



Department of
Justice
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Sentencing Review Northern Ireland

A Public Consultation

**Department of Justice
October 2019**

Preface

Sentencing is a vital part of the justice system in Northern Ireland. It often involves complex considerations and requires a delicate balance to be struck between the rights of defendants on the one hand, and the needs and expectations of victims and the public generally on the other. This challenging task is performed by a skilled judiciary whose job is to deliver fair and appropriate sentences independently of government in every case which comes before the criminal courts.

The role of government is to provide a flexible and robust sentencing framework which is fit for purpose and within which the judiciary can exercise its judicial function effectively.

Effective and appropriate sentencing policy is fundamental to the success of the Department's mission to reduce levels of offending and deal in a firm and fair way with those who offend; a way which benefits communities and recognises the hurt that can be suffered by victims whilst assisting offenders to change their offending behaviour.

This consultation document seeks your views on sentencing policy both generally and on a range of specific areas where sentencing has raised particular challenges for the criminal justice system.

The Review team has engaged with key stakeholders, conducted extensive research into practices around the world, and listened to victims and their families in developing this paper. Its aim is to give readers some insight into what lies behind sentencing policy and practices, with its questions designed to elicit your comments on a number of key issues.

The consultation paper is inevitably lengthy, reflecting the complexity of sentencing. It can be responded to in full or in part, guided by where your interest lies.

This is the first review of sentencing policy in Northern Ireland since 2005. There have been many sentencing changes since then and understanding of the factors influencing offending behaviour has become more informed. New studies have revealed better ways of dealing with offenders than simply increasing prison sentences; ways that reduce the likelihood of further offending and directly improve outcomes for victims, offenders, their families and the wider community.

This important consultation gives you the opportunity to gain a fuller understanding of sentencing policy and the options facing it, and to help to shape future developments by contributing your views on the best way forward for sentencing in Northern Ireland.

Peter May, Permanent Secretary, Department of Justice

Introduction to Consultation Process

In June 2016 the then Justice Minister, Clare Sugden, announced a Sentencing Policy Review in Northern Ireland.¹ Having completed the Review, the Department now wishes to consult on those areas where changes to sentencing policy in Northern Ireland might be made.

This consultation is restricted to sentencing policy covering adult offenders and it does not consider the sentences handed out in individual cases, as that is a matter for the independent judiciary. The Review's Terms of Reference are found at Appendix 1.

In developing this public consultation, the Review team worked closely with a group of experts in the field of sentencing (Appendix 2), who provided regular assistance and guidance; it conducted significant desk research, considering information from many common law jurisdictions around the world; and held a series of engagement events and individual meetings with relevant voluntary organizations, statutory agencies, stakeholders, victims and victims' families, and other interested parties (Appendix 3).

Further engagement events, detailed at the end of this section, will take place during the consultation process. These will give respondents the opportunity to engage with the Review team and discuss the best way of tackling the challenges highlighted by the Review.

The Sentencing Framework in Northern Ireland

The criminal law aims to ensure that similar offending attracts similar sentencing ranges and outcomes. When a person is convicted of a crime in Northern Ireland, it is the role of the court to impose an appropriate sentence. In doing this the court must act independently, and within a sentencing framework, to:

- set the sentence within the limits allowed by legislation for the particular offence;
- consider all of the circumstances of the case and decide whether these make the offending behaviour more or less serious;
- determine whether there are any mitigating or aggravating factors which should influence the sentence; and
- have regard to any relevant sentencing guidance² and to the general levels of sentence given in similar cases.

¹ <https://www.justice-ni.gov.uk/news/justice-minister-announces-sentencing-review>

² See Chapter 3.

The Government's responsibility is to ensure that this framework is suitable to allow the courts to deliver fair and just sentences that are considered appropriate in all cases. This consultation seeks views on the following:

- principles and purposes of sentencing;
- public perception;
- sentencing guidance;
- tariff setting for murder;
- unduly lenient sentencing arrangements;
- community sentencing; and
- sentencing for:
 - hate crime;
 - attacks on frontline public services;
 - crimes against older and vulnerable people; and
 - driving offences causing death or serious injury.

A Brief Overview

The following overview of the criminal courts' structure, the scale of sentencing, the types of sentence available, and the sentencing process, is intended to provide a brief contextual backdrop to the chapters that follow.

Criminal Courts' Structure

The two criminal court tiers for prosecuting offenders in Northern Ireland are the Magistrates' Courts and the Crown Court.

The Magistrates' Courts deal with the less serious 'summary' offences, while the Crown Court deals with the more serious 'indictable' cases. Whether an offence is summary or indictable is determined by legislation. Some offences can be tried either summarily or on indictment, and generally the seriousness of the case will determine which method of trial is most appropriate.

Appeals from the Magistrates' Courts are dealt with in the County Courts. Appeals from the Crown Court go to the Northern Ireland Court of Appeal.

Levels of Convictions

Table 1 shows the volume of convictions in Northern Ireland over recent years, together with a breakdown of numbers by court tier.

Table 1: Number of convictions in Northern Ireland (2015-18)

Year	2015	2016	2017	2018
Number of convictions across all courts	24,379	22,956	23,630	24,921
Number of convictions in Crown Court	1,127	1,623	1,332	1,174
Number of convictions in Magistrates' Courts	23,252	21,333	22,298	23,747

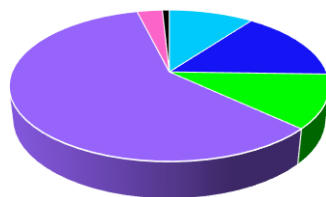
Use of Sentences

When we think of sentences we often think of prison. However, the vast majority of offences are of a less serious nature and, as can be seen from Table 1, are dealt with in the Magistrates' Courts where fines and other financial penalties are the most commonly used disposal. Other types of sentence including community sentences and suspended sentences are used in more serious cases where immediate custody is not appropriate. Only a small proportion of sentences are custodial. A detailed list of sentence types ('disposals') and their descriptors can be found at Annex A.

Chart 1 illustrates the breakdown of disposals imposed in each court tier in 2018.

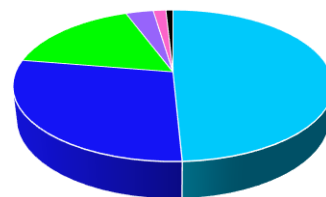
Chart 1: Disposals in Magistrates' Courts and Crown Court 2018

Magistrates' Courts 2018



- Immediate custody
- Suspended custodial
- Community sentence
- Monetary Penalty
- Discharge
- Other

Crown Court 2018



- Immediate custody
- Suspended custodial
- Community sentence
- Monetary Penalty
- Discharge
- Other

Table 2 shows recent levels of convictions by court tier and disposal.

Table 2: Use of sentence types In Northern Ireland (2015-18)

	Immediate custody	Suspended custodial	Community sentence	Monetary Penalty	Discharge	Other	Total
All Courts							
2015	3,013	3,733	3,174	13,129	1,029	301	24,379
2016	2,953	3,822	2,854	12,129	925	273	22,956
2017	2,910	3,734	2,837	13,147	808	194	23,630
2018	3,001	3,958	2,914	14,097	742	209	24,921
Magistrates' Courts							
2015	2,443	3,415	3,003	13,096	1,001	294	23,252
2016	2,212	3,333	2,542	12,080	897	269	21,333
2017	2,259	3,376	2,594	13,088	792	189	22,298
2018	2,423	3,625	2,718	14,058	724	199	23,747
Crown Court							
2015	570	318	171	33	28	7	1,127
2016	741	489	312	49	28	4	1,623
2017	651	358	243	59	16	5	1,332
2018	578	333	196	39	18	10	1,174

Custodial Sentences and Licensing

Since 2009 prison sentences for fixed periods of 12 months or more in Northern Ireland have consisted of a custodial period and a period the offender must spend on licence.³

This licence element often goes without acknowledgement, with many reports of prison sentences focusing only on the custodial part. This can lead to a lack of awareness of this important change in sentencing policy, a lack of appreciation of the true value and impact of such sentences, and a consequent negative impact on public confidence in the levels of custodial sentences imposed.

The licence period immediately follows the prisoner's release from custody. It is set by the court, and must be at least half of the overall sentence.⁴ This system replaced

³ Criminal Justice (NI) Order 2008: <http://www.legislation.gov.uk/nisi/2008/1216/part/2/chapter/2> , commenced with saving for sentences of less than 12 months: <http://www.legislation.gov.uk/nisr/2009/120/schedule/2/made>

⁴ This applies to 'ordinary' determinate custodial sentences. Different provisions of the Criminal Justice (NI) Order 2008 apply when an 'extended custodial sentence' is ordered.

earlier arrangements whereby prisoners had normally been granted remission at the half-way point of their sentence and were then under no further supervision or control.⁵

The licence element of the sentence is designed to protect the public and prevent further offending by imposing requirements on the offender while living in the community. These may include curfew conditions or a requirement to comply with electronic monitoring.

It is important to note that compliance with such conditions is carefully monitored by the Probation Board for Northern Ireland as well as, when appropriate, PSNI and other agencies during the licence period. Offenders who fail to comply are liable to be recalled to serve the remainder of their sentence in custody. The power to recall is regularly exercised, with over 30% of all those released on licence since 2009 having been returned to prison.⁶

Sentencing Decisions

Sentencing is a complex process: Judges are trained to consider all relevant information; to take account of relevant sentencing guidance; and to be unaffected by their personal views.

