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STATUTORY INSTRUMENTS

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**1996 No. 3160**

**The Criminal Justice (Northern Ireland) Order 1996**

**PART II**

**TREATMENT OF OFFENDERS**

*Preliminary*

**Deferment of sentence**

3.—(1) Subject to the provisions of this Article, the Crown Court or a magistrates' court may defer passing sentence on an offender for the purpose of enabling the court to have regard, in determining his sentence, to his conduct after conviction (including, where appropriate, the making by him of reparation for his offence) or to any change in his circumstances.

(2) Any deferment under this Article shall be until such date as may be specified by the court, not being more than 6 months after the date on which the deferment is announced by the court; and where the passing of sentence has been deferred under this Article it shall not be further deferred thereunder.

(3) The power conferred by this Article shall be exercisable only if the offender consents and the court is satisfied, having regard to the nature of the offence and the character and circumstances of the offender, that it would be in the interests of justice to exercise the power.

(4) A court which under this Article has deferred passing sentence on an offender may pass sentence on him before the expiration of the period of deferment if during that period he is convicted in Northern Ireland of any offence.

(5) If an offender on whom a court has under this Article deferred passing sentence in respect of one or more offences is during the period of deferment convicted in Northern Ireland of any offence ("the subsequent offence"), then, without prejudice to paragraph (4) but subject to paragraph (6), the court which (whether during that period or not) passes sentence on him for the subsequent offence may also, if this has not already been done, pass sentence on him for the first-mentioned offence or offences.

(6) The power conferred by paragraph (5) shall not be exercised by a magistrates' court if the court which deferred passing sentence was the Crown Court; and the Crown Court, in exercising that power in a case in which the court which deferred passing sentence was a magistrates' court, shall not pass any sentence which could not have been passed by a magistrates' court in exercising it.

(7) A court which under this Article has deferred passing sentence on an offender may issue a summons requiring him to appear before the court, or may issue a warrant for his arrest where—

(a) the court proposes to sentence him, whether on the date originally specified by the court or by virtue of paragraph (4) before that date; or

(b) the offender does not appear on the date so specified.

(8) In deferring the passing of sentence under this Article a magistrates' court shall be regarded as exercising the power of adjourning the trial which is conferred by Article 161(1) of the Magistrates'

Courts (Northern Ireland) Order 1981 and accordingly Articles 23 and 25(3) of that Order (non-appearance of the accused) apply (without prejudice to paragraph (7)) if the offender does not appear on the date specified in pursuance of paragraph (2).

(9) A court which under this Article defers passing sentence on an offender shall not on the same occasion remand him.

(10) Nothing in this Article shall affect the power of the Crown Court to bind over an offender to come up for judgment when called upon or the power of any court to defer passing sentence for any purpose for which it may lawfully do so apart from this Article.

(11) The power of a court under this Article to pass sentence on an offender in a case where the passing of sentence has been deferred thereunder includes power to deal with him in any way in which the court which deferred passing sentence could have dealt with him.

### *Discharge*

#### **Absolute and conditional discharge**

4.—(1) Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment, the court may make an order either—

- (a) discharging him absolutely; or
- (b) if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding 3 years from the date of the order, as may be specified in the order.

(2) Before making an order for conditional discharge the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence.

(3) Where, under this Part, a person conditionally discharged under this Article is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.

(4) The Secretary of State may by order direct that paragraph (1) shall be amended by substituting for the maximum period for the time being specified in sub-paragraph (b) of that paragraph, such other period as may be specified in the order.

(5) Nothing in paragraph (1) shall be construed as preventing a court which discharges an offender absolutely or conditionally in respect of any offence from making an order for costs against the offender or from making an order under Article 11 or 14 of the Criminal Justice (Northern Ireland) Order 1994 (power to deprive offenders of property used, or intended for use, for purposes of crime and compensation orders) or under Article 8 of the Criminal Justice (Northern Ireland) Order 1980 (driving disqualification where vehicle used for purposes of crime) or under section 27 of the Theft Act (Northern Ireland) 1969 (restitution orders).

#### **Commission of further offence by person conditionally discharged**

5.—(1) If it appears to the Crown Court, where that Court has jurisdiction in accordance with paragraph (2), or to a justice of the peace having jurisdiction in accordance with that paragraph, that a person in whose case an order for conditional discharge has been made—

- (a) has been convicted by a court in any part of Northern Ireland of an offence committed during the period of conditional discharge; and
- (b) has been dealt with in respect of that offence,

the Court or justice may, subject to paragraph (3), issue a summons requiring that person to appear at the place and time specified therein or a warrant for his arrest.

(2) Jurisdiction for the purposes of paragraph (1) may be exercised—

- (a) if the order for conditional discharge was made by the Crown Court, by that Court;
- (b) if the order was made by a magistrates' court, by a justice of the peace.

(3) A justice of the peace shall not issue a summons under this Article except on complaint and shall not issue a warrant under this Article except on complaint in writing and on oath.

(4) A summons or warrant issued under this Article shall direct the person to whom it relates to appear or to be brought before the court by which the order for conditional discharge was made.

