

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**

An Roinn Dlí agus Cirt

Máinnystrie O tha Laa

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26 March 2026

Dear Kathy,

### **CRIMINAL JUSTICE (SENTENCING ETC) BILL**

Thank you for your letter dated 10 March 2026 requesting additional information in relation to the Criminal Justice (Sentencing Etc) Bill.

Evidence base for the proposed increase in maximum sentences, given that the 2020 consultation indicated that the risk of getting caught committing an offence was more of a deterrent than the severity of the sentence.

Part 7 of the Bill provides for increases in the maximum sentences available for the offences of:

- Causing death or grievous bodily injury by driving when disqualified, from 6 to 12 months on summary conviction and from 2 to 4 years on conviction on indictment;
- Causing death or grievous bodily injury by dangerous driving (indictable only offence), from 14 to 20 years, or to a discretionary life sentence for a repeat offender; and



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- Causing death or grievous bodily injury by careless driving when under the influence of drink or drugs (indictable only offence), from 14 to 20 years, or to a discretionary life sentence for a repeat offender.

As highlighted in the consultation documentation, many offences are committed without significant pre-meditation and risk assessment on the offender's behalf. It is where an offence is planned that research suggests it is the risk of being caught, rather than the likely sentence that influences decisions.

Offences causing death or serious injury by driving are particular examples which, by their nature, tend to involve little if any pre-meditation, and a lower level of intent than many other offences; typically the offender has acted recklessly in relation to their driving which has, nevertheless, resulted in devastating consequences. The risk of being caught, therefore, is unlikely to feature in relation to the commission of these offences.

It is considered that increasing the maximum penalty and highlighting these offences in public awareness-raising, which will accompany the implementation of these provisions, provides an opportunity to affect peoples' fundamental attitudes, to deter people from drink and drug driving in the first place, and so to lead to a reduction in the incidence of these particular offences.

In deciding to increase the maximum penalties for these offences the Department has taken into consideration all of the purposes of sentencing, which are, as provided for at clause 1 of the Bill:

- Punishment of offenders;
- Protection of the public (including victims of crime);
- The reduction of crime by deterrence;
- The rehabilitation of offenders; and
- The making of reparation by offenders to persons affected by their offences.



As well as having an impact on drivers' behaviours, these increases in maximum sentence are anticipated to act as stronger punishments; to better protect the public by removing such offenders from society for longer periods, preventing further offending during the period of their custody; and providing extended periods during which rehabilitation work may be carried out with the offenders while in custody, with a view to preventing further offending. Given the life-changing nature of such offences, the higher maximum reflects the gravity of their impact.

The Bill also creates the offence of assaulting a public worker. While this is a new offence, it is aimed at assaults of a nature similar to common assault, and also replaces existing assault offences specifically aimed at the occupation of the victim. In all of these existing offences the maximum sentence on summary conviction is 6 months' imprisonment.

On analysis of the sentences imposed for the existing offences, and in particular the offence of assault on police, it was found that the maximum sentence of 6 months' imprisonment was imposed in a number of instances. This suggested that a higher maximum sentence in the magistrates' courts would be justified and utilised in appropriate cases to reflect the heightened seriousness of the new proposed offence.

Assaults can often be crimes of passion or impulse, committed on the spur of the moment and, similar to road traffic offences, without appreciable pre-meditation. However, whether pre-meditated or not, the risk of being caught is eminently apparent, so does not act as a deterrent. Equally, in the heat of the moment, an increase in maximum sentence is unlikely to have a particular deterrent effect. But, as with the increases in death by driving penalties, our aim in having a higher maximum penalty for this new offence is to help change attitudes and so reduce offending, as well as satisfy the other purposes of sentencing, as detailed above, in particular recognising the impact on victims and the people they serve.

#### Analysis of the impact that the provisions of the Bill and the increase in maximum sentences may have on the Prison Service.

The Department has considered the potential operational impact of the provisions within the Bill during policy development and will continue to work with criminal justice partners ahead of implementation. We anticipate that most of the Bill's provisions will be delivered

from within existing resources, and any additional costs that do arise will be subject to a proportionate business case and appropriate approvals.

