannot vary or discharge a SCPO (this can only be done by the High Court)⁶¹.

Where an offender who is the subject of a SCPO is convicted of a ‘serious offence’, in addition to imposing a sentence or conditional discharge, the Crown Court may, on an application by the relevant applicant authority, vary the terms of the SCPO where it has reasonable grounds to believe that the new terms would protect the public by preventing, restricting or disrupting involvement by the offender in serious crime in Northern Ireland; the Court cannot, however, discharge the SCPO.⁶²

Where an offender is convicted of breaching a SCPO, in addition to imposing a sentence or conditional discharge, the Crown Court may, on an application by the relevant applicant authority, vary the terms of the SCPO, or replace the SCPO with a new SCPO, where it has reasonable grounds to believe that the new terms or new SCPO would protect the public by preventing, restricting or disrupting involvement by the offender in serious crime in Northern Ireland.⁶³

Where the Crown Court is considering making, varying or replacing a SCPO the result of which is likely to have a significant adverse effect on someone who is not the offender, the Crown Court may permit the person to make representations at the relevant hearing.⁶⁴

Where a person who is subject to a SCPO is charged with a ‘serious offence’ or breaching the SCPO, the Crown Court may, on application by the relevant applicant authority and if the order would otherwise cease to have effect, vary the SCPO so that it continues in effect until either:

- (a) the person is convicted of the offence and the court varies or replaces the SCPO or deals with the person without varying or replacing the SCPO;
- (b) the person is acquitted of the offence;
- (c) the charge is withdrawn; or
- (d) the proceedings in respect of the charge are discontinued or the charge is ordered to lie on the file.

A SCPO can only be extended, however, if the order is still in force, and the Crown Court has reasonable grounds for believing that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in Northern Ireland.⁶⁵

⁴⁸ Section 6 of the 2007 Act

⁴⁹ As defined by section 3 and Part 2 of Schedule 1.

⁵⁰ Section 19(7)

⁵¹ As defined by section 3

⁵² Sections 5 and 19(5)

⁵³ Sections 5(3) and 19(5)

⁵⁴ Sections 5(6) and 19(5)

⁵⁵ Section 11

⁵⁶ Section 12

⁵⁷ Section 13(1)

⁵⁸ Section 13(2)-(4)

⁵⁹ Section 14

⁶⁰ Section 16

⁶¹ Section 19(7)

⁶² Sections 20

⁶³ Sections 21

⁶⁴ Section 9(4)

⁶⁵ Section 22E

APPENDIX F

Justice Act (Northern Ireland) 2015 Violent Offences Prevention Orders

A court may impose a Violent Offences Prevention Order (“VOPO”) when dealing with an offender:

- (i) in respect of a ‘specified offence’⁶⁶;
- (ii) who is found not guilty of a specified offence by reason of insanity; or
- (iii) who is found unfit to be tried but has been found to have done the act charged in a specified offence.

AND the court is satisfied that a VOPO is necessary for the purpose of protecting the public from the risk of serious violent harm caused by the offender.⁶⁷

A VOPO can be made in respect of a specified offence committed before the commencement of the legislation.⁶⁸

A VOPO can be made for a minimum of 2 years and a maximum 5 years.⁶⁹

A VOPO may contain provisions prohibiting the offender from doing anything described in the order or requiring the offender to do anything described in the order (or both); but only those prohibitions or requirements necessary for the purpose of protecting the public from the risk of serious violent harm caused by the offender may be included in the order.⁷⁰

An offender who is the subject of a VOPO is required by law to⁷¹:

- **Notify the Police** within the next 3 days (or if he is in custody or otherwise detained, within 3 days of his release) of his:

- (a) date of birth;
- (b) national insurance number;
- (c) name on the date on which the person was dealt with in respect of the offence (where the person used one or more other names on that date, each of those names);
- (d) home address on that date;
- (e) name on the date on which notification is made (where the person uses one or more other names on that date, each of those names);
- (f) home address on the date on which notification is made;
- (g) address of any other premises in the United Kingdom at which, at the time the notification is made, the person regularly resides or stays;
- (h) any other information as prescribed by the Secretary of State.

- **Notify the Police** of any change of name or home address within 3 days of the date of any change.
- **Notify the Police** of any address where he resides or stays for 7 days or longer. This means either 7 days at a time or a total of 7 days in any 12 month period.
- **Notify the Police** of his details every 12 months even if there is no change to those details.
- **Notify the Police** of any plans to travel abroad for a period of 3 days or longer.
- **Notify the Police** of any changes to the prescribed information.

Upon application by the offender or the Chief Constable:

- (i) The Magistrates’ Court can vary, renew or discharge a VOPO made by any court other than the Crown Court;

(ii) The Crown Court can vary, renew or discharge a VOPO made by the Crown Court.⁷²

APPENDIX G

Justice Act (Northern Ireland) 2011 Regulated Match Banning Orders

A court, having sentenced an offender or imposed a conditional discharge, must make a Regulated Match Banning Order (“RMBO”) where it is satisfied:

- (a) the offender has been convicted of an offence which involved him engaging in violence or disorder;
- (b) the offence was committed –
 - (i) at a regulated match or while entering or leaving (or trying to enter or leave) the ground;
 - (ii) on a journey to or from a regulated match; or
 - (iii) otherwise, where it appears to the court from all the circumstances that the offence was motivated (wholly or partly) by a regulated match; and
- (c) there are reasonable grounds to believe that making a RMBO would help to prevent violence or disorder at or in connection with any regulated matches.⁷³

‘Violence’ means violence against persons or property and includes threatening violence and doing anything which endangers the life of any person.⁷⁴

“Disorder” includes stirring up sectarian hatred or hatred against a group of persons defined by reference to colour, race, nationality (including citizenship), ethnic or national origins, religious belief, sexual orientation or disability or against an individual as a member of such a group; using threatening, abusive or insulting words or behaviour or disorderly behaviour; and displaying any writing or other thing which is threatening, abusive or insulting. It is not limited to violence in connection with a regulated match.⁷⁵

A ‘regulated match’ is an association football match in which one or both participating teams:

- represents a country or territory;
- represents a club which is for the time being a member of the IFA Premiership, the IFA Championship, the FAI Premier League, or the FAI First Division;
- represents a club which is for the time being a member of the Football League, the Football Association Premier League, the Football Conference, the Welsh Premier League, the Scottish Premier League, or the Scottish Football League;
- is a member of, or affiliated to, a national football association which is a member of FIFA; and which is part of a competition or tournament organised by, or under the authority of FIFA or UEFA.⁷⁶

A RMBO shall⁷⁷:

- (i) prohibit the offender from entering any premises for the purposes of attending a regulated match;
- (ii) require the offender to report at a police station specified in the order within 5 days of the order being made;
- (iii) require the offender to give notification to the Chief Constable of certain specified matters including any underclosed aliases, change of name, or change of address;
- (iv) contain such additional requirements in relation to any regulated matches as the court imposing the order thinks fit; and
- (v) if made in addition to a sentence of immediate custody, shall be for a minimum of 6 years and a maximum of 10 years; or in any other case, be for a minimum of 3 years and a maximum of 5 years.

When making a RMBO the court must explain its effect to the offender in ordinary language.⁷⁸

⁶⁶ ‘Specified offence’ is defined as an offence listed in Part 1 of Schedule 2 to the Criminal Justice (NI) Order 2008 (violent offences) – section 55 of the 2015 Act

⁶⁷ Section 56

⁶⁸ Section 56(4)

⁶⁹ Section 55(1)

⁷⁰ Section 59

⁷¹ Sections 64-70

⁷² Section 60

⁷³ Section 41 of the 2011 Act

⁷⁴ Section 44 and is not limited to violence in connection with a regulated match

⁷⁵ Section 44 and is not limited to disorder in connection with a regulated match

⁷⁶ Section 35 and Schedule 3

⁷⁷ Sections 42 and 46

⁷⁸ Section 42(2)

unless stated otherwise)

Was the Offence committed before 15 May 2008?

No

Yes

Does the offence carry a mandatory life sentence?

Yes

No

Is the offence a 'Serious Offence'?

Yes

No

Is there a significant risk of 'serious harm' occasioned by D committing further 'specified offences' ?

Yes

No

Does the offence carry a discretionary life sentence?

Yes

No

Does the seriousness of the offence justify a life sentence? Art. 13(2)

Yes

No

Impose Life Sentence
Fix tariff pursuant to Art. 5 of the Life Sentences (NI) Order 2001

Would an Extended Sentence not be adequate to protect the public from 'serious harm' occasioned by D committing further 'specified offences'? Art 13(3)

Yes

No

Impose an Indeterminate Custodial Sentence

Is the offence a 'specified' violent or sexual offence? Art. 12(3), Art. 15 and Sch 2

Yes

No

Is there significant risk of 'serious harm' occasioned by D committing further 'specified offences'? Art 14(1)(b) and 15

Yes

No

Impose an Extended Custodial Sentence

Was the offence committed before 1 April 2009? Art 8(1)

No

Yes

Is a determinate sentence justified? Art. 5(2)

Yes

No

Is the determinate sentence for less than 12 months?

No

Yes

Impose a Determinate Custodial Sentence

Sentence under Pre 2008 Order legislation

Impose a Non-Custodial Sentence

Impose a Determinate Custodial Sentence

Impose relevant Ancillary Orders
AND

