

THE **LAW SOCIETY**
OF NORTHERN IRELAND



**Northern Ireland Assembly
Consultation**

**CALL FOR EVIDENCE ON THE CRIMINAL JUSTICE
(SENTENCING ETC) BILL**

**Response of the Law Society of
Northern Ireland**

May 2026

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ABOUT THE LAW SOCIETY

The Law Society of Northern Ireland (the Society) is the professional body for solicitors, in Northern Ireland. The Society represents c.3000 solicitors working throughout Northern Ireland in approximately 440 firms in the private sector as well as solicitors in the public sector, in business and in the community and voluntary sector.

May 2026

CONSULTATION QUESTIONS

Exercise of court's discretion when sentencing Clause 1 - 2

- **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?**

The Law Society of Northern Ireland (The Society) believes that outlined purposes comply with the application of the requirements of a sentencing process.

At times the Court needs to balance a complex set of facts and principles to achieve the correct result.

The Court of Appeal Judgment in R v Harrington Jack [2020] NICA 1 is an example of such a difficult balancing exercise. There should be emphasis and focus on rehabilitation as successful outcomes will reduce future offending and reoffending thus resulting in protection of the public which is a primary duty of the State.

The Society notes that legislative proposals to end early release of people convicted of terror offences will not be extended to this jurisdiction due to the fact that the method for calculation of a sentence employed by our courts might raise Article 7 ECHR issues.

- **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?**

The Society agrees as these are basic common law standards which must always be adhered to.

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

Courts should have flexibility to cover additional issues which may arise in individual cases and should not be fettered by legislative restriction in this respect.

- **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?

An obvious difficulty to legislating in this area is the restrictive impact that can result for sentencing Judges who are attempting to achieve appropriate sentencing outcomes tailored to the case before them. The Harrington Jack case, referred to in answer no.1 above, is an example of a complex sentencing situation involving a variety of ingredients in a difficult balancing exercise. Judges are already acquainted with the sentencing Guidelines issued by the Lady Chief Justice's Sentencing Group to be applied when sentencing.

Guidelines may be amended or new ones added as has occurred recently with the Harrington Jack Case, without the requirement of new legislation being introduced. Thus, there is flexibility already in situ to meet new challenges and circumstances in sentencing, as and when they arise.

Also, an example of the need for flexibility was clearly seen in the Queen v Declan Kevin O'Neill [2019] NICC 23 murder case. On the face of it an eight-year custodial sentence was lenient and there was public outcry once the facts became known. Nevertheless, the PPS did not consider the sentence unduly lenient. Although the circumstances in this case were rare, the need for flexibility in such instances cannot be ignored. The Courts should not be fettered in exercising this function, and flexibility should be allowed when the circumstances require it.

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

No further observations at this point in time.

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

Please see above answers referring to the need to respect the unfettered discretion of the judiciary.

Availability and effect of suspended sentence orders Clause 3 – 7

- **Clause 3 sets out when suspended sentence orders may be made and Clause 4 sets out what a suspended sentence order is, and it will be activated. Do you support the provisions around when suspended sentences can be used and what a suspended sentence order is in Clauses 3 and 4 of the Bill?**

The Law Society supports with the introduction of one or more community requirements being imposed on an offender. However, such requirements must be proportionate and fair. In addition, there must be provision for review by the Court should the offender subsequently be unable to comply with some or all of the specific terms, or their personal circumstances change.

- **Clause 5 sets out the operational period and supervision period which apply to a suspended sentence. Do you agree with the periods and requirements outlined in the clause?**

Both the operational and supervision periods appear to be fair and have clear parameters.

However there does not appear to be inclusion of particulars for when the community requirement cannot be complied with by the offender due to circumstances beyond their control. The latter should be provided for.

- **Clause 6 sets out that a court must explain to an offender, in language the offender can understand, the reason why it is imposing requirements and the effect of them. Do you agree with the provision of copies of orders and explanation of effect as laid out in Clause 6?**

Many offenders appearing before Courts in this jurisdiction do not have English as their first language. The interests of justice can only be served if it is clear and transparent that every offender will have the right to fully understand proceedings and decisions, with specific provision made for interpretative services if necessary.

- **Clause 7 sets out how a suspended sentence is to be treated. Do you agree with the intent of Clause 7?**

The Society has always supported solutions that will assist accused persons to avoid re-offending. Rehabilitation is an important part of any criminal justice process and therefore resources and budgets must be available for schemes to break the cycle of offending as well as diverting offenders away from the system in appropriate circumstances. Enhanced Combination Orders (ECOs) began as a pilot in this jurisdiction in October 2015 and have since been expanded across other court divisions. The approach of requiring offenders to complete community service and participate in victim focused work emphasises rehabilitation through multi agency

collaboration and assessing criminogenic needs such as addiction and mental health etc, has been effective in reducing reoffending. This has been achieved by addressing the root causes of offending. The approach in this jurisdiction to using ECOs was a significant pivot in how to address and deal with minor offences focusing on rehabilitation rather than punishment. This assists offenders to reintegrate as well as creating a safer community. Such schemes are dependent on sustainable funding and resources.

- **Do you have any other comments on Clauses 3 to 7 of the Bill?**

No further observations at this point in time.

Community requirements Clause 8 – 10

- **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?**

The Society supports rehabilitative work streams as this approach has proven benefits, in many jurisdictions to reducing reoffending. In addition to the above points, an offender should be offered the opportunity to offer reparation to their victims as a means of alleviating the consequences of their actions. The suspended sentence order must be carefully matched to the circumstances of the offender so that they are not placed in an onerous position which could result in failure to fulfil all requirements of the order. A fairness and balance must be observed when finalising such an order. In addition the proposed legislation must include a condition to seek the consent of the offender to the conditions as is currently sought by the judge when imposing a Probation Order or Community Supervision Order.

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

No further observations at this point in time.

Responsible Officer Clause 11 – 13

- **Do you have any other comments on Clauses 11 to 13 of the Bill?**

Sufficient training and resources are required to fulfil this part of the legislation.

Activation of sentence and amendment of order Clause 14

- **Do you have any other comments on Clause 14?**

An offender who has been returned to court for breach of a suspended sentence order must be given the opportunity to obtain independent legal advice.

Any sentencing exercise should factor in the level and duration of compliance with the community requirements of the original suspended sentence, if community requirements have been imposed.

Supplementary (Suspended sentences) Clause 15 – 17

- **Do you have any other comments on Clauses 15 to 17 of the Bill?**

No further observations at this point in time.

- **Part 2 - Suspended Sentences. Do you have anything further to add on Part 2 of the Bill?**

No further observations at this point in time.

Life sentences Clause 18 – 19

- **Clause 18 makes provision so that, where a court makes an order under paragraph (1) or (3) of the Life Sentences (Northern Ireland) Order 2001 (the 2001 Order), the court must state in ordinary language the reason for imposing a life sentence and explain in ordinary language to the offender the effect of such a decision. Do you agree with the intention behind this clause?**

No further observations at this point in time.

- **Clause 19 inserts new Article 5B and Schedule A1 into the 2001 Order on the determination of tariffs in cases of mandatory life sentences for adult offenders. This includes the starting point of 15 years where there are no aggravating factors and 20 years as the starting point where the seriousness of the offence is exceptionally high. Do you agree with the provisions of this clause?**

The R v McCandless [2004 NICA 1] decision has been applied in this jurisdiction for a considerable period of time in respect to tariffs. It has also recently been discussed in several murder cases, such as R v Hutchison [2023] NICA 3, R v Nauburaitis [2024] NICA 37 and R v McKinney [2024] NICA 33. All these decisions point to the fact that sentencing for murder in Northern Ireland allows for flexibility on the part of sentencers within the guidelines provided by the McCandless case. These cases also reflect the fact that as societal conditions change, judges should be aware of different issues which should be taken into account. In particular, in Hutchison, the fact of a prolonged history of domestic violence against the victim and other partners was a relevant aggravating factor. In Nauburaitis the fact that there was desecration of the deceased's body was also an additional aggravating factor.

Only exceptionally if the circumstances explained in McCandless arise, may consideration be given to the lower culpability of the offenders. The experience of this case illustrates the fact that having to consider this starting point in every case may deflect the sentencer away from reaching an appropriate sentence. Recourse to this starting point will only arise where culpability is low and so arises in only a small number of cases. In addition, where exceptionally high culpability arises a higher starting point as described in sub para [19] of the Practice Statement adopted in McCandless can be applied of 20 years or more. McCandless is now viewed that the normal starting point is 15/16 years, based on high culpability. In addition, sentencing judges have the flexibility to vary the starting point upwards or downwards to take into account the circumstances of each case. It is important to avoid an over-mechanistic approach to this issue, while guarding against the danger of double counting.

Unduly lenient sentences Clause 20 – 23

- **Three options were consulted on for the reform of unduly lenient sentence review:**
 - **Option A – All Crown Court and Magistrates' Courts sentences are made referable**
 - **Option B – All Crown Court sentences are made referable**
 - **Option C – All Crown Court sentences and sentences for offences with a maximum penalty of 12 months or more when tried in a Magistrates' Court are made referable. No clear preference for any option emerged as a result of the consultation. The review team concluded that to extend the arrangements to some Magistrates' Courts sentences would risk diminishing their purpose and would add to confusion over which offences were included, so it was decided to only make the**

referrals applicable to Crown Court sentences. Do you agree with the approach as provided for in Clause 20?

The Society has no objection to this approach as it maintains consistency which will result in transparency and clarity.

- **Clause 21 allows for the Director of Public Prosecutions for Northern Ireland to refer a case to the Court of Appeal where it appears to them that the sentencing has been unduly lenient and the case is one which is applicable under Clause 20. Do you agree with the intent behind this Clause?**

The DPP already has the authority to refer a case to the Court of Appeal in such circumstances.

- **Do you have any comments on Clauses 20 to 23 of the Bill?**

No further observations at this point in time.

- **Part 4 - Unduly lenient sentences. Do you have anything further to add on Part 4 of the Bill?**

No further observations at this point in time.

Failure to disclose information about victim's remains: Increase to sentence following failure to disclose Clause 24 – 27

- **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 victims 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?**

The imposition of a minimum 30% aggravator in a 'no body' case must be fairly applied with care taken not to infringe an accused's human rights.

It is noted that if this proposal proceeds, it will include disclosures made after commencement post-conviction.

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

No further observations at this point in time.

Reduction to sentence following disclosure Clause 28 – 30

- **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?**

No further observations at this point in time.

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

No further observations at this point in time.

Parole Commissioners Clause 31

- **Clause 31 places a duty on Parole Commissioners to consider a failure by a prisoner to disclose the location of victim's remains or how a victim's remains have been disposed of, when considering their release as part of the public interest decision making. Do you agree that this should form part of the consideration for the Parole Commissioners when making a determination?**

The issue of fairness and proportionality must always be applied by the Commissioners. The fact that someone convicted of an offence has always maintained their innocence must be given appropriate weight in such decisions. The Commissioners must consider this when addressing alleged ongoing failure to disclose information.

- **Do you have any other comments on Clause 31 of the Bill?**

No further observations at this point in time.

Supplementary (Failure to disclose) Clause 32

- **Do you have any comments on Clause 32 of the Bill?**

No further observations at this point in time.

- **Part 5 - Failure to disclose about a victim's remains. Do you have any further comments on Part 4 of the Bill?**

No further observations at this point in time.

Particular persons or groups: Aggravation by hostility Clause 33 – 35

- **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?**

The Law Society is cognizant of the fact that the criminal justice system is equipped to deal with successful prosecutions of crimes and additional motivating conduct of the offender eg hostility towards a person due to their association to a particular grouping can be dealt with by the sentencing judge by way of using enhanced sentencing provision contained in legislation eg Criminal Justice (NI) Order 2004. If aggravating factors are proven by the prosecution, then the trial judge can deal with that element in sentencing, and this element can be effectively communicated and recorded. Recording of enhanced sentencing has improved in this jurisdiction and additional steps should be considered to ensure these increases.

