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Submitted to Criminal Justice (Sentencing etc) Bill
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Introduction

What is your name?

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If you are providing a submission on behalf of an organisation or business, please state its name.

Organisation:
N/A

The Committee for Justice has agreed to publish all responses as part of the survey results. If you would like to have your survey results anonymised and for us not to publish your name or organisation, please indicate so here.

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Exercise of court's discretion when sentencing

Clause 1 outlines the purposes and principles of sentencing. It sets out the factors that the court must have regard to for the purposes of sentencing, which are: the punishment of offenders; for the protection of the public; the reduction of crime by deterrence; the rehabilitation of offenders; and, the making of reparations by offenders to persons affected by their offences. Do you agree with the purposes of sentencing as outlined above?

Yes

Please provide information to support your answer here::

I broadly agree that the purposes of sentencing in Clause 1 are appropriate, as they reflect the core aims of criminal justice.

Punishment ensures accountability and a proportionate response to offending, while protection of the public safeguards society from harm. Deterrence remains a recognised objective, although its effectiveness is debated.

Rehabilitation is particularly important in reducing reoffending, reflecting a longer-term approach to justice. Reparation also plays a valuable role in recognising harm and supporting victims.

Clause 1 also defines the principles of sentencing as proportionate, fair and transparent. Do you agree with these being set as the principles of sentencing?

Not Answered

Please provide information to support your answer here::

I agree that proportionality, fairness, and transparency are fundamental principles of sentencing and are appropriately included. However, they are not sufficient on their own and are expressed in a way that is arguably too limited and somewhat vague.

In particular, key terms such as "fairness" and "transparency" are not defined within the provision. This lack of definition risks inconsistent interpretation and application in practice, as different judges may attribute different meanings to these concepts. While a degree of flexibility is necessary, greater clarity would enhance legal certainty and promote more consistent sentencing outcomes.

Consideration could be given to providing further guidance, either within the legislation or through accompanying sentencing guidelines, to ensure these principles are applied in a clear and consistent manner.

Do you have anything further to add on Clause 1 of the Bill?

Yes

Please provide any further information relating to Clause 1 here::

The provision does not indicate which purpose should take priority. In practice, aims such as punishment and rehabilitation may conflict, leaving significant discretion to judges and potentially resulting in inconsistency in sentencing outcomes.

In addition, key terms such as "protection of the public" and "deterrence" are broad and undefined. This risks allowing these purposes to assume disproportionate weight in sentencing decisions without clear statutory limits, again placing considerable reliance on judicial discretion.

While flexibility in sentencing is important, legislation should promote certainty, consistency, and clear legislative intent.

Overall, the purposes of sentencing outlined are appropriate; however, the framework would benefit from greater clarity, particularly through the refinement of broad concepts and clearer guidance on how competing purposes should be balanced.

Clause 2 imposes a duty to follow guidance relevant to the case when sentencing an offender, unless it would be contrary to the interests of justice to do so and to give reasons in relation to sentencing. Do you support the objectives of this clause?

Not Answered

Please provide information to support your answer here::

I support the overall objectives of Clause 2, particularly its aim of promoting consistency and transparency in sentencing. Requiring courts to follow relevant sentencing guidance helps to ensure that similar cases are treated alike, thereby reducing unwarranted disparities. The duty to give reasons further strengthens accountability and public confidence in sentencing decisions.

However, the clause leaves significant scope for judicial discretion, particularly through the exception where departure from guidance is permitted if it would be "contrary to the interests of justice". This phrase is broad and undefined, creating a risk of inconsistent application and undermining the objective of structured sentencing.

Again, while some flexibility is necessary, it is ultimately the responsibility of the executive and legislature to establish clear rules and boundaries within which sentencing decisions are made. As currently drafted, the provision risks placing too much reliance on judicial interpretation, rather than providing sufficient statutory guidance.

Consideration should therefore be given to clarifying the scope of the "interests of justice" exception, whether through more precise legislative drafting or supplementary guidance, in order to ensure that discretion is exercised consistently and within clearly defined limits.

Overall, the clause represents a positive step, but its effectiveness would be enhanced by a clearer delineation of the boundaries of judicial discretion.

Do you have anything further to add on Clause 2 of the Bill?

No

Please provide information to support your answer here::

Part 1 - Exercise of court's discretion when sentencing - Do you have anything further to add on Part 1 of the Bill?

No

Please provide information to support your answer here::

Community requirements

The Minister of Justice has stated that the intention behind adding community-based requirements to suspended sentences is to allow rehabilitative work to be carried out where it might be helpful to do so and to add a visible element to making reparations that could be realised via a community based sentence. Do you agree with the intent behind enacting Clauses 8-10?