There are likely to be some I.T. costs associated with the new recording provisions within the statutory aggravators for hate crime, vulnerable victims and public workers, and with the recording the victim's occupation in the new public worker offence; however, by capturing the motivation of the offending in such cases, it will also enable rehabilitative efforts to be more effectively and efficiently targeted.

### Suspended sentences

The aim of the provisions within Part 2 is to make the suspended sentence a more impactful, flexible and targeted disposal, with a view to addressing offending behaviour and reducing re-offending. At present, whilst a deterrent against reoffending during the suspension period, no rehabilitation work or behavioural intervention is attached to a suspended sentence: these changes seek to allow for that in cases where it may be beneficial to public protection and successful desistance.

The provisions were subject to a costing exercise during policy development, and the Department will continue to engage with the Probation Board to draft a business case to support implementation.

This costing exercise identified that there will be significant costs associated with implementation of this approach - approximate indicative costs could range from £3.13m if applied in 50% of cases, to £6.25m if applied in all cases. There would also be additional set-up costs, and costs associated with breaches. The overall cost of implementing the provisions, therefore, will be heavily dependent on the extent to which community elements are applied to suspended sentences by the judiciary.

It is also important to note that, based on analysis conducted by the Department in February 2024, there will potentially be a net economic benefit associated with introducing these new sentencing arrangements, linked to reductions in re-offending and consequent reduced prison costs. By way of illustration, in the event of a full roll-out at the Crown Court, it is estimated that implementing community requirements as an additional element to suspended sentences could have a net economic benefit of



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between £165,092 (lower estimate) and £1,996,559 (higher estimate). In the event of a full roll-out at the magistrates' court, there is potential for a net economic benefit of between £1,475,444 (lower estimate) and £17,862,507 (higher estimate).

A further benefit for the prison population may be realised: There may be cases where the court currently considers that only an immediate custodial sentence is suitable but where, with the option of the community requirements provided for in the Bill, a suspended sentence may be considered a more effective solution. This may only transpire in a small proportion of cases where the court would currently come down, on balance, marginally in favour of immediate custody; but nonetheless, some reductions in immediate custodial sentences may be possible.

However, as outlined above, there will need to be significant investment in PBNI for these benefits to be realised. For example, if adopted in all suspended sentence cases the impact could be as much as double PBNI's current caseload. In light of this, the Department plans to consider implementing the provisions in a staged and proportionate manner, subject to the funding available.

### Unduly lenient sentencing

Part 4 of the Bill extends the current power of the DPPNI to refer a sentence to the Court of Appeal on the grounds that he considers it to be unduly lenient so that all sentences imposed in the Crown Court may be so referred. Around 2/3 of the Crown Court's sentences can be referred under existing provisions, so this change will increase the potential numbers of referrals by approximately 50%. The threshold for what can be considered 'unduly lenient' remains high: it is not simply that the sentence imposed was lower than that which the Court of Appeal would have imposed. The Court of Appeal has stated that to be unduly lenient the sentence must fall "outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate".

As a result, very small numbers of referrals are approved by the DPP - on average there are around 5 per year, of which just over half are granted by the Court of Appeal. For

context, there were 1515 convictions in the Crown Court in 2024. The impact on prison spaces of any increases in sentence on referral are, therefore, minimal and even a 50% increase is unlikely to have a particular impact.

### 'Charlotte's Law'

Part 5 of the Bill introduces 'Charlotte's Law', with provisions requiring the court to increase the offender's custodial sentence by a factor of at least 30% where the location of the victim's remains have not been disclosed by the time of sentence. It also allows for a reduction if a disclosure is made post-sentence.

It is not considered that Charlotte's Law will impact negatively on prison spaces for the following reasons:

- To date there is only one person serving a sentence for a 'no body' killing, namely, Johnny Miller who was convicted of and sentenced for Charlotte Murray's murder in 2020. The numbers of such cases are likely to remain extremely low.
- It is difficult to predict whether Charlotte's Law will result in significantly different custodial sentences being imposed. In Charlotte's case the sentence was aggravated to take account of the non-disclosure, and while the exact amount of aggravation was not stated by the Court, it could be extrapolated as reflecting around a 30% increase.

