
DRAFT STATUTORY INSTRUMENTS

2008 No.

The Criminal Justice (Northern Ireland) Order 2008

PART 2

SENTENCING

CHAPTER 2

CUSTODIAL SENTENCES

Interpretation of this Chapter

4.—(1) In this Chapter—

“custodial sentence” means—

- (a) a sentence of imprisonment;
- (b) a sentence of detention in a young offenders centre;
- (c) a sentence of detention under Article 13(4)(b) or 14(5);
- (d) a sentence of detention under Article 45(1) or (2) of the [Criminal Justice \(Children\) \(Northern Ireland\) Order 1998 \(NI 9\)](#);
- (e) an order under Article 39 of that Order sending the offender to a juvenile justice centre;
- (f) an order under Article 44A of that Order sending the offender to secure accommodation;

“pre-sentence report” means a report in writing which—

- (a) with a view to assisting the court in determining the most suitable method of dealing with an offender, is made or submitted by a probation officer or a social worker of an HSS Board or authorised HSS trust; and
- (b) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State;

and for the purposes of this definition an “authorised HSS trust” is an HSS trust by which functions relating to such reports are exercisable by virtue of an authorisation for the time being in operation under Article 3(1) of the [Health and Personal Social Services \(Northern Ireland\) Order 1994 \(NI 2\)](#).

(2) For the purposes of this Chapter—

- (a) a sentence falls to be imposed under Article 13 if, because the court is of the opinion mentioned in paragraph (1)(b) of that Article and considers that the case falls within paragraph (2) or (3) of that Article, the court is obliged to pass a sentence complying with that Article;
- (b) a sentence falls to be imposed under Article 14 if, because the court is of the opinion mentioned in paragraph (1)(b)(i) and (ii) of that Article, the court is obliged to pass a sentence complying with that Article;

- (c) a sentence falls to be imposed under paragraph (2) of Article 70 of the [Firearms \(Northern Ireland\) Order 2004 \(NI 3\)](#) if it is required by that paragraph and the court is not of the opinion there mentioned; an
- (d) a sentence falls to be imposed under paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006 (c. 38) if it is required by that provision and the court is not of the opinion there mentioned.

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 or 14;
 - (ii) Article 70(2) of the [Firearms \(Northern Ireland\) Order 2004 \(NI 3\)](#); or
 - (iii) paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006 (c. 38).

(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.

(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).

Restrictions on imposing custodial sentences on persons not legally represented

6.—(1) A magistrates' court on summary conviction or the Crown Court on conviction on indictment shall not pass a custodial sentence on a person if that person is not legally represented in that court.

(2) Paragraph (1) does not apply to a person if

- (a) a custodial sentence has previously been passed on that person or a corresponding sentence has previously been passed on that person by a court in any other part of the United Kingdom;
- (b) that person applied for legal aid and the application was refused on the ground that it did not appear the person's means were such that the person required assistance; or

(c) having been informed of the right to apply for legal aid and had the opportunity to do so, that person refused or failed to apply.

(3) In paragraph (2) “legal aid” means legal aid for the purposes of proceedings in the court, whether the whole proceedings or the proceedings on or in relation to sentence.

(4) In the case of a person committed to the Crown Court for trial, it is immaterial whether that person applied for legal aid in the Crown Court to, or was informed of the right to apply by, that Court, or the court which committed that person.

(5) For the purposes of this Article—

(a) a person is to be treated as legally represented in a court if, but only if, that person has the assistance of counsel or a solicitor to represent that person in the proceedings in that court at some time after that person is found guilty and before that person is sentenced;

(b) a previous sentence of imprisonment or order for detention which has been suspended and which has not taken effect shall be disregarded.

Length of custodial sentences

7.—(1) This Article applies where a court passes a sentence—

(a) of imprisonment for a determinate term;

(b) of detention in a young offenders centre;

(c) of detention under Article 14(5); or

(d) of detention under Article 45(2) of the [Criminal Justice \(Children\) \(Northern Ireland\) Order 1998 \(NI 9\)](#).

(2) Subject to Article 14 and the statutory provisions mentioned in paragraph (3), the sentence shall be 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.

(3) The statutory provisions referred to in paragraph (2) are—

(a) Article 70(2) of the [Firearms \(Northern Ireland\) Order 2004 \(NI 3\)](#);

(b) paragraph 2(4) or (5) of Schedule 2 to the [Violent Crime Reduction Act 2006 \(c. 38\)](#).

Length of custodial period

8.—(1) This Article applies where a court passes—

(a) a sentence of imprisonment for a determinate term, other than an extended custodial sentence, or

(b) a sentence of detention in a young offenders centre

in respect of an offence committed after the commencement of this Article.

(2) The court shall specify a period (in this Article referred to as “the custodial period”) at the end of which the offender is to be released on licence under Article 17.

(3) The custodial period shall not exceed one half of the term of the sentence.

(4) Subject to paragraph (3), the custodial period shall be the term of the sentence less the licence period.

(5) In paragraph (4) “the licence period” means such period as the court thinks appropriate to take account of the effect of the offender’s supervision by a probation officer on release from custody—

(a) in protecting the public from harm from the offender; and

(b) in preventing the commission by the offender of further offences.

(6) Remission shall not be granted under prison rules to the offender in respect of the sentence.

Procedural requirements for custodial sentences

9.—(1) In forming any such opinion as is mentioned in Article 5(2) or 7(2), a court shall take into account all such information as is available to it 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).

(2) Subject to paragraph (3), a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in Article 5(2), 7(2), 13(1)(b) or 14(1)(b)(i).

(3) Paragraph (2) 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.

(4) In the case of an offender under the age of 18, 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 (3) or (6) unless—

- (a) there exists a previous pre-sentence report obtained in respect of the offender; and
- (b) 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.

(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 (2) 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 is unnecessary to obtain a pre-sentence report.

Additional requirements in the case of mentally disordered offenders

10.—(1) Subject to paragraph (2), in any case where Article 9(2) 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 the offender's 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—

“mentally disordered”, in relation to any person, means suffering from a mental disorder within the meaning of the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#);

“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 2 of the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#).

(6) Nothing in this Article shall be taken as prejudicing the generality of Article 9.

Disclosure of pre-sentence reports

11.—(1) This Article applies where a court obtains a pre-sentence report.

(2) Subject to paragraphs (3) and (4), the court shall give a copy of the report—

- (a) to the offender or the offender’s counsel or solicitor; and
- (b) to the prosecutor, that is to say, the person having conduct of the proceedings in respect of the offence.

(3) If the offender is under the age of 18 and is not represented by counsel or a solicitor, a copy of the report need not be given to the offender but shall be given to the offender’s parent or guardian if present in court

(4) If the prosecutor is not of a description prescribed by order made by the Secretary of State, a copy of the report need not be given to the prosecutor if the court considers that it would be inappropriate for the prosecutor to be given it.

(5) No information obtained by virtue of paragraph (2)(b) shall be used or disclosed otherwise than for the purpose of—

- (a) determining whether representations as to matters contained in the report need to be made to the court; or
- (b) making such representations to the court.