(5) If a person in whose case an order for conditional discharge has been made by the Crown Court is convicted by a magistrates' court of an offence committed during the period of conditional discharge, the magistrates' court—

- (a) may commit him to custody or release him on bail until he can be brought or appear before the Crown Court; and
- (b) if it does so, shall send to the Crown Court a copy of the entry of the conviction made in the Order Book, signed by the clerk of petty sessions by whom the Order Book is kept.

(6) Where it is proved to the satisfaction of the court by which an order for conditional discharge was made that the person in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may deal with him, for the offence for which the order was made, in any manner in which it could deal with him if he had just been convicted by or before that court of that offence.

(7) If a person in whose case an order for conditional discharge has been made by a magistrates' court is convicted before the Crown Court of an offence committed during the period of conditional discharge, the Crown Court may deal with him, for the offence for which the order was made, in any manner in which the magistrates' court could deal with him if it had just convicted him of that offence.

(8) If a person in whose case an order for conditional discharge has been made by a magistrates' court is convicted by another magistrates' court of any offence committed during the period of conditional discharge, that other court may deal with him, for the offence for which the order was made, in any manner in which the court could deal with him if it had just convicted him of that offence.

(9) Where an order for conditional discharge has been made by a court of summary jurisdiction in the case of an offender under the age of 17 in respect of an offence not being a summary offence or an offence which, in the case of an adult, could have been tried summarily with his consent under Article 45 of the Magistrates' Courts (Northern Ireland) Order 1981, any powers exercisable under paragraph (6), (7) or (8) by that or any other court in respect of the offender after he has attained the age of 17 shall be those which would be exercisable if that offence were an offence which could have been tried summarily under the said Article 45 with the offender's consent, and had been so tried.

(10) For the purposes of this Article the age of an offender at a particular time shall be deemed to be or to have been that which appears to the court after considering any available evidence to be or to have been his age at that time.

### **Effect of discharge**

6.—(1) Subject to paragraph (2) and to section 30(4) of the Criminal Appeal (Northern Ireland) Act 1980 and Article 140(1A) of the Magistrates' Courts (Northern Ireland) Order 1981, a conviction of an offence for which an order is made under this Part discharging the offender absolutely or conditionally shall be deemed not to be a conviction for any purpose other than the purposes of the

proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under Article 5.

(2) Where the offender being not less than 17 years of age at the time of his conviction of the offence in question, is subsequently sentenced under this Part for that offence, paragraph (1) shall cease to apply to the conviction.

(3) Without prejudice to paragraphs (1) and (2), the conviction of an offender who is discharged absolutely or conditionally under this Part shall in any event be disregarded for the purposes of any statutory provision which—

- (a) imposes any disqualification or disability upon convicted persons; or
- (b) authorises or requires the imposition of any such disqualification or disability.

(4) Paragraphs (1) to (3) shall not affect—

- (a) any right of any offender discharged absolutely or conditionally under this Part to rely on his conviction in bar of any subsequent proceedings for the same offence; or
- (b) the restoration of any property in consequence of the conviction of any such offender; or
- (c) the operation, in relation to any such offender, of any statutory provision in force at the commencement of this Part which is expressed to extend to persons dealt with under section 1(1) of the Probation of Offenders Act 1907 as well as to convicted persons.

### **Supplementary provisions as to discharge**

7.—(1) Without prejudice to section 76(2) of the Children and Young Persons Act (Northern Ireland) 1968 (which enables a court to order the parent or guardian of a person under the age of 17 years charged with an offence to give security for his good behaviour), a court may, on the making of an order for conditional discharge, if it thinks it expedient for the purpose of the reformation of the offender, require the offender, or if the offender is under the age of 14 years, his parent or guardian, or if the offender has attained the age of 14 years but is under the age of 17 years, the offender or his parent or guardian to give security for the good behaviour of the offender.

(2) Any security given under paragraph (1) shall be by way of recognizance.

(3) In proceedings before the Crown Court under Articles 4 to 6, any question whether any person in whose case an order for conditional discharge has been made has been convicted of an offence during the period of conditional discharge shall be determined by the Court and not by the verdict of a jury.

### *Community sentences*

#### **Restrictions on imposing community sentences**

8.—(1) A court shall not pass on an offender a community sentence unless it is 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.

(2) Subject to paragraph (3), where a court passes a community sentence—

- (a) the particular order or orders comprising or forming part of the sentence 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.

(3) In consequence of the provision made by Article 15 with respect to combination orders, a community sentence shall not consist of or include both a probation order and a community service order.

### **Procedural requirements for community sentences**

9.—(1) In forming any such opinion as is mentioned in Article 8(1) or (2)(b), a court shall take into account all such information about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated with it (including any aggravating or mitigating factors) as is available to it.

(2) In forming any such opinion as is mentioned in Article 8(2)(a), a court may take into account any information about the offender which is before it.

(3) Subject to paragraph (4), a court shall obtain and consider a pre-sentence report before forming an opinion as to the suitability for the offender of one or more of the following orders, namely—

- (a) a probation order which includes additional requirements authorised by Schedule 1;
- (b) a community service order;
- (c) a combination order; and
- (d) a supervision order which includes requirements imposed under paragraphs 7 to 10 of Schedule 3 to the Children and Young Persons Act (Northern Ireland) 1968.