The benefit of the provisions in this Bill is the certainty for both victims and defendants of such an increase; and the prospect of a reduction if a disclosure is made. In effect, therefore, these provisions could result in a slight saving in terms of prison time.

### Statutory aggravators

Part 6 of the Bill introduces statutory aggravators in relation to offences aggravated by hostility; by reason of vulnerability; and where the victim is a public worker.

The Department does not consider that the implementation of these statutory aggravators will necessarily result in very significant increases in sentences. Rather they provide a statutory requirement to treat the specified offences more seriously for the purpose of sentencing in place of current sentencing guidance.

The benefit of placing these aggravators in statute is the resultant transparency, acknowledgment, public messaging and recording capabilities that are created.

#### Offence of assaulting a public worker

Part 6 also provides for the creation of the new offence of assaulting a public worker in the course of their work, with a maximum 12-month sentence available in the magistrates' courts – an increase from the current 6-month maximum available in that court tier for assault offences.

It is not possible to predict how many custodial sentences will be imposed under this new offence, but it is clear that the new offence will not result in additional convictions (as it will be used as an alternative to existing offences). Any increased custodial sentences for these offences will be limited to relatively short additional periods, but will nevertheless, send out a clear message with respect to the acceptability of such behaviours.

#### Increased maximum penalty for causing death by driving offences

In respect of the impact that the increase in maximum sentences for road traffic offences in Part 7 of the Bill on the prison service, the Department is of the view that the amendments within the Bill will not increase the number of individuals that receive a custodial sentence, because the scope of the offences remains unchanged. However, the amendments within the Bill should increase the length of custodial sentences that are received in these cases.

In this regard, it is important to note that the number of individuals convicted of death by dangerous driving each year is relatively low. For example, in the period 2020 to 2024, there were 17 convictions at courts for the offence of 'causing death by dangerous driving' and, in 14 of these cases, the main penalty imposed was a custodial sentence. The impact on prison spaces is therefore expected to be negligible.

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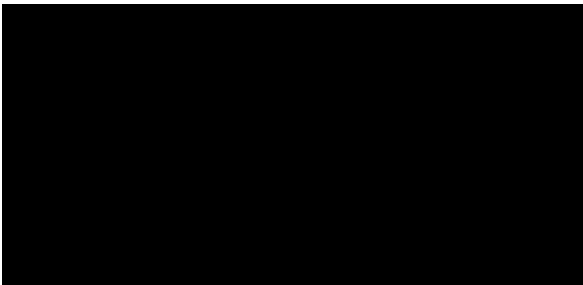
Whether any consideration has been given to considering the continual breach of the conditions of a non-molestation order as an aggravator rather than the profession of the victim being an aggravating factor.

The Department has not given any consideration to making the continual breach of the conditions of a non-molestation order a statutory aggravator.

Courts will already take into consideration past offending behaviour when determining the appropriate sentence for an offence. Therefore, previous similar offending, including breaches of a non-molestation order, acts as an aggravating factor during the sentencing process, typically leading to a more severe sentence. It is also important to note that breach of a non-molestation order is a criminal offence under Article 25 of the Family Homes and Domestic Violence (NI) Order 1998, punishable on summary conviction by up to six months' imprisonment, or a fine of up to £5,000, or both.

I also enclose a copy of the Delegated Powers Memorandum to assist the Committee in their scrutiny of the Bill.

I trust the Committee will find this information helpful.



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**Enc.**

## **DELEGATED POWERS MEMORADUM**

### **CRIMINAL JUSTICE (SENTENCING ETC) BILL**

#### **INTRODUCTION**

1. This Bill gives effect to the Justice Minister's aim of improving transparency and effectiveness in sentencing in the criminal justice system. It also creates new provision to encourage disclosure of information as to the location of victims' remains in 'no body' cases; and creates a new statutory aggravation model for sentencing hate crimes.
2. The Bill has 51 clauses in 8 Parts, and 7 Schedules.
3. Part 1 of the Bill deals with the exercise of the court's discretion when sentencing. It covers the purposes and principles of sentencing and places a duty on the court to follow and give reasons in relation to sentencing guidance.
4. Part 2 creates new suspended sentence orders.
5. Part 3 makes provision in respect of life sentences, specifically a duty to give reasons when determining a tariff and makes provision around the setting of tariffs in mandatory life sentences for adults.
6. Part 4 deals with unduly lenient sentences.
7. Part 5 makes provision about cases in which there has been a failure to disclose the location of victim's remains. It allows for a court, when sentencing an offender in such circumstances, and where specific criteria are met, to include an additional custodial period as part of the sentence because of the failure to disclose. It also allows for a reduction of that additional custodial period if a disclosure is subsequently made.
8. Part 6 provides for a number of aggravators that can be specified alongside an offence and which the court must treat as increasing the seriousness of the offence when sentencing. The aggravators relate to hostility, vulnerability and

assaults on public workers acting in the exercise of their functions. It also creates an offence of assault on a public worker, or a person assisting a public worker, who is acting in the exercise of their functions.

9. Part 7 relates to sentencing in particular road traffic offences where death or serious injury result.

10. Part 8 is general (interpretation, commencement, etc.)

11. The following provisions for delegated legislation have been identified in the Bill:

Clause	Title	Assembly Procedure
10(7)(b)	Regulations relating to the information in and presentation of pre-sentence reports where a suspended sentence order with community requirements is being made.	Negative resolution (clause 10(8))
15	Regulations relating to suspended sentence orders	Negative resolution (clause 15(3))
19(2) and Schedule 3 - insert Schedule A1 into the Life Sentences (NI) Order 2001 - paragraph 8 of that new Schedule A1	Power to amend provision in relation to starting points for mandatory life sentences for adults by regulations.	Draft laid before and approved by a resolution of the Assembly (paragraph 8(4))
20(3)(b)	Unduly lenient sentences, regulations specifying an	Negative resolution (clause 20(4))

	offence of description in respect of summary trials	
23 and paragraph 3 of Schedule 4	Unduly lenient sentences, Rules of Court	Rules of Court, s.55 of the Judicature (Northern Ireland) Act 1978 – negative resolution
28(5) and (6)	Power to make regulations relating to relevant disclosures made in cases where there has been a failure to disclose the location of victim's remains	Draft laid before and approved by a resolution of the Assembly (clause 28(7))
35	Power to add, by regulations, further kinds of hostility by which an offence may be aggravated	Draft laid before and approved by a resolution of the Assembly (clause 35(5))
42 (New Article 34A(9) of the Road Traffic Offenders (Northern Ireland) Order 1996).	Power for the Department of Justice by order to provide that the proportion specified in paragraph (4)(g)(i) or (h)(i) of this Article is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion.	Negative resolution (clause 42, new Article 34A (10) of the Road Traffic Offenders (Northern Ireland) Order 1996).

46	<p>Further provision - Power to make regulations for such supplementary, incidental or consequential provision and such transitory, transitional or saving provision as considered appropriate for the general purposes, or any particular purpose, of this Bill or in consequence of, or for giving full effect to, any provision made by this Bill.</p>	<p>Where the regulations amend, repeal, revoke or otherwise modify primary legislation, draft laid before and approved by a resolution of the Assembly</p> <p>Otherwise negative resolution.</p> <p>(clause 46(3) and (4))</p>
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## **DELEGATED PROVISIONS**

### **PART 2: SUSPENDED SENTENCES**

#### **Clause 10(7): Regulations relating to pre-sentence reports**

##### **Purpose of the delegated legislation**

12. A power to allow the Department to make regulations prescribing the information in and presentation of pre-sentence reports obtained by the court when considering making a suspended sentence order with community requirements.