Yes

Please provide information to support your answer here::

I agree with the intent behind Clauses 8 to 10, particularly in promoting rehabilitation and reparation through community-based measures.

However, the requirement to avoid conflicts with an offender's religious beliefs is too broad. It risks undermining consistency in sentencing and introduces unnecessary scope for variation. Sentencing should be clear and proportionate, and such exemptions will weaken that principle.

Do you have any other comments on Clauses 8 to 10 of the Bill?

No

Please provide information to support your answer here::

Failure to disclose information about victim's remains: Increase to sentence following failure to disclose

Part 5 of the Criminal Justice (Sentencing etc) Bill, covering Clauses 24 to 27, proposes to introduce a statutory aggravating factor, adding a minimum of 30% to the notional custodial period, for failure to disclose the location of a victim's remains or how a victim was disposed of. Do you agree with the introduction of this aggravating factor as an additional tariff to sentencing in "no body" cases?

Yes

Please provide information to support your answer here::

I agree in principle with the introduction of a statutory aggravating factor in "no body" cases. The ongoing failure to disclose information about the location or disposal of a victim's remains causes significant and continuing harm to victims' families, and it is appropriate that this is reflected in sentencing.

Given Northern Ireland's history, the introduction of a structured uplift, including a minimum 30% increase to the custodial period, provides clarity and ensures that this factor is consistently recognised across cases. In contrast to other aggravating factors within the Bill, this provision offers a clear and measurable framework for how the aggravation should affect sentencing.

Do you have any other comments on Clauses 24 to 27 of the Bill?

Yes

Please provide information to support your answer here::

the rigidity of the 30% minimum uplift raises some concerns. While the inclusion of an exception where it would be "contrary to the interests of justice" provides an important safeguard, this phrase is broad and undefined. This may lead to uncertainty and inconsistent application, as judges are left to determine its scope without clear guidance.

In addition, there may be cases where an offender is unable, rather than unwilling, to provide information, for example due to the passage of time or other factors affecting memory. In such cases, the application of a fixed uplift may risk disproportionate outcomes.

Overall, the introduction of this aggravating factor is justified however, its effectiveness would be enhanced by providing clearer guidance on the operation of the "interests of justice" exception and ensuring that sufficient flexibility exists to account for individual circumstances.

Reduction to sentence following disclosure

Clauses 28 to 30 of the Bill deal with applying a reduction to the additional aggravating tariff where disclosure of the location or detailing what happened to a victim's remains is made post conviction. The principle is that the amount of any reduction will never exceed the aggravation applied at the point of sentencing but provides an incentive for the offender to disclose information about the victim's remains or how they were disposed of. Do you agree with the principles behind Clauses 28 to 30 of the Bill?

Yes

Please provide information to support your answer here::

I agree with the principles underlying Clauses 28 to 30 of the Bill.

The approach of allowing a reduction in the additional custodial period where a disclosure is made post-conviction is both practical and principled. It acknowledges that, even after sentencing, there remains significant value in securing information about the location or disposal of a victim's remains, particularly for the benefit of victims' families.

However, consideration may be given to ensuring that the process for assessing and verifying disclosures is sufficiently transparent and robust. In particular, clarity around how disclosures are evaluated and the role of the Department in accepting or rejecting them would help to maintain confidence in the fairness and operation of the scheme.

Do you have any other comments on Clauses 28 to 30 of the Bill?

No

Please provide information to support your answer here::

Particular persons or groups: Aggravation by hostility

Clause 33 introduces an aggravator to an offence if the offence is aggravated by the person's race, religion, sexual orientation or as a result of disability. Do you agree with this being an appropriate list of groups for the aggravators included in this Clause?

Yes

Please provide information to support your answer here::

I agree that the inclusion of race, religion, sexual orientation and disability as protected characteristics for the purposes of hostility-based aggravation is appropriate. Recognising hostility on these bases as an aggravating factor properly acknowledges the heightened harm caused, both to the individual

victim and to the wider community associated with that characteristic.

The provision is strengthened by its clear and structured definition of hostility, particularly in distinguishing between demonstrated hostility and motivation. This provides a more precise framework and supports consistent application in practice.

Clause 34 sets out the consequences of aggravation by hostility. Do you agree with the consequences outlined in the Clause?

Yes

Please provide information to support your answer here::

I agree with the consequences of aggravation by hostility as set out in Clause 34. The requirement for the court to formally recognise the aggravation at the point of conviction, record it, and take it into account in sentencing is appropriate.

In particular, the duty on the court to state its reasons and explain how the aggravation has affected the sentence is a strong feature of the clause. This promotes transparency, accountability, and public confidence, while also reinforcing the denunciatory function of sentencing by clearly acknowledging the role of hostility in the offence.

