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STATUTORY INSTRUMENTS

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**2008 No. 1216**

**The Criminal Justice (Northern Ireland) Order 2008**

**PART 2**

SENTENCING

CHAPTER 2

CUSTODIAL SENTENCES

**Restrictions on imposing certain custodial sentences**

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

- (a) fixed by law; or
- (b) falling to be imposed under—
  - (i) Article 13 [<sup>F1</sup>, 13A or 14];
  - (ii) Article 70(2) of the Firearms (Northern Ireland) Order 2004 (NI 3);<sup>F2</sup>...
  - (iii) paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006 (c. 38);  
[<sup>F3</sup>or
  - (iv) section 7(2) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.]

(2) The court shall not pass a custodial 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 so serious that only a custodial sentence can be justified for the offence.

(3) Nothing in paragraph (2) shall prevent the court from passing a custodial sentence if the offender fails to express a willingness to comply with—

- (a) a requirement which is proposed by the court to be included in a community sentence and which requires an expression of such willingness; or
- (b) a requirement which is proposed by the court to be included in—
  - (i) an order under Article 8(5) of the Criminal Justice (Northern Ireland) Order 1998 (NI 20); or
  - (ii) a youth conference order.

(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 referred to in paragraph (2) 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.

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**Changes to legislation:** *The Criminal Justice (Northern Ireland) Order 2008, Section 5 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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(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 required to be kept under rule 19 of the Magistrates' Courts Rules (Northern Ireland) 1984 (No. 225).

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**Textual Amendments**

- F1** Words in art. 5(1)(b)(i) substituted (29.6.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(2)(v), **Sch. 13 para. 66(4)**
- F2** Word in art. 5(1)(b)(ii) omitted (14.1.2015) by virtue of Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), **ss. 7(8)(b)**, 28(2)
- F3** Art. 5(1)(b)(iv) and word added (14.1.2015) by Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), **ss. 7(8)(b)**, 28(2)

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**Commencement Information**

- I1** Art. 5 wholly in operation at 1.4.2009, see art. 1(4) and S.R. 2009/120, **art. 2**, Sch. 1 (subject to Sch. 2 paras. 1(1)(2)(a), 4)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 2 Pt. 1 para. 31A renumbered as 31(B) by [2022 c. 19 \(N.I.\) Sch. 4 para. 3\(a\)](#)
- art. 19(1A) inserted by [2015 c. 9 \(N.I.\) s. 82](#)
- art. 45(1A) inserted by [2011 c. 24 \(N.I.\) s. 58\(2\)](#)