

Criminal Justice (Sentencing etc.) Bill:

PPS Response to the Committee for Justice's Consultation (May 2026)

Exercise of Court's Discretion When Sentencing (Clause 2)

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

Yes ✓

No

Please provide information to support your answer here: (3000 characters maximum)

We agree with the legislative intent to bring greater transparency and consistency to sentencing and to elevate the significance and awareness of guideline judgments.

We note that this proposed provision is similar to the corresponding provision in England and Wales. The situation in this jurisdiction is, however, somewhat different. Notwithstanding the Lady Chief Justice's Sentencing Group and a trend towards identifying cases as guideline judgments, some ambiguity remains as regards to whether a Court of Appeal judgment contains guidance which is relevant to the court's sentencing function. This would apply equally with regard to Crown Court judgments which may be used to try and assist the court. As a result, it may be difficult to ascertain the *relevant authorities* that *must* be identified.

We consider that a provision of this nature works better in a context where there are clear guidelines, such as those promulgated by the England and Wales Sentencing Council. In that jurisdiction there is no doubt as to the guidance which the court is required to follow and the guidance itself will be a clear and concise attempt to cover all aspects of sentencing for an offence. The statutory requirement to follow guidelines in England and Wales is balanced by the Court of Appeal in that jurisdiction actively discouraging judges from over-citing authority (see [R v Chin Charles \[2019\] EWCA Crim 1140](#)). This is a combination that arguably lends itself to shorter, clearer and more accessible sentencing remarks that are more easily understood by the public.

There is also a risk that any uncertainty over whether a previous judgment is a relevant guideline judgment gives rise to additional points that may be relied upon in any defence appeal. The defence will argue that the Judge has failed to take into account a judgment that they say is relevant; or, alternatively, that the judge placed weight on a judgment that they say is irrelevant. It could be argued that the Judge has failed in their duty under Clause 2 and that this is an error of law. Ultimately, the question on an appeal against sentence is whether the sentence was manifestly excessive, but the Court of Appeal could be faced with new arguments arising from the operation of this clause.

It may be possible to mitigate some of the risks if work were to be undertaken by the Lady Chief Justice's Sentencing Group to review and ensure that the list of all guideline judgments is current, comprehensive and fit for purpose, in advance of the introduction of a legal obligation as set out in Clause 2. Steps would also be required to ensure that the list is kept under continuous review and updated immediately upon publication of any new guideline judgment.

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

Yes

No

Unduly Lenient Sentences (Clauses 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?

Yes ✓

No

Please provide information to support your answer here: (3000 characters maximum)

We agree that all Crown Court sentences should be made referable under the ULS scheme.

We note that the Department of Justice may specify further offences to be included under the scheme. This may be required, for example, in response to any extension of the jurisdiction of the Magistrates’ Court.

However, in the context of the current sentencing powers of the Magistrates’ Court we consider that it would be inappropriate to extend the remit of the ULS provisions beyond sentences imposed in the Crown Court. A reference to the Court of Appeal is not the prosecution equivalent to an appeal against sentence by the defence. Rather, it exists as a safety net to ensure that there is a mechanism to correct *gross errors* in sentences imposed for serious offending. It is a high and exacting threshold for a reference to succeed. It is considered that it would be a very rare case where, given the limited sentencing powers available in the Magistrates’ Court, the Court of Appeal would find that this exacting threshold was met. There is a real risk that extending the powers to the Magistrates’ Court would raise expectations and result in very many requests to the Director of Public Prosecutions to make a referral – the vast majority of which would result in a decision not to refer which would cause disappointment to victims. There is no precedent in other jurisdictions for such a wide-ranging power of referral to the Court of Appeal and the decision-making process and associated explanations that would be required would place a disproportionate burden on limited prosecutorial resources.

It should also be noted that the Magistrates' Court is not a court of record and is a court of summary jurisdiction in which District Judges are generally not assisted by detailed sentencing submissions from the parties, and do not have the time to carefully prepare and deliver detailed sentencing remarks. These circumstances also militate against the extension of the provisions to Magistrates' Court cases as the analysis of the first instance proceedings that could be conducted would be limited. Furthermore, the prospect of sentencing being reviewed in the Court of Appeal could result in more detailed but slower processes that would undermine the efficiency of the Magistrates' Courts.

Should further offences be added to the category of reviewable sentences, and in anticipation of a potential increase in the number of applications being made, we may wish to comment further regarding the 28 day time limit set out in Schedule 4.

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?

Yes ✓

No

Please provide information to support your answer here: (3000 characters maximum)

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

Yes

No ✓

Aggravation by Hostility (Clauses 33 – 35)

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 ✓

No

Please provide information to support your answer here: (3000 characters maximum)

The PPS supports the introduction of a formal aggravation scheme in respect of race, religion, sexual orientation and disability.

We recognise that the current provisions under the Criminal Justice (No.2) (Northern Ireland) Order 2004 are not being used to any significant extent in Northern Ireland and are not well understood. Difficulties with the current system include:

- (i) Cases not being routinely opened at court as being aggravated by hostility;
- (ii) Poor recording practices;
- (iii) Sentences not being enhanced in appropriate cases; and
- (iv) The absence of any mechanism for recording on a criminal record that a sentence was aggravated by hostility.

There are a number of advantages to having aggravated offences. In particular, it is arguably a clearer and more powerful indication to defendants and the wider public of a specific approach to hate crime intended to mark society's condemnation and determination to address it. There is greater transparency right from the beginning of the process in relation to the aggravated nature of the alleged offending and one can see how this should lead to more effective investigations where the relevant proofs are identified and sought at an early stage. Under the new provisions, a conviction for an aggravated offence would be easily identified from a criminal record.