(4) Paragraph (3) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report and where the court does not obtain and consider a pre-sentence report, it shall state in open court that it is of that opinion and what the circumstances are.

(5) In the case of an offender under the age of 17 years, except where the offence or any other offence associated with it is punishable only on conviction on indictment, the court shall not form such an opinion as is mentioned in paragraph (4) or (7) unless there exists a previous pre-sentence report obtained in respect of the offender and the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.

(6) No community sentence which consists of or includes such an order as is mentioned in paragraph (3) shall be invalidated by the failure of a court to obtain and consider a pre-sentence report before forming an opinion referred to in that paragraph, but any court on an appeal against such a sentence—

- (a) shall, subject to paragraph (7), obtain a pre-sentence report if none was obtained by the court below; and
- (b) shall consider any such report obtained by it or by that court.

(7) Paragraph (6)(a) does not apply if the court is of the opinion—

- (a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report, or
- (b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.

## *Probation*

### **Probation orders**

**10.**—(1) Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion that the supervision of the offender by a probation officer is desirable in the interests of—

- (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,

the court may make a probation order, that is to say, an order requiring him 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.

(2) A probation order shall specify the petty sessions district in which the offender resides or will reside; and the offender shall, subject to paragraph 12 of Schedule 2, be required to be under the supervision of a probation officer appointed for or assigned to that district.

(3) Before making a probation order, the court shall—

- (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—
  - (i) why it is making a probation order;
  - (ii) the effect of the order (including any additional requirements proposed to be included in the order in accordance with Article 11);
  - (iii) the consequences which may follow under Schedule 2 if he fails to comply with any of the requirements of the order; and
  - (iv) that the court has under Schedule 2 power to review the order on the application either of the offender or of the supervising officer,

and if the offender has attained the age of 14 years the court shall not make the order unless he expresses his willingness to comply with its requirements.

(4) The court by which a probation order is made shall forthwith give copies of the order to a probation officer assigned to the court, and he shall give a copy—

- (a) to the offender;
- (b) to the probation officer responsible for the offender's supervision; and
- (c) to the person in charge of any institution in which the offender is required by the order to reside, present himself or attend.

(5) The court by which such an order is made shall also, except where it itself acts for the petty sessions district specified in the order, send to the clerk of petty sessions for that district—

- (a) a copy of the order; and
- (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that district in the exercise of its functions in relation to the order.

(6) An offender in respect of whom a probation order is made shall keep in touch with the probation officer responsible for his supervision in accordance with such instructions as he may from time to time be given by that officer and shall notify him of any change of address.

(7) A magistrates' court shall cause a reason stated by it under paragraph (3) to be entered in the Order Book.

(8) The Secretary of State may by order direct that paragraph (1) shall be amended by substituting, for the minimum or maximum period specified in that paragraph, such period as may be specified in the order.

(9) An order under paragraph (8) may make in paragraph 13(2)(a) of Schedule 2 any amendment which the Secretary of State thinks necessary in consequence of any substitution made by the order.

(10) Nothing in paragraph (1) shall be construed as preventing a court which makes a probation order in respect of any offence from making an order for costs against, or imposing any disqualification on, the offender or from making in respect of the offence an order under Article 11 or 14 of the Criminal Justice (Northern Ireland) Order 1994 (power to deprive offenders of property used or intended for use, for purposes of crime and compensation orders) or under Article 8 of the Criminal Justice (Northern Ireland) Order 1980 (driving disqualification where vehicle used for purposes of crime) or under section 27 of the Theft Act (Northern Ireland) 1969 (restitution orders).

#### **Additional requirements which may be included in such orders**

**11.**—(1) Subject to paragraph (2), a probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers desirable in the interests of—

- (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.

(2) Without prejudice to the power of the court under Article 11 or 14 of the Criminal Justice (Northern Ireland) Order 1994 to make a compensation order, the payment of sums by way of damages for injury or compensation for loss shall not be included among the additional requirements of a probation order.

(3) Without prejudice to the generality of paragraph (1), the additional requirements which may be included in a probation order shall include the requirements which are authorised by Schedule 1.

#### **Substitution of conditional discharge for probation**

**12.**—(1) Where on an application made by an offender placed on probation or a probation officer it appears to the court having power to discharge a probation order that the order is no longer appropriate in the case of the offender, the court may make, in substitution for the probation order, an order discharging him in respect of the original offence subject to the condition that he commits no offence between the making of the order under this Article and the expiration of the probation period.

(2) No application may be made under paragraph (1) while an appeal against the probation order is pending.

(3) A person in respect of whom an order is made under this Article shall so long as the said condition continues in force be treated in all respects and in particular for the purposes of paragraph 7 of Schedule 2 as if the original probation order made in his case had been an order for conditional discharge made by the court which made that original order and as if the period of conditional discharge were the same as the probation period.

(4) On the making of an order under this Article the appropriate officer of the court shall forthwith give copies of the order to the probation officer, who shall give a copy to the person in respect of whom the order is made and a copy to the person in charge of any institution in which that person was required by the probation order to reside.

### *Community service orders*

#### **Community service orders in respect of convicted persons**

13.—(1) Subject to paragraph (4), where a person of or over 16 years of age is convicted of an offence punishable with imprisonment (not being an offence the sentence for which is fixed by law), the court by or before which he is convicted may, make a community service order, that is to say, an order requiring him to perform unpaid work in accordance with the subsequent provisions of this Part.

(2) The number of hours which a person may be required to work under a community service order shall be specified in the order and shall be in the aggregate—

- (a) not less than 40; and
- (b) not more than 240.

(3) The reference in paragraph (1) to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any statutory provision on the imprisonment of persons under 21 years of age.

(4) A court shall not make a community service order in respect of any offender unless the offender consents and the court is satisfied—

- (a) after hearing (if the court thinks it necessary) a probation officer, that the offender is a suitable person to perform work under such an order; and
- (b) that provision can be made by the Probation Board for him to do so.

(5) Where a court makes community service orders in respect of 2 or more offences of which the offender has been convicted by or before the court, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders, but so that the total number of hours which are not concurrent shall not exceed the maximum specified in paragraph (2)(b).

(6) A community service order shall specify the petty sessions district in which the offender resides or will reside; and the functions conferred by the subsequent provisions of this Part on the relevant officer shall be discharged by a probation officer selected under arrangements made by the Probation Board or a person appointed by it for the purposes of this paragraph.

(7) Before making a community service order the court shall—

- (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—
  - (i) why it is making a community service order;
  - (ii) the effect of the order (including the requirements of the order as specified in Article 14);
  - (iii) the consequences which may follow under Part II of Schedule 2 if he fails to comply with any of the requirements of the order; and
  - (iv) that the court has under Schedule 2 power to review the order on the application either of the offender or of the relevant officer.

(8) The court by which a community service order is made shall forthwith give copies of the order to a probation officer assigned to the court and he shall give a copy to the offender and to the relevant officer; and the court shall, except where it is itself a magistrates' court acting for the petty sessions district specified in the order, send to the clerk of petty sessions for the petty sessions district specified in the order a copy of the order, together with such documents and information relating to



the case as it considers likely to be of assistance to a court acting for that district in exercising its functions in relation to the order.

(9) A magistrates' court shall cause a reason stated by it under paragraph (7) to be entered in the Order Book.

(10) The Secretary of State may by order direct that paragraph (2) fl shall be amended by substituting for the maximum number of hours for the time being specified in sub-paragraph (b) of that paragraph such number of hours as may be specified in the order.

(11) Nothing in paragraph (1) shall be construed as preventing a court which makes a community service order in respect of any offence from making an order for costs against, or imposing any disqualification on, the offender or from making in respect of the offence an order under Article 11 or 14 of the Criminal Justice (Northern Ireland) Order 1994 (power to deprive offenders of property used, or intended for use, for purposes of crime and compensation orders) or under Article 8 of the Criminal Justice (Northern Ireland) Order 1980 (driving disqualification where vehicle used for purposes of crime) or under section 27 of the Theft Act (Northern Ireland) 1969 (restitution orders).

#### **Obligations of person subject to community service order**

**14.**—(1) An offender in respect of whom a community service order is in force shall—

- (a) keep in touch with the relevant officer in accordance with such instructions as he may be given by that officer and notify him of any change of address; and
- (b) perform for the number of hours specified in the order such work at such times as he may be instructed by the relevant officer.

(2) Subject to paragraph 15 of Schedule 2, the work required to be performed under a community service order shall be performed during the period of 12 months beginning with the date of the order; but, unless revoked, the order shall remain in force until the offender has worked under it for the number of hours specified in it.

(3) The instructions given by the relevant officer under this Article shall so far as practicable, be such as to avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which he normally works or attends a school or other educational establishment.

#### **Orders combining probation and community service**

**15.**—(1) Where a court by or before which a person of or over the age of 16 years is convicted of an offence punishable with imprisonment (not being an offence for which the sentence is fixed by law) is of the opinion mentioned in paragraph (2), the court may make a combination order, that is to say, an order requiring him both—

- (a) to be under the supervision of a probation officer for a period specified in the order, being not less than 12 months nor more than 3 years; and
- (b) to perform unpaid work for a number of hours so specified, being in the aggregate not less than 40 nor more than 100.

(2) The opinion referred to in paragraph (1) is that the making of a combination order is desirable in the interests of—

- (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.

(3) Before making a combination order, the court shall—

- (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.

(4) A magistrates' court shall cause a reason stated by it under paragraph (3) to be entered in the Order Book.

(5) Subject to paragraph (1) and to paragraph 6(6) of Schedule 2 a combination order shall be treated for the purposes of this Part 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).

#### *Orders: supplemental*

#### **Enforcement etc. of community orders**

16. Schedule 2 (which makes provision for dealing with failures to comply with the requirements of certain community orders, for amending such orders and for revoking them with or without the substitution of other sentences) shall have effect.