The structure of the clause is clear and consistent, particularly in ensuring that where the aggravation is not proved, the conviction proceeds without reference to it. This provides an important safeguard for fairness and due process.

While the clause provides a clear procedural framework, requiring courts to identify, record, and explain the effect of hostility on sentencing, it does not provide substantive guidance on how the aggravation should be reflected in the sentence. In particular, there is no indication of the extent to which sentences should be increased or how seriousness should be assessed in practice.

This is notable when compared with other provisions in the Bill, such as those relating to failure to disclose information about victims' remains, where a structured approach is adopted through a defined minimum uplift to the sentence. The absence of any comparable framework in relation to hostility may result in inconsistent application, with different judges applying varying levels of weight to the aggravation.

As with other provisions, this places significant reliance on judicial discretion.

Overall, the consequences outlined in the clause are appropriate but their effectiveness would be enhanced by greater clarity on how the aggravation should be applied in practice.

Clause 35 provides the Department of Justice with the power to add, amend or revoke the kinds of hostility by which an offence may be aggravated if the hostility relates to a group or characteristic. Do you agree that the Department should be able to amend the groups for whom an aggravator applies?

No

Please provide information to support your answer here::

I do not agree that the Department should have the power to amend the groups for whom an aggravator applies.

The identification of protected characteristics for the purposes of hostility-based aggravation is a matter of significant legal and social importance. It determines which groups receive enhanced protection within the criminal law and reflects broader societal values. As such, these are matters that should be clearly defined on the face of primary legislation and subject to full legislative scrutiny.

While the use of delegated powers may provide flexibility to respond to evolving forms of hostility, the breadth of the power in Clause 35 raises concerns. The ability to add, amend or revoke categories by regulation risks creating uncertainty and undermining the stability of the legal framework. It may also result in changes being made without the same level of scrutiny and debate that primary legislation would require.

In addition, this approach is inconsistent with the need for clarity and certainty in criminal law. Individuals should be able to understand, in advance, the circumstances in which offending behaviour may be treated as aggravated. Leaving the scope of protected groups open to change through delegated legislation risks weakening that certainty.

It is ultimately the responsibility of the executive and legislature to establish clear rules and boundaries in this area.

Overall, the list of protected characteristics should be set out clearly in primary legislation, with any changes subject to full legislative consideration rather than broad delegated powers.

Do you have any other comments on Clauses 33 to 35 of the Bill?

Yes

Please provide information to support your answer here::

There are some areas where the clause would benefit from further consideration. In particular, the definition of "disability group" does not align with the established definition under the Disability Discrimination Act 1995 as it applies in Northern Ireland. The clause adopts a broad formulation based on "any physical or mental impairment", which lacks the structured criteria of the 1995 Act, including the requirement for a substantial and long-term adverse

effect on normal day-to-day activities.

This divergence risks creating inconsistency across the legal framework and may lead to uncertainty in interpretation and application. While a broader definition may be intended to widen protection in the criminal context, this approach may in practice weaken protection. By diluting the meaning of disability, it risks blurring the distinction between disability and more general forms of vulnerability, and may undermine the clarity and authority of the established legal definition. This could make the aggravator more difficult to apply consistently and robustly in practice.

Consideration should therefore be given to aligning the definition more closely with existing equality legislation, or otherwise providing a clear justification for adopting a different and broader approach, in order to promote coherence, legal certainty, and effective protection.

Aggravation by reason of vulnerability

Clause 36 introduces a new aggravator by reason of the victim being vulnerable, following a consultation which originally included older age and vulnerability as potential aggravators. Do you agree with including vulnerability as an aggravator in this Clause?

Yes

Please provide information to support your answer here::

I agree in principle with the inclusion of vulnerability as an aggravating factor. Recognising the increased seriousness of offences committed against vulnerable victims is appropriate. The provision also reflects an important policy objective of enhancing protection for those at greater risk of exploitation or abuse.

The structure of the clause is broadly sound. In particular, the requirement that the offender "knew, or ought reasonably to have known" of the victim's vulnerability provides an important safeguard, ensuring that the aggravation is applied fairly and only where there is a sufficient degree of culpability.

Do you have any other comments on Clause 36 of the Bill?

Yes

Please provide information to support your answer here::

However, I have concerns regarding the breadth of the definition of "vulnerable person". While categories such as age, disability, illness, and old age are clear and appropriate, the inclusion of the phrase "or for any other reason" is overly wide and lacks sufficient precision. This risks creating uncertainty as to the scope of the aggravator and may lead to inconsistent application in practice.

As currently drafted, the provision leaves significant scope for judicial interpretation in determining what constitutes vulnerability. While some flexibility is desirable, it is ultimately the responsibility of the legislature to define the boundaries of criminal liability and sentencing factors with sufficient clarity. An open-ended formulation risks placing too much reliance on judicial discretion, potentially undermining consistency and legal certainty.