The Society believes that greater awareness and frequent training for prosecutors and court staff – and all criminal justice agencies - is required to enable prosecutions to be brought before a judge with identified aggravating factors, clearly set out in the facts and evidence, and court clerks then should correctly record court findings including proven findings of aggravating features. Judges should clearly state the factors that impacted on their decision, and this should be accurately recorded. It appears that existing legislation is not as effective as it could be due principally to ineffective processing of the crimes which are reported and prepared for prosecution.

The Society favours open justice, and a trial judge should clearly state in court what factors altered the length of sentence due to aggravation, and furthermore this should be clearly and accurately recorded by the Clerk.

Sexual orientation is currently protected under Hate Crime law in this jurisdiction. To include gender as a protected characteristic has the potential to dilute the current position which in itself seeks to protect vulnerable groups. If further protection of

gender was required, it might be best deal with by way of a separate offence of misogynistic harassment.

To include age either on the basis of youth or being elderly as a protected characteristic would result in everyone potentially being covered by this legislation. This would thus dilute the current legislation which seeks to protect disadvantaged minorities. While accepting that there is evidence of hostility-based offences against the elderly as opposed to young people, judges can take into consideration the age of a victim when sentencing offenders as per the case of R v Edward Stuart Cambridge (2015) NICA 4.

The Society foresees issues arising from interpretation of vulnerability and exploitation as their definitions are not straight forward. To embark upon a legislative list of specific characteristics which are protected will inevitably lead to controversy as that list cannot be exhaustive otherwise some victims are given a hierarchy which would be unjust.

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

The Society take no issue with this and again is supportive of open justice.

- **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 further observations at this point in time.

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

The Society believes that the judiciary has long taken into account various aggravating and mitigating matters at the point of sentencing. The Society is cautious about the recent trend to segregate out particular factors as specific aggravators. This runs the risk of creating a hierarchy of victims, rather than permitting judges to take into account all factors and weighing them accordingly.

Aggravation by reason of vulnerability Clause 36

- **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?**

No issue taken with this inclusion as the accused will have the right to defend themselves and test the evidence against them before a determination is made as to whether the charge is proven.

- **Do you have any other comments on Clauses 36 of the Bill?**

No further observations at this point in time.

Public Workers Clause 37 – 39

- **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?**

The Society welcomes the introduction of the new offence of assault on a public worker. Those providing services to the public should not come under attack for simply carrying out their duties.

Lawyers provide essential services to members of the public, and routinely act for individuals during critical life moments, such as in family breakdown or when facing criminal charges. This involves operating in often high-pressure, contentious and emotionally charged circumstances. Lawyers also play a central role in the administration of justice and upholding the rule of law in our society. When legal professionals are intimidated, threatened or attacked, it creates a chilling effect that risks deterring lawyers from taking on challenging cases, potentially denying justice to vulnerable clients. Attacks on the legal profession are attacks on the justice system itself, and impact on both access to justice and the rule of law.

There has been a worrying trend in relation to attacks against solicitors undertaking their professional duties. A survey undertaken by the Law Society in February 2026 revealed that, of the 480 solicitors who responded, 66% said they had experienced some form of threat or abuse in the course of their work while 52% of respondents said they had been subject to a threat or incident in the past year.

The survey highlighted that the threats and attacks take many forms, from physical assaults and criminal damage to property, to online abuse and stalking. They also take place across a variety of settings, ranging from online, at solicitor offices, at or close to courthouses, and most concerning of all, at the solicitor's own home.

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

The current definition of a "public worker" in Clause 37 (3) is broad and will depend on judicial interpretation.

- **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?**

Penalties for assaults committed on someone in the course of public service must be sufficiently robust to reflect the seriousness of the offending and to provide an effective deterrent.