In considering the appropriate sentence the Judge needs to take account of:

- the nature of the offence;
- the culpability of the offender;
- circumstances and characteristics of the offender;
- the impact on the victim and wider society;
- any pre-sentence report provided by the Probation Board, or other specific reports requested by the court; and
- any aggravating and mitigating factors, which may lead to higher or lower sentences respectively.

Such factors include:

- the seriousness of the effect or the intended effect of the offending; the frequency of offending and conduct that the court is dealing with; and the prevalence of the type of crime in the community;

⁵ Remission remains available for custodial sentences of less than 12 months, and can be granted under rule 30 of the Prison and Young Offenders Centre Rules (NI) 1995: http://www.legislation.gov.uk/nisr/1995/8/pdfs/nisr_19950008_en.pdf

⁶ Sourced from Department of Justice, Public Protection Branch.

- particular characteristics of the offender such as their youth; mental or addiction problems; vulnerability; and personal suffering as a result of crime;
- the impact that the crime has had on the victim; any Victim Impact Report prepared by an expert, for example a psychologist; and any Victim Personal Statement, made by the victim of the crime; and
- whether the defendant has pleaded guilty or not guilty. If there is an early guilty plea then the sentencing judge must normally take this into account by reducing the sentence: the maximum reduction or discount will usually be awarded for defendants who plead guilty at the earliest opportunity.

Equality Proofing

As a public authority the Department of Justice is required, under section 75 of the Northern Ireland Act 1998, to have due regard to the need to promote equality of opportunity. Public authorities are also required to identify whether a policy has a differential impact upon relevant groups; the nature and extent of that impact; and whether such an impact is justified. These obligations are designed to ensure that equality and good relations considerations are made central to government policy development.

The Department of Justice has considered the impact the conduct of this consultation will have on different groups. It does not believe that any specific issues will arise in relation to: religious belief; political opinion; racial group; age; marital status; sexual orientation; men and women generally; or those with or without a disability or dependents.

The Department does not consider that an Equality Impact Assessment (EQIA) is required at this point.⁷ It will take account of the evidence gathered through this consultation in developing policy proposals, which will be subject to fresh equality screening at that stage.

Privacy Notice

Any data collected through this consultation will be subject to the protection of the General Data Protection Regulations (GDPR). Data collected in this consultation will only be used for informing the need for changes to sentencing policy in Northern Ireland.

⁷ The equality screening document can be viewed at <https://www.justice-ni.gov.uk/publications/type/impactassessments>

Any information that you provide will be treated in strict confidence and will not be used to identify you. Analysis of responses will be carried out on an anonymous basis under the guidelines of the GDPR.

Anonymised comments may be used in support of policy development and may be published.

Public Engagement Events

A number of public engagement events are planned over the consultation period. These will be held on:

Date	Time and Registration Link	Location
11 November 2019	Closed	Derry/Londonderry
13 November 2019	Closed	Enniskillen
14 November 2019	Closed	Craigavon
4 December 2019	3.00pm – 4.30pm https://www.eventbrite.co.uk/e/78592721947 7.00pm – 8.30pm https://www.eventbrite.co.uk/e/78593953631	Clifton House North Queen Street Belfast BT15 1EQ
13 January 2020	7.00pm – 8.30pm https://www.eventbrite.co.uk/e/84581777373	CAFRE Food Technology Centre Loughry Campus 76 Dungannon Road Cookstown BT80 9AA
16 January 2020	7.00pm – 8.30pm https://www.eventbrite.co.uk/e/84581992015	Adair Arms Hotel Kells Suite 1-7 Ballymoney Road Ballymena BT43 5BS
20 January 2020	7.00pm – 8.30pm https://www.eventbrite.co.uk/e/84583075255	Newry Conference Centre 39 – 41 The Mall Newry BT34 1AR

Responding to this Consultation

The Department is seeking your views on the issues raised by this consultation and any other comments on sentencing policy that you consider relevant. You have a choice to respond to the whole consultation or just those areas that interest you.

We would be particularly pleased to hear from victims of crime, organizations representing victims, the police, criminal justice practitioners, and others who have been thorough the justice system.

We would encourage you to respond to the consultation using the on-line facility on citizen space, accessible via: <https://consultations.nidirect.gov.uk/doj-corporate-secretariat/sentencing-review-northern-ireland>.

If you require a hard copy of this consultation document or have any other enquiries please email your request to SentencingReviewConsultation@justice-ni.x.gsi.gov.uk

or you can write to us at:

Sentencing Review Team,
Criminal Justice Policy and Legislation Division,
Department of Justice,
Massey House,
Stormont Estate,
Belfast, BT4 3SX.

The Department will publish a summary of responses to the consultation.

Duration and Closing Date

The consultation will be open for 14 weeks. The closing date is **Monday 3 February 2020**.

Alternative Formats

Copies in alternative formats can be made available on request.

If it would assist you to access the document in an alternative format or language other than English please let us know and we will do our best to assist you.