Consideration should therefore be given to refining the definition of vulnerability, for example by limiting it to clearly identifiable categories or by providing further statutory guidance on the types of circumstances that may fall within the provision.

Overall, the inclusion of vulnerability as an aggravating factor is justified, but the effectiveness of the clause would be improved by a more precise and clearly defined framework.

Public Workers etc

Clause 37 introduces a new offence of assault on a public worker and defines a public worker as being a person employed or engaged to provide a service to the public, performing a public duty or delivering a public service. Do you agree with the new offence of assault on a public worker?

Yes

Please provide information to support your answer here::

I agree with the provisions set out in Clauses 37 to 39. The introduction of a specific offence of assault on a public worker, alongside a statutory aggravating factor for more serious offences, is appropriate and reflects the particular risks faced by those providing services to the public or performing public duties.

Do you agree with the definition of a public worker as defined in Clause 37?

Yes

Please provide information to support your answer here::

The definition of "public worker" is broad and inclusive, covering those who provide services, perform public duties, or deliver public services, whether paid or unpaid. This ensures that a wide range of individuals who may be exposed to harm in the course of their work are afforded protection.

Clause 37 proposes that a person found guilty of assaulting a public worker could receive a fine and/or be sentenced to up to 2 years imprisonment. Do you believe the penalties for this offence are appropriate?

Yes

Please provide information to support your answer here::

I agree that the penalties for this offence are appropriate. The availability of a custodial sentence of up to two years reflects the seriousness of assaults on public workers and provides a strong deterrent.

The flexibility to impose a fine or non-custodial sentence in less serious cases is also appropriate, ensuring that sentencing remains proportionate.

Overall, the proposed penalty range strikes a suitable balance between seriousness and flexibility.

Clause 38 proposes introducing a new aggravator if an offence is committed against a public worker who is acting in the exercise of functions as a public worker. Do you agree with the inclusion of an offence of aggravation by assault on a public worker?

Yes

Please provide information to support your answer here::

I agree with the inclusion of an aggravator where an offence is committed against a public worker acting in the exercise of their functions. It is appropriate that offences committed in these circumstances are treated as more serious, given the role public workers play and the risks they face.

Do you have any other comments on Clauses 37 to 39 of the Bill?

No

Please provide information to support your answer here::

Part 6 - Particular persons or groups. Do you have any further comments on Part 6 of the Bill?

No

Please provide information to support your answer here::

Road Traffic Offences

Clause 40 increases the maximum penalty for causing death or grievous bodily injury by driving while disqualified to 12 months or the statutory maximum fine or both when tried summarily, and 4 years or a fine or both when tried on indictment. Do you agree with the proposed increased sentences?

Not Answered

Please provide information to support your answer here::

Clause 41 of the Bill proposes to increase the maximum sentences for driving offences that cause death or grievous bodily injury, through dangerous driving or while under the influence of drink or drugs, from 14 years to 20 years. Do you agree with the increase in maximum sentencing for these offences?

Not Answered

Please provide information to support your answer here::

Clause 42 of the Bill proposes to increase the maximum sentences available for certain repeat offences which occur within 10 years of the person serving the required custodial period for the earlier offence. Do you agree with the increase to the maximum sentence periods for certain repeat offenders?

Not Answered

Please provide information to support your answer here::

Clauses 43 to 45 provide for disqualification periods for certain offences and for certain repeat offences and increase the mandatory minimum disqualification period. Do you agree with the introduction of new mandatory minimum disqualification periods included in these clauses of the Bill?

Not Answered

Please provide information to support your answer here::

Do you have any other comments on Clauses 40 to 45 of the Bill?

Not Answered

Please provide information to support your answer here::

Part 7 - Road Traffic Offences. Do you have anything further to add on Part 7 of the Bill?

Not Answered

Please provide information to support your answer here::

General

Do you have comments on Clauses 46 to 49 of the Bill?

Yes

Please provide information to support your answer here::

I have concerns regarding the extent of delegated powers conferred on the Department throughout the Bill. Provisions such as Clause 35 and Clause 46 allow for the amendment of key aspects of the sentencing framework through regulations, raising the risk of significant legal changes being made without full legislative scrutiny.

While some flexibility is necessary, matters such as the scope of aggravating factors and the structure of sentencing are of sufficient importance that they should be set out clearly in primary legislation. Allowing these to be altered through broadly framed delegated powers undermines legal certainty and democratic accountability.

Consideration should be given to narrowing these powers or strengthening scrutiny mechanisms to ensure that fundamental aspects of the sentencing framework remain subject to appropriate legislative oversight.