

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of
Justice

An Roinn Dlí agus Cirt

Máinnystrie O tha Laa

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17 June 2026

Dear Kathy,

**CRIMINAL JUSTICE (SENTENCING ETC) BILL - ASSEMBLY LEGAL SERVICES
CONVENTION RIGHTS MEMORANDUM**

Thank you for your letter of 5th June with which you shared the convention rights memorandum on the Sentencing Bill, prepared by Assembly Legal Services (ALS).

While I note that Section 3 of the Memorandum states that none of the bill's provisions raise particular concerns as regards compatibility with the Convention, the following response provides comment on the points made, with particular regard to the ECHR compliance of clauses 24, 29 and 33 of the bill as requested by the Committee.

Clause 2 (*Duty to follow and give reasons in relation to sentencing guidance*)

As is pointed out by the ALS at paragraphs 18 of the Memorandum, a court is a public authority which must act in a way that is compatible with the Convention, and there is no reason to believe that a court would not act in a way that was compliant with Article 5.

Sentencing guidelines do not have the force of law, and as such if a guideline is departed from, as provided for in clause 2, this does not mean that the sentencing exercise is undertaken otherwise than "in accordance with a procedure prescribed by law".

The Department has no reason to believe that the courts will act otherwise than in accordance with a procedure prescribed by law.

Clause 3 (*suspended sentence order: availability*)

Paragraph 23 seeks further detail of the circumstances under which a court may decline to make a SSO.

The Department would not seek to provide views on the circumstances under which a court may decline to make a SSO. The legislation does not impact on the choice of disposal a court may impose on conviction but rather provides an additional option for the suspended sentence disposal for its consideration. It will remain a matter for the court, exercising its discretion as it does presently, to decide which disposal it considers appropriate based on the individual facts of the case.

Clause 4 (*Suspended sentence order*)

The Department is satisfied that activation events are prescribed within the bill and accordingly that any activation event will be in accordance with a procedure prescribed by law. The Department is also satisfied, as set out at paragraph 28, that there is no reason to believe that any finding of an activation event would not be compliant with Article 5.

It is noted that Article 8 is a qualified right. The Department considers that any interference with Article 8 rights are a proportionate means of achieving the legitimate aims of punishing offenders, rehabilitating offenders and protecting other individuals.

As is recognised at paragraph 29, PBNI, the body on which the supervision duty is placed, is a public body, and as such is under an obligation to carry out its functions in a manner compatible with the convention rights.

Clause 6 (*provision of copies of orders and explanation of effect*)

It is not intended that the Department will provide guidance to the court for the purposes of clause 6. The Department does not consider that the court will require guidance to follow the provision as it is considered that the legislation is clear.

It should be noted that current court practice is to explain the reasons why a particular sentence has been imposed and the implications of it. As stated previously there is no reason to believe that the court will act in any way other than is compatible with the Convention.

Clause 8 (*Community requirements*)

The Department is satisfied that the requirement to perform unpaid work as part of a SSO will be used in a manner proportionate to the offence, and that any interference with the offender's right to private and family life is justified for the purposes of punishing the offender, rehabilitating the offender and further protection of the public.

Clause 9 (*exercise of power to impose community requirements*)

The purpose of clause 9(4) is to ensure that the offender's rights related to work, education and religious observance are matters that are taken into account by a court when passing sentence. The Department considers that the court will be well placed to make this assessment, taking into consideration all the circumstances of the case before it, and acting in a convention compliant way as required as a public authority.

Clause 10 (*requirement to obtain pre sentence report*)

As regards the requirement to obtain a pre-sentence report, Clause 10 mirrors existing requirements relating to community sentences. As such the department does not intend to suggest the circumstances in which a court may decline to obtain a pre sentence report. This is a matter for the court to decide on the particular circumstances of each case.

Clause 12 (*Obligations of responsible officer*)

The purpose of clause 12(4) is to ensure that the offender's rights related to work, education and religious observance are matters that are taken into account by the responsible officer when making arrangements in connection with a community requirement. The Department considers that PBNi is well versed in balancing these rights (as this is already a requirement when a community sentence is in place), and is best placed to make this assessment, acting in a convention compliant way as required as a public authority.

Clause 15 (*Regulation of suspended sentence orders*)

In accordance with section 24 of the Northern Ireland Act 1998, any subordinate legislation must be convention compliant. This will be a consideration in the crafting of any regulations under clause 15.

Clause 18 (*duty to give reasons when determining a tariff*)

Clause 18 will operate in conjunction with the existing provisions of Article 5 of the Life Sentences (Northern Ireland) Order 2001 and with Articles 5 and 6 of the Convention.

The Department is satisfied that the combination of these provisions will ensure that any deprivation of liberty will be in accordance with the procedure prescribed by law, and that court will act in accordance with Article 6 of the Convention in adequately stating its reasons.

Clause 19 (*Mandatory life sentences for adult offenders: further provision*)

Clause 19 will operate in conjunction with the existing provisions of Article 5 of the Life Sentences (Northern Ireland) Order 2001 and with Articles 5 and 6 of the Convention.

The Department is satisfied that the combination of these provisions will ensure that any deprivation of liberty will be in accordance with the procedure prescribed by law, and that court will act in accordance with Article 6 of the Convention in adequately stating its reasons.

We would draw the Committee's attention to clause 49(1)(b) of the bill which provides that Part 3 (life sentences) does not apply where a person is convicted of an offence committed before commencement. The Department therefore does not consider that clause 19 has retrospective effect.

Clause 24 (*Charlotte's Law – determining the length of the custodial period*)

The Committee has asked for particular comment regarding the compliance of clause 24 with Article 7 rights. Article 7 provides for no punishment without law. It prevents the retrospective application of the criminal law to the accused's disadvantage. This includes both provisions defining an offence and the penalty itself.

The ALS analysis notes that the changes to the law will apply to a person who may have committed offences but not been charged, convicted or sentenced before this clause comes into effect. This is correct. However, the aggravation proposed by clause 24 is designed to reflect a convicted killer's failure to disclose information at the point of sentence. The opportunity to avoid the aggravation is therefore open to the offender up until that point, and as such the provision does not have a detrimental retrospective effect.

In addition, with regard to these provisions, the maximum penalty for the offence of murder or manslaughter remains unchanged. Murder is a mandatory life sentence and when setting the tariff the court can take into account aggravating and mitigating factors. Manslaughter carries a discretionary life sentence. Within those penalties, the setting of the appropriate sentence in an individual case is a matter for the court to decide.

When considering Article 7 ECHR, the Court must verify that at the time when an accused person performed the act which led to his being prosecuted and convicted there was in

force a legal provision which made that act punishable, and that the punishment imposed did not exceed the limits fixed by that provision.

That remains the case here. These provisions do not alter the maximum penalties that can be given. No heavier penalty can be imposed on the defendant than the one applicable at the time of offence. The punishment imposed cannot exceed the limits imposed by the law currently setting the sentences for murder and manslaughter.

It is the department's view, therefore, that clause 24 does not interfere with offenders' Article 7 rights.

Clause 29 (*Charlotte's Law: Reduction to sentence*)

The Committee has asked for comment on clause 29 with particular regard to Article 8 ECHR and the rights of victim family members. Article 8 provides for respect for private and family life. This right can be interfered with in accordance with the law and where necessary in a democratic society. When assessing Article 8, part of the assessment will be whether the interference was proportionