

**2012 No. 214 (C. 18)**

**JUSTICE**

**The Justice (2011 Act) (Commencement No. 4 and Transitory Provision) Order (Northern Ireland) 2012**

*Made* - - - -

*21st May 2012*

The Department of Justice, in exercise of the powers conferred by section 111(3) and (4) of the Justice Act (Northern Ireland) 2011(a), makes the following Order:

**Citation and interpretation**

1.—(1) This Order may be cited as the Justice (2011 Act) (Commencement No. 4 and Transitory Provision) Order (Northern Ireland) 2012.

(2) In this Order, “the 2011 Act” means the Justice Act (Northern Ireland) 2011.

**Provisions coming into operation on 6th June 2012**

2. The day appointed for the coming into operation of the following provisions of the 2011 Act is 6th June 2012 —

- (a) section 1(1) (offender levy imposed by court) except paragraph (e) (application to community orders);
- (b) section 1(2) (offender levy imposed by court) except as it relates to an offender levy imposed in addition to a sentence referred to in section 1(1)(e) (community orders) and section 1(6) (suspended sentences);
- (c) section 1(3), (4), (5), (7), (8) and (9) (offender levy imposed by court);
- (d) section 2 (enforcement and treatment of offender levy imposed by court);
- (e) section 3 (deduction of offender levy imposed by court from prisoner’s earnings);
- (f) section 4 (offender levy imposed by court: other supplementary provisions);
- (g) section 5(1) (offender levy on certain penalties) except paragraph (a) (application to road traffic fixed penalties);
- (h) section 5(2) and (3) (offender levy on certain penalties);
- (i) section 5(4) (offender levy on certain penalties) except as it relates to a penalty referred to in section 5(1)(a) (road traffic fixed penalties);
- (j) section 6(1) (amount of the offender levy) except paragraph (c) (amount where sentence is or includes a community order or a suspended sentence);
- (k) section 6(2) (amount of the offender levy), except as it relates to a penalty referred to in section 5(1)(a) (road traffic fixed penalties);
- (l) section 6 (3) and (4) (amount of the offender levy);

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(a) 2011 c.24 (N.I.)

(m) Chapter 1 of Part 6 (penalty notices) and Schedule 4 (penalty offences and penalties).

**Provisions coming into operation on 11th June 2012**

3. The day appointed for the coming into operation of the following provisions of the 2011 Act is 11th June 2012 —

- (a) section 83(1) and (3) (legal aid for certain bail applications);
- (b) section 91 (bail: compassionate grounds).

**Provision coming into operation on 1st September 2012**

4. The day appointed for the coming into operation of section 90(2) (consequential and supplementary provisions) of the 2011 Act is 1st September 2012.

**Transitory provision in connection with the commencement of section 6(1)(d) of the 2011 Act**

5. Until section 1(1)(e) (application of offender levy to community orders) or section 1(6) (inclusion of suspended sentences) of the 2011 Act come into operation, section 6(1)(d)(ii) of that Act shall be modified to read “does not include a sentence falling within paragraph (a) or (b)”.

Sealed with the Official Seal of the Department of Justice on 21st May 2012



*David Ford*  
Minister of Justice

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into operation certain provisions of the Justice Act (Northern Ireland) 2011 (c.24) (“the Act”).

The provisions of the Act set out in Article 2 come into operation on 6th June 2012.

Some provisions in Chapter 1 of Part 1 (the offender levy) of the Act come into operation to allow for an offender levy to be imposed by the court in certain cases and attached to certain penalties.

The provisions brought into operation by this Order allow for an offender levy to be imposed by a court where it deals with an offender for one or more sentences which is or includes an immediate custodial sentence specified in section 1(1)(a) – (d) or a fine (section 1(1)(f)). The provisions to allow for an offender levy to be imposed by a court where it deals with an offender for one or more sentence which is or includes a community order (within the meaning of section 1(1)(e)) or a suspended sentence (section 1(6)) are not brought into operation by this Order..

Sections 2, 3 and 4 are also commenced to facilitate enforcement of the offender levy imposed by a court, to allow for the levy to be deducted from prisoners’ earnings, and to allow the remittal or discharge of the levy in certain specified circumstances.

The transitory provision in Article 5 is made to ensure that until powers for courts to impose offender levies to community orders or suspended sentences are brought into operation, the levy can still be attached to a fine where a court has also imposed either a community order or a suspended sentence.

Some provisions in section 5 are commenced to allow the levy to be attached to penalties that are introduced in Chapter 1 of Part 6 of the Act, or a penalty specified by Order made by the Department of Justice. The provisions in section 5 which would enable the levy to be attached to road traffic fixed penalties (section 5(1)(a)) are not brought into operation by this Order (nor are the related provisions in section 5(5) and (6)).

Provisions in section 6 (except section 6(1)(c)) come into operation to set the amount of the levy.

The provisions in Chapter 1 of Part 6 (penalty notices) and Schedule 4 (penalty offences and penalties) also come into operation on 6th June 2012 to create a new diversionary disposal in the form of new penalty notices for first-time or non-habitual offenders committing prescribed offences. This enables police to deal effectively with minor offences without the need for the alleged offender to go to court.

Section 59 and Schedule 4 set out the offences which can attract a penalty notice and the amount payable in relation to that offence. Offences which attract a £40 penalty are indecent behaviour, and being drunk in a public place. Offences with an £80 penalty are theft (for first-time shoplifting offences only), criminal damage, disorderly behaviour in any public place, behaviour likely to cause a breach of the peace in a public place, and resisting, obstructing or impeding a constable in the execution of his duty.

Sections 60 to 70 define the penalty notice, dictate the form that the penalty notice must take, describe the effect of the penalty notice and what happens if the penalty is not paid, set out the restrictions on prosecutions, allow for guidance to be issued in respect of penalty notices, set out the procedures for payment of a penalty, detail the enforcement arrangements that will be activated if a penalty is not paid, and the appeals mechanism to be followed if an individual wishes to challenge enforcement.

The provisions of the Act set out in Article 3 come into operation on 11th June 2012.

Section 91 provides the magistrates’ courts with the power to grant defendants bail on compassionate grounds. Previously only the High Court or Crown Court had the power to do so.

Sections 83(1) and (3) are also brought into operation to provide that, where a person has been granted a criminal aid certificate for proceedings in the Crown Court, that certificate will also cover work in respect of applying to a magistrates' court for compassionate bail under section 91 of the Act.

Section 90(2) of the Act is brought into operation on 1st September 2012. Section 90(2) is an enabling power set out in Part 8 of the Act (solicitors' rights of audience), which gives the Department the power to make consequential amendments to specified legislation by way of negative resolution Order. Such an Order will enable amendments to be made to the legislation listed in section 90(2) in consequence of, or for giving full effect to, the provisions of Part 8 of the Act.

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

*(This note is not part of the Order)*

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.R. No.</i>
Sections 14 to 19, 54, 56, 96, 97, 98, 99, 109 (partially), 110 (partially), Schedule 6 (partially), Schedule 7 (partially) and Schedule 8 (partially)	5th July 2011	S.R. 2011 No. 224 (C. 14)
Section 35 (partially) and Schedule 3 (partially), sections 36 to 40 and 50 (partially)	1st August 2011	S.R. 2011 No. 224 (C. 14)
Section 103	1st December 2011	S.R. 2011 No. 370 (C.26)
Sections 7 to 11, 13, 35 (so far as not already in operation) and Schedule 3 (so far as not already in operation), 41 to 49, 50 (so far as not already in operation), 100, 110 (partially), Schedule 7 (partially) and Schedule 8 (partially)	1st January 2012	S.R. 2011 No. 370 (C.26)
Sections 20 to 34 and Schedules 1 and 2, sections 81 and 110 (partially), Schedule 7 (partially) and Schedule 8 (partially).	1st April 2012	S.R. 2012 No. 142 (C.14)

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