The Society considers that the current sentencing framework should be strengthened by introducing a statutory presumption against the suspension of custodial sentences where the victim of an assault is an officer of the court. The Society proposes amending Clauses 32 and 37 as set out in **Annex 1** of this submission.

- **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?**

The Society welcomes the introduction of this new aggravator.

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

Whilst the Society welcomes these provisions, it is important that they are consistently applied in practice across the criminal justice system from the initial report to the charge, conviction and outcome. To ensure this, relevant guidance and training should be provided, as well as reporting mechanisms to ensure that the provisions have the intended effect.

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

No further observations at this point in time.

Road Traffic Offences Clause 40 – 45

- **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?**

All new maximum sentences will be implemented by the courts and judicial discretion will manage each individual case according to its specific circumstances.

- **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?**

The Society does not raise any objections.

- **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?**

The judiciary will sentence using sentencing provisions available under legislation. Judicial independence and discretion should be protected. Likewise established sentencing principles such as Totality, should remain respected.

- **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?**

The courts must maintain an ability and discretion to facilitate applications to be permitted to drive again at an earlier stage than the conclusion of the disqualification if there is sufficient evidence to support this.

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

No further observations at this point in time.

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

No further observations at this point in time.

General Clause 46 – 49

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

No further observations at this point in time.

Commencement Clause 50

- **Do you agree that the sections of the Bill should be commenced as outlined in Clause 50 of the Bill?**

No further observations at this point in time.

Short Title Clause 51

- **Do you have any other comments on Clause 51 of the Bill?**

No further observations at this point in time.

Any Other Comments on the Bill

- **Do you have any other comments or views on the Criminal Justice (Sentencing etc) Bill?**

No further observations at this point in time.

CONCLUSION

The Society welcomes the opportunity to submit a response in respect of the Consultation on **the Criminal Justice (Sentencing etc) Bill**.

We trust our contribution is constructive and we would like to be kept informed of any subsequent proposals formed as a result of this consultation. We would be grateful if you could send us any post-consultation responses to [REDACTED]

ANNEX 1

Proposed amendments in relation to the introduction of a statutory presumption against suspending a sentence where an officer of the court is the victim of an attack.

1. Amend Clause 32 to insert in alphabetical place -
'officer of the court' means a judge, deputy judge, lay magistrate, barrister-at-law, pupil barrister-at-law, solicitor, trainee solicitor, or court official; '

2. Amend Clause 37 as follows –

In subsection (3)

- At the end of paragraph (b) leave out 'or';
- At the end of paragraph (c) replace the full stop with ',or' ; and
- Add a new paragraph -
'(d) serve as an officer of the court'; and

Re-number subsection (6) as subsection (7) and insert new subsection -
'(6) Where the victim of an offence under this section is an officer of the court, a sentence of imprisonment may not be made the subject of a suspended sentence order (within the meaning of section 4(1)) unless there are exceptional reasons for doing so and the reasons are stated by the court when passing sentence. '

The Clause as amended would therefore read:

Assaults on public workers etc

37.—(1) A person commits an offence if the person—

- (a) assaults a public worker who is acting in the exercise of functions as such a worker ("P"), and
- (b) knows, or ought reasonably to know, that P is such a worker.

(2) A person commits an offence if the person—

- (a) assaults a person assisting a public worker who is acting in the exercise of functions as such a worker ("Q"), and
- (b) knows, or ought reasonably to know, that Q is assisting such a worker.

(3) A public worker is a person employed or engaged to—

- (a) provide a service to the public,
- (b) perform a public duty,
- (c) deliver a public service, or

(d) serve as an officer of the court.

(4) It is immaterial for the purposes of subsection (3) whether the employment or engagement is paid or unpaid.

(5) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.

(6) Where the victim of an offence under this section is an officer of the court, a sentence of imprisonment may not be made the subject of a suspended sentence order (within the meaning of section 4(1)) unless there are exceptional reasons for doing so and the reasons are stated by the court when passing sentence.

(7) In this section—

(a) a reference to providing services to the public includes a reference to providing goods or facilities to the public;

(b) a reference to the public includes a reference to a section of the public.