##### **Reason for the delegated legislation**

13. The Department considers that, if required, the contents of a pre-sentence report is a procedural matter which is best contained in secondary legislation which can be updated readily if need be.

##### **Assembly control**

14. Any regulations made under this power will be procedural in nature and will be subject to negative resolution.

#### **Clause 15: Regulations relating to suspended sentence orders**

##### **Purpose of the delegated legislation**

15. A power to allow the Department to make regulations for regulating the supervision of offenders subject to suspended sentence orders, and any arrangements to be made under Article 4(1)(b) of the Probation Board (Northern Ireland) Order 1982 for offenders subject to suspended sentence orders to perform work and the performance of that work and the functions of responsible officers.

## **Reason for the delegated legislation**

16. The Department considers it appropriate to set out any necessary details of how the supervision of offenders, subject to suspended sentence orders, is to work in practice in secondary legislation which will enable any updates or amendments be made quickly and efficiently as need be.

## **Assembly control**

17. Any regulations made under this power will be procedural in nature and subject to negative resolution.

## **Clause 19(2) and Schedule 3 (which insert new Schedule A1 into the Life Sentence (Northern Ireland) Order 2001): Power to amend provision relating to starting points**

## **Purpose of the delegated legislation**

18. Clause 19(2) and Schedule 3 insert new Schedule A1 into the Life Sentences (Northern Ireland) Order 2001. Paragraph 8 of Schedule A1 contains a power for the Department to make regulations to substitute any period of time for the starting points for tariffs specified in that Schedule. The Regulations may also amend Schedule A1 to add further cases into the list of cases considered to have exceptionally high seriousness (as set out in paragraph 1(2)). Paragraph 5 may also be amended in consequence of any such amendment (aggravating factors).

## **Reason for the delegated legislation**

19. Schedule A1 sets out the appropriate starting point when setting a tariff in murder cases for mandatory life terms. The appropriate starting point for cases which are considered to have exceptionally high seriousness is 20 years (paragraph 1(1)) and in all other cases the appropriate starting point is 15 years (paragraph 2). The Department considers it appropriate to take a power to substitute any other period of time for those periods in order to be able to respond to any circumstances arising in the future.

20. The Department also considers it appropriate to be able to add cases to the list of those cases that have exceptionally high seriousness – for example in response to emerging case law or new offences.

### **Assembly control**

21. Any regulations made under this provision will be subject to draft affirmative resolution. It is considered that this level of scrutiny is appropriate as it allows for Assembly debate on the matter.

### **Clause 20(3)(b): Unduly lenient sentences – summary trial offences**

#### **Purpose of delegated legislation**

22. Clause 20(3) provides the Department with a regulation making power to specify an offence of a description, on summary trial, which will be capable of being subject to a referral of undue leniency by the Director of Public Prosecutions.

#### **Reason for the delegated legislation**

23. The Bill allows for any case sentenced by the Crown Court to be referred to the Court of Appeal by the Director of Public Prosecutions as being unduly lenient. The Department considers it appropriate to provide for a power to extend this to certain specified offences on summary trial in the future.

### **Assembly control**

24. Clause 20(4) provides that regulations made under paragraph (3)(b) are subject to negative resolution. This is in keeping with the control specified in section 35(5) of the Criminal Justice Act 1988 for orders to extend the unduly lenient sentencing provision in section 35 of that Act to other cases. (Note: Section 35 and 36 (Part 4) of that Act, which currently apply for the purpose of unduly lenient sentences in Northern Ireland, are omitted by paragraph 23 of Schedule 7 to this Bill.)

## **Clause 23 and paragraph (3) of Schedule 4: Unduly lenient sentences – Rules of Court**

### **Purpose of delegated legislation**

25. This power allows Rules of Court to enable a person, whose sentencing has had an unduly lenient reference or application, to obtain documents from the Master; and to allow the Master to make charges for them in accordance with rates and scales fixed by the Department.

### **Reason for delegated legislation**

26. The Department considers it appropriate that procedural matters relating to applications are prescribed by Rules of Court.