#### **Regulation of community orders**

17.—(1) The Secretary of State may make rules for regulating—

- (a) the supervision of persons subject to probation orders;
- (b) the arrangements to be made under Article 4(1)(b) of the Probation Board (Northern Ireland) Order 1982 for persons subject to community service orders to perform work and the performance of such work;
- (c) without prejudice to the generality of sub-paragraphs (a) and (b), the functions of the responsible officers of such persons as are mentioned in those sub-paragraphs.

(2) Rules under paragraph (1)(b), may in particular make provision—

- (a) limiting the number of hours of work to be done by a person on any one day;
- (b) as to the reckoning of hours worked and the keeping of work records; and
- (c) for the payment of travelling and other expenses in connection with the performance of work.

(3) In this Part “responsible officer” means—

- (a) in relation to an offender who is subject to a probation order, the probation officer responsible for his supervision; and
- (b) in relation to an offender who is subject to a community service order, the relevant officer within the meaning of Article 13(6).

#### *Custodial sentences*

#### **Restriction on imposing sentences of imprisonment or detention on persons not legally represented**

18.—(1) A magistrates' court on summary conviction or the Crown Court on conviction on indictment shall not pass a sentence of imprisonment or detention in a young offenders centre or a sentence of detention during the Secretary of State's pleasure under section 73(1) of the Children and Young Persons Act (Northern Ireland) 1968 on, or make a training school order with respect to, a person who is not legally represented in that court and has not been previously sentenced to that punishment by a court in any part of the United Kingdom, unless either—

- (a) he applied for legal aid and the application was refused on the ground that it did not appear his means were such that he required assistance; or
  - (b) having been informed of his right to apply for legal aid and had the opportunity to do so, he refused or failed to apply.
- (2) In paragraph (1)(a) and (b) “legal aid” means legal aid for the purposes of proceedings in that court, whether the whole proceedings or the proceedings on or in relation to sentence.
- (3) In the case of a person committed to the Crown Court for trial, it is immaterial whether he applied for legal aid in the Crown Court to, or was informed of his right to apply by, that Court, or the court which committed him.
- (4) For the purposes of this Article—
- (a) a person is to be treated as legally represented in a court if, but only if, he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced;
  - (b) a previous sentence of imprisonment or order for detention in a young offenders centre which has been suspended and which has not taken effect under section 40 of the Criminal Justice Act 1967, section 19 of the Treatment of Offenders Act (Northern Ireland) 1968 or section 23 of the Powers of Criminal Courts Act 1973 shall be disregarded; and
  - (c) “young offenders centre” means in relation to Great Britain a young offenders institution.

#### **Restrictions on imposing custodial sentences**

**19.**—(1) This Article applies where a person is convicted of an offence punishable with a custodial sentence other than one fixed by law.

(2) Subject to paragraph (3), the court shall not pass a custodial sentence on the offender unless it is of the opinion—

- (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
- (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.

(3) Nothing in paragraph (2) shall prevent the court from passing a custodial sentence on the offender if he refuses to give his consent to a community sentence which is proposed by the court and requires that consent.

(4) Where a court passes a custodial sentence, it shall—

- (a) in a case not falling within paragraph (3), state in open court that it is of the opinion that either or both of sub-paragraphs (a) and (b) of paragraph (2) apply and why it is of that opinion; and
- (b) in any case, explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.

(5) A magistrates' court shall cause a reason stated by it under paragraph (4) to be specified in the warrant of commitment and to be entered in the Order Book.

#### **Length of custodial sentences**

**20.**—(1) This Article applies where a court passes a custodial sentence other than one fixed by law or an order sending an offender to a training school under section 74(1)(a) of the Children and Young Persons Act (Northern Ireland) 1968.

(2) The 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; or
  - (b) where the offence is a violent or sexual offence, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender.
- (3) Where the court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it, the court shall—
- (a) state in open court that it is of the opinion that paragraph (2)(b) applies and why it is of that opinion; and
  - (b) explain to the offender in open court and in ordinary language why the sentence is for such a term.
- (4) A custodial sentence for an indeterminate period shall be regarded for the purposes of paragraphs (2) and (3) as a custodial sentence for a term longer than any actual term.

#### **Procedural requirements for custodial sentences**

**21.**—(1) Subject to paragraph (2), a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in Article 19(2) or 20(2).

(2) Paragraph (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report and where the court does not obtain and consider a pre-sentence report, it shall state in open court that it is of that opinion and what the circumstances are.

(3) In the case of an offender under the age of 17 years, except where the offence or any other offence associated with it is punishable only on conviction on indictment, the court shall not form such an opinion as is mentioned in paragraph (2) or (6) unless there exists a previous pre-sentence report obtained in respect of the offender and the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.

(4) In forming any such opinion as is mentioned in Article 19(2) or 20(2) a court—

- (a) shall take into account all such information about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated with it (including any aggravating or mitigating factors) as is available to it; and
- (b) in the case of any such opinion as is mentioned in sub-paragraph (b) of that paragraph, may take into account any information about the offender which is before it.

(5) No custodial sentence shall be invalidated by the failure of a court to obtain and consider a pre-sentence report before forming an opinion referred to in paragraph (1) but any court on an appeal against such a sentence—

- (a) shall, subject to paragraph (6), obtain a pre-sentence report if none was obtained by the court below; and
- (b) shall consider any such report obtained by it or by that court.