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

Yes ✓

No

Please provide information to support your answer here: (3000 characters maximum)

See above.

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?

Yes

No

Please provide information to support your answer here: (3000 characters maximum)

The PPS adopt a broadly neutral position as to whether new categories of hate crime should be created for characteristics which are not covered by the current legislative provisions (i.e. the 2004 Order).

The exception to this is transgender. It would appear to the PPS that the evidence base is present to include transgender within the list of protected characteristics. Based on feedback received at public engagement events and from key stakeholders, it is likely that a significant amount of transphobic motivated hate crime is going unreported to police. This covers a wide spectrum of offending, ranging from verbal abuse to physical assault.

Importantly, transgender is a protected group elsewhere within the United Kingdom and in the Republic of Ireland. It is desirable that, in the absence of good reasons for a difference in approach, there should be consistency across each of these jurisdictions.

A decision in relation to other groups may also be informed by any research conducted and / or any changes introduced in the neighbouring jurisdictions.

It should be noted that a decision *not* to provide specific statutory protection for a particular group does not mean that a relevant vulnerability will not be taken into account by a court at sentencing. Whilst it is acknowledged that this will not be conducted under the enhanced sentencing regime, or by way of a specific aggravated offence, it can be recognised during the sentencing exercise when the court will take account of all aggravating factors in any particular case and increase a sentence where appropriate.

In considering any expansion of the protected groups, care should also be taken to avoid over-extension of the legislation. The more groups that are added, the greater the risk that the provisions cease to be about protecting the disadvantaged or vulnerable groups, thereby diluting the purpose of the legislation and its symbolic effect. It also seems

sensible to identify a clear evidence base that identifies the need for protection and the benefits likely to be delivered through any further amendments.

Finally, any additional protected characteristic should be clearly defined so that it does not give rise to difficulties in terms of its practical application within the criminal law.

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

Yes

No

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?

Yes

No

Please provide information to support your answer here: (3000 characters maximum)

We recognise the importance of vulnerability as an aggravating factor in the sentencing process but would highlight the following issues regarding the inclusion of vulnerability as a specific statutory aggravator:

- A victim's vulnerability is already a factor that is taken into consideration by the trial judge at the sentencing stage, where this is an issue.
- The proposed definition is very wide ("or for any other reason"), extending beyond issues of age and demonstrable mental or physical conditions. This is likely to create a difficulty for police and prosecutors in certain cases in determining whether the aggravator should apply.
- The issue of vulnerability is subjective. Victims do not always consider themselves to be vulnerable when others may consider them so. The converse is also true. Victims may be caused distress if they disagree with the PPS decision as to whether to include the statutory aggravator.
- To add vulnerability as an aggravator may add unnecessary complexity to the investigation and prosecution of cases. Other statutory aggravators tend to relate to the circumstances of the offence which will be addressed through the investigation of the alleged offending conduct and are often capable of being proved by objective evidence. However, the matters relevant to whether a victim is vulnerable could be well removed from the circumstances of the offence and could be very complex in nature.
- If vulnerability is a matter that the prosecution is formally presenting as part of the charge, then disclosure obligations in relation to this issue would arise. This could be intrusive and upsetting for victims.

- The application of a vulnerability aggravator to a case is likely to make the case more difficult to resolve. Experience from other jurisdictions would suggest that defendants are reluctant to plead guilty to an offence where a statutory aggravator is attached. There is the potential for vulnerability aggravators to be applied in many cases, and this could contribute to a reduced level of guilty pleas and more contested hearings / trials.
- Finally, it is noted that there are now a number of statutory aggravators, two or more of which could apply in the circumstances of a particular case. In addition to those proposed under this Bill, there are those that already exist under the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021, There is the potential for the ‘layering’ of multiple aggravators in a particular case which would further reduce the prospect of early guilty pleas and also complicate the task of the jury (in prosecutions on indictment) and any sentencing exercise upon conviction.

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

Yes

No

Assaults on Public Workers etc. (Clause 37)

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 delivery a public service. Do you agree with the new offence of assault on a public worker?

Yes ✓

No

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

Yes ✓

No

Please provide information to support your answer here: (3000 characters maximum)

We understand that there is some concern as to whether this definition is potentially too wide. On the one hand, it may be argued that the benefit of the statutory aggravator should accrue to all public workers who are victims of crime - and that courts are capable of distinguishing between the greater public harm that may arise in relation to offending against some types of public workers when deciding by how much to increase a sentence on account of the presence of the aggravator.

A contrary view is that, for many cases involving public workers, the courts can deal with any aggravation of sentence in accordance with general sentencing principles and practice.

Overall, a statutory aggravator may be better targeted to those specific public workers where there is evidence that offending is a particular concern – in terms of prevalence and / or the wider public harm that might flow from the offending. It may be that the impact of the statutory aggravator in an individual case will be greater if it is targeted towards a narrower group of public workers.

Ultimately the balance to be struck here will be informed by the policy intent behind the introduction of this particular measure, and a political judgment as to where the line should be drawn.

From an operational perspective, there could be cases in which the application of the provision is unclear, although that is likely to occur considerably less frequently than in

the case of the vulnerability aggravator, and we do not have the same concerns as regards certainty of scope.

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

No

Please provide information to support your answer here: (3000 characters maximum)

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 inclusions of an offence of aggravation by assault on a public worker?

Yes

No

Please provide information to support your answer here: (3000 characters maximum)

See response in respect of Clause 37.

We note the offences which are listed at Clause 38(3). Some of these offences (assault occasioning actual bodily harm; threats to kill) may be quite commonly encountered, whereas many of the others are much less likely to arise.

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

Yes

No

Public Prosecution Service

22 May 2026

For further information, please contact the PPS at [REDACTED]