### **Assembly control**

27. Rules of Court are made under section 55 of the Judicature (Northern Ireland) Act 1978 and are subject to negative resolution.

## **Clause 28(5) and (6): Relevant disclosures where there has been a failure to disclose victim's remains**

### **Purpose of delegated legislation**

28. Clause 28(5) and (6) allows the Department to make regulations relating to relevant disclosures in cases where the location of victim's remains have not been disclosed (and the offender has been convicted of murder or manslaughter). A relevant disclosure is a disclosure that contains information about where, or how, the victim's remains were disposed of (whether or not the information leads to the recovery of the victim's remains). The Regulations may, in particular, make provision about matters such as the form of the relevant disclosure or the manner in which the Department deals with the relevant disclosure.

### **Reason for the delegated legislation**

29. The Department considers that any procedural details around relevant disclosures should be appropriately dealt with in secondary legislation which can be amended easily where a need arises.

### **Assembly control**

30. Clause 28(7) provides that regulations under subsection (5) are subject to draft affirmative resolution. This level of scrutiny is considered appropriate given the nature of the provision and allows for the content of the regulations to be the subject of Assembly debate.

### **Clause 35: Power to add further kinds of hostility**

#### **Purpose of the delegated legislation**

31. Clause 35 allows the Department to make regulations to add further kinds of hostility by which an offence may be aggravated, specify the circumstances in which an offence is aggravated by hostility of a kind added, and specify one or more offences in respect of which an allegation that the offence is aggravated by hostility of the kind added may not be made. The regulations may add a kind of hostility only if the hostility relates to a group or characteristic.

#### **Reason for delegated legislation**

32. The power to make regulations adding to the kinds of hostility by which an offence may be aggravated allows the Department to ensure that that list can be updated readily, for example in response to societal standards and needs.

#### **Assembly control**

33. The regulations are subject to draft affirmative resolution which the Department considers the appropriate level of scrutiny for making a change of that nature.

## **Clause 42: Period of imprisonment for certain repeat offences**

### **Purpose of delegated legislation**

34. Clause 42 provides that if an order is made under Article 18(9) of the Criminal Justice (Northern Ireland) Order 2008 to amend the definition of the “relevant part of the sentence” in Article 18(2)(b) of that Order, which prescribes the proportion of the sentence to be served in custody, the Department may make an order under Article 34A(9) of the Road Traffic Offenders (Northern Ireland) Order 1996, to provide that the proportion referred to in paragraph (4)(g)(i) or (h)(i) of Article 34A is to be read as a reference to the new proportion.

### **Reason for the delegated legislation**

35. Under Article 18(9) of the Criminal Justice (Northern Ireland) Order 2008, the Department has the power (subject to negative resolution) to make an order to amend the definition of the “relevant part of the sentence” in Article 18(2)(b) of that order, which refers to the proportion of the sentence to be served in custody. If that definition is amended at any stage, new Article 34A (9) of the Road Traffic Offenders (Northern Ireland) Order 1996 will provide the Department with the power to update the references to the proportion of the sentence in paragraphs (4)(g)(i) and (h)(i) of Article 34A, in line with those changes.

### **Assembly control**

36. Any order made under this power will be subject to negative resolution. This aligns with the Assembly control for the corresponding power in Article 18(9) of the Criminal Justice (Northern Ireland) Order 2008.

## **Clause 46: Further Provision**

### **Purpose of delegated legislation**

37. Clause 46 provides a general power to make such supplementary, incidental or consequential provision and such transitory, transitional or saving provision as is considered appropriate for the general purposes of, or any particular purpose, of this Bill, or in consequence of, or for giving full effect to, any provisions made by this Bill. The regulations can amend, repeal, revoke or otherwise modify any statutory provision.

### **Reason for delegated legislation**

38. This is a general power to make regulations for the general or particular purposes of this Bill.

### **Assembly control**

39. Any change to primary legislation will be subject to draft affirmative resolution. In other cases the Assembly procedure is negative resolution. The Department considers that this reflects the appropriate level of scrutiny for the nature of the changes that may be made.