(6) Paragraph (5)(a) does not apply if the court is of the opinion—

- (a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report, or
- (b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it report.

### **Additional requirements offenders is unnecessary to obtain a pre-sentence in the case of mentally disordered**

**22.**—(1) Subject to paragraph (2), in any case where Article 21(1) applies and the offender is or appears to be mentally disordered, the court shall obtain and consider a medical report before passing a custodial sentence other than one fixed by law.

(2) Paragraph (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.

(3) Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court shall consider—

- (a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise); and
- (b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.

(4) No custodial sentence which is passed in a case to which paragraph (1) applies shall be invalidated by the failure of a court to comply with that paragraph, but any court on an appeal against such a sentence—

- (a) shall obtain a medical report if none was obtained by the court below; and
- (b) shall consider any such report obtained by it or by that court.

(5) In this Article “medical report” means a report as to an offender’s mental condition made or submitted orally or in writing by a registered medical practitioner appointed by the Mental Health Commission for Northern Ireland for the purposes of Part II of the Mental Health (Northern Ireland) Order 1986.

(6) Nothing in this Article shall be taken as prejudicing the generality of Article 21.

### **Suspended sentences of imprisonment or orders for detention**

**23.** In section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 (suspended sentences of imprisonment or orders for detention in a young offenders centre)—

- (a) in subsections (1) and (1A) at the beginning there shall be inserted “Subject to subsection (1C)”;
- (b) after subsection (1B) there shall be inserted—

“(1C) A court shall not deal with an offender by means of a suspended sentence or order for detention unless it is of the opinion—

- (a) that the case is one in which a sentence of imprisonment or order for detention in a young offenders centre would have been appropriate even without the power to suspend the sentence or order; and
- (b) that the exercise of that power can be justified by the exceptional circumstances of the case.

(1D) A court which passes a suspended sentence or makes an order for detention on any person for an offence shall consider whether the circumstances of the case are such as to warrant in addition the imposition of a fine or the making of a compensation order.”.

### **Custody probation orders**

**24.**—(1) Where, in the case of a person convicted of an offence punishable with a custodial sentence other than one fixed by law, a court has formed the opinion under Articles 19 and 20 that a custodial sentence of 12 months or more would be justified for the offence, the court shall consider

whether it would be appropriate to make a custody probation order, that is to say, an order requiring him both—

- (a) to serve a custodial sentence; and
- (b) on his release from custody, to be under the supervision of a probation officer for a period specified in the order, being not less than 12 months nor more than 3 years.

(2) Under a custody probation order the custodial sentence shall be for such term as the court would under Article 20 pass on the offender less such period as the court thinks appropriate to take account of the effect of the offender's supervision by the probation officer on his release from custody in protecting the public from harm from him or for preventing the commission by him of further offences.

(3) A court shall not make a custody probation order in respect of any offender unless the offender consents and, where an offender does not so consent, the court shall not pass a custodial sentence of a greater length than the term the court would otherwise pass under Article 20.

(4) Where in any case a court does not consider a custody probation order to be appropriate, the court shall state in open court that it is of that opinion and why it is of that opinion.

(5) A court which makes a custody probation order shall state the term of the custodial sentence it would have passed under Article 20 if the offender had not consented to the order.

#### **Supplementary provisions as to custody probation orders**

**25.**—(1) The period of supervision under a custody probation order shall commence on the offender's release from custody at the expiry of the custodial sentence.

(2) Subject to Article 24(1), in relation to a custody probation order—

- (a) in so far as it imposes a custodial sentence, all statutory provisions relating to such custodial sentences shall apply as if it were such a sentence; and —
- (b) in so far as it imposes such a requirement as is mentioned in paragraph (1)(b) of that Article, this Part shall, subject to paragraph (3), apply as if it were a probation order.

(3) In its application to a custody probation order, a court exercising its powers under paragraph 3(1)(d), 4(1)(d), 7(2)(a)(ii) or 8(2)(b) of Schedule 2 shall have regard to the term of the custodial sentence which would have been imposed by the court which made the order had the offender not consented to the order and to the term of the custodial sentence served by the offender in respect of the offence.

(4) In relation to release from custody under paragraph (1), section 13(7) of the Prison Act (Northern Ireland) 1953 (prison rules) shall have effect as if the words from “and on the discharge” onwards were omitted.

#### *Release on licence of certain offenders*

#### **Release on licence of sexual offenders**

**26.**—(1) Where, in the case of an offender who has been sentenced to imprisonment or ordered to be detained in a young offenders centre—

- (a) the whole or any part of his sentence or order for detention was imposed for a sexual offence, and
- (b) the court by which he was sentenced or ordered to be detained for that offence, having regard to—
  - (i) the need to protect the public from serious harm from him, and

(ii) the desirability of preventing the commission by him of further offences and of securing his re-habilitation, ordered that this Article shall apply,

instead of being granted remission of his sentence or order for detention under prison rules, the offender shall, on the day on which he might have been discharged if the remission had been granted, be released on licence under the provisions of this Article.

(2) An offender released on licence under this Article shall be under the supervision of a probation officer appointed for or assigned to the petty sessions district within which the offender resides until the date on which he would (but for his release) have served the whole of his sentence or order for detention.

(3) An offender released on licence under this Article shall comply with such conditions determined by the Secretary of State as may be specified in the licence.

(4) An offender released on licence under this Article shall be given a notice from the Secretary of State before any alteration in the conditions specified in the licence comes into effect.

(5) The Secretary of State may make rules for regulating the supervision of sex offenders under this Article.

### **Breach of licence conditions**

27.—(1) If at any time while an offender is released on licence under Article 26 it appears on complaint to a justice of the peace that the offender has failed to comply with any of the conditions specified in the licence, the justice may—

- (a) issue a summons requiring the offender to appear at the place and time specified in it; or
- (b) if the complaint is in writing and on oath, issue a warrant for his arrest.

(2) Any summons or warrant issued under paragraph (1) shall direct the offender to appear or be brought before a court of summary jurisdiction acting for the petty sessions district in which he resides.

(3) If it is proved to the satisfaction of the court of summary jurisdiction before which an offender released on licence under Article 26 appears or is brought under paragraph (2) that he failed without reasonable excuse to comply with any of the conditions specified in the licence, the court may—

- (a) impose on him a fine not exceeding £1,000; or
- (b) suspend the licence for a period not exceeding 6 months and order him to be recalled to prison or, as the case may be, a young offenders centre for the period of the suspension.

(4) On the suspension of the licence of an offender under paragraph (3)(b), he shall be liable to be detained in pursuance of his sentence or order for detention and, if at large, shall be deemed to be unlawfully at large.

### **Convictions during currency of original sentences**

28.—(1) Where an offender released on licence under Article 26—

- (a) before the date on which he would (but for his release) have served his sentence or order for detention in full, commits an offence punishable with imprisonment; and
- (b) whether before or after that date, is convicted of that offence (“the new offence”);

the court by or before which he is convicted of the new offence may, whether or not it passes any other sentence on him, order him to be returned to prison or a young offenders centre for the whole or any part of the period which—

- (i) begins with the date of the order; and

- (ii) is equal in length to the period between the date on which the new offence was committed and the date mentioned in sub-paragraph (a).
- (2) A court of summary jurisdiction—
- (a) shall not have power to order an offender released on licence under Article 26 to be returned to prison or a young offenders centre for a period of more than 6 months; but
  - (b) may commit him to custody or release him on bail until he can be brought or appear before the Crown Court.
- (3) Where, under paragraph (2)(b), a court deals with an offender released on licence under Article 26, it shall send to the Crown Court such particulars of the case as may be desirable.
- (4) Where, by virtue of paragraph (2)(b), an offender released on licence under Article 26 is brought or appears before the Crown Court, the Court may order him to be returned to prison or a young offenders centre for the whole or any part of the period which—
- (a) begins with the date of the order; and
  - (b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in paragraph (1)(a).
- (5) The period for which an offender released on licence under Article 26 is ordered under paragraph (1) or (4) to be returned to prison or a young offenders centre—
- (a) shall, as the court may direct, either be served before and be followed by, or be served concurrently with, the sentence imposed for the new offence; and
  - (b) in either case, shall be disregarded in determining the appropriate length of that sentence.

### *Financial penalties*

#### **Fixing of fines**

- 29.**—(1) Before fixing the amount of any fine to be imposed on an offender who is an individual, a court shall inquire into his financial circumstances.
- (2) The amount of any fine fixed by a court shall be such as, in the opinion of the court, reflects the seriousness of the offence.
- (3) In fixing the amount of any fine to be imposed on an offender (whether an individual or other person), a court shall take into account the circumstances of the case including, among other things, the financial circumstances of the offender so far as they are known, or appear, to the court.
- (4) Where—
- (a) an offender has been convicted in his absence in pursuance of Article 23 or 24 of the Magistrates' Courts (Northern Ireland) Order 1981 (non-appearance of accused), or
  - (b) an offender—
    - (i) has failed to comply with an order under Article 30(1); or
    - (ii) has otherwise failed to co-operate with the court in its inquiry into his financial circumstances,
 and the court considers that it has insufficient information to make a proper determination of the financial circumstances of the offender, it may make such determination as it thinks fit.
- (5) Paragraph (3) applies whether taking into account the financial circumstances of the offender has the effect of increasing or reducing the amount of the fine.
- (6) The amendments made by Schedule 3 shall have effect.



### **Statements as to offenders' means**

**30.**—(1) Where an individual has been convicted of an offence the court may, before sentencing him, make a financial circumstances order with respect to him.

(2) Where a magistrates' court has been notified in accordance with Article 24(4) of the Magistrates' Courts (Northern Ireland) Order 1981 that an individual desires to plead guilty without appearing before the court, the court may make a financial circumstances order with respect to him.

(3) In this Article “a financial circumstances order” means, in relation to any individual, an order requiring him to give to the court, to within such period as may be specified in the order, such a statement of his financial circumstances as the court may require.

(4) An individual who without reasonable excuse fails to comply with a financial circumstances order shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **False statements as to financial circumstances**

**31.**—(1) If an individual in furnishing a statement in pursuance of a financial circumstances order under Article 30 or a person who is charged with an offence in furnishing a statement of his financial circumstances in response to an official request—

- (a) makes a statement which he knows to be false in a material particular;
- (b) recklessly furnishes a statement which is false in a material particular; or
- (c) knowingly fails to disclose any material fact,

he shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 4 on the standard scale or to both.

(2) For the purposes of this Article an official request is a request which—

- (a) is made by the clerk of petty sessions or the chief clerk, as the case may be; and
- (b) is expressed to be made for informing the court, in the event of his being convicted, of his financial circumstances for the purpose of determining the amount of any fine the court may impose.

(3) Proceedings in respect of an offence under this Article may, notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981 (limitation of time), be commenced at any time within 2 years from the date of the commission of the offence or within 6 months from its first discovery by the prosecution, whichever period expires the earlier.

### **Remission of fines**

**32.**—(1) This Article applies where a court has, in fixing the amount of a fine, determined the offender's financial circumstances under Article 29(4).

(2) If, on subsequently inquiring into the offender's financial circumstances, the court is satisfied that had it had the results of that inquiry when sentencing the offender it would—

- (a) have fixed a smaller amount; or
- (b) not have fined him,

it may remit the whole or any part of the fine.

(3) Where under this Article the court remits the whole or part of a fine after a term of imprisonment has been fixed under Article 92(1)(b) of the Magistrates' Courts (Northern Ireland) Order 1981 (issue of warrant of commitment for default) or section 35 of the Criminal Justice Act 1945 (powers of Crown Court or county court in relation to fines), it shall reduce the term by the corresponding proportion.

(4) In calculating any reduction required by paragraph (3), any fraction of a day shall be ignored.

### *Miscellaneous*

#### **Reduction in sentences for guilty pleas**

**33.**—(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence a court shall take into account—

- (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
- (b) the circumstances in which this indication was given.

(2) If, as a result of taking into account any matter referred to in paragraph (1), the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, it shall state in open court that it has done so.

#### **Reports of probation officers**

**34.**—(1) Subject to paragraph (2), where a report by a probation officer is made to any court (other than a juvenile court) with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, the copy of the report shall be given by the court to the offender or his counsel or solicitor.

(2) If the offender is under the age of 17 years and is not represented by counsel or a solicitor, a copy of the report need not be given to him but shall be given to his parents or guardian if present in court.

#### **Remands**

**35.** For Article 47(3) of the Magistrates' Courts (Northern Ireland) Order 1981 (extended period of remand in custody or on bail) there shall be substituted—

“(3) A magistrates' court may remand the accused in custody for a period exceeding 8 days if—

- (a) it has previously remanded him in custody for the same offence; and
- (b) he is before the court,

but only if, after affording the accused and the prosecution an opportunity to make representations, it has set a date on which it expects that it will be possible for the next stage in the proceedings, other than a hearing relating to a further remand in custody or on bail, to take place, and

- (i) for a period ending not later than that date; or
- (ii) for a period of 28 days,

whichever is the lesser.”.

#### **Savings for mitigation and mentally disordered offenders**

**36.**—(1) Nothing in this Part shall prevent a court from mitigating an offender's sentence by taking into account any such matters as, in the opinion of the court, are relevant in mitigation of sentence.

(2) Without prejudice to the generality of paragraph (1), nothing in this Part shall prevent a court—

- (a) from mitigating any penalty included in an offender's sentence by taking into account any other penalty included in that sentence; or
  - (b) in a case of an offender who is convicted of one or more other offences, from mitigating his sentence by applying any rule of law as to the totality of sentences.
- (3) Nothing in this Part shall be taken—
- (a) as requiring a court to pass a custodial sentence, or any particular custodial sentence, on a mentally disordered offender; or
  - (b) as restricting any power (whether under the Mental Health (Northern Ireland) Order 1986 or otherwise) which enables a court to deal with such an offender in the manner it considers to be most appropriate in all the circumstances.

### **Effect of previous convictions and of offending while on bail**

**37.**—(1) 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.

(2) In considering the seriousness of any offence committed while the offender was on bail, the court shall treat the fact that it was committed in those circumstances as an aggravating factor.

(3) A probation order or conditional discharge order made before 1 the coming into operation of this Part (which, by virtue of section 1 or 5 of the Probation Act (Northern Ireland) 1950, would otherwise not be a sentence for the purposes of this Article) is to be treated as a sentence for those purposes.

(4) A conviction in respect of which a probation order or an order discharging the offender absolutely or conditionally was made before the coming into operation of this Part (which, by virtue of section 8 of that Act, would otherwise not be a conviction for those purposes) is to be treated as a conviction for those purposes.

(5) A conditional discharge order made after the coming into operation of this Part (which, by virtue of Article 4 would otherwise not be a sentence for those purposes) is to be treated as a sentence for those purposes.

(6) A conviction in respect of which an order discharging the offender absolutely or conditionally was made after the coming into operation of this Part (which, by virtue of Article 6, would otherwise not be a conviction for those purposes) is to be treated as a conviction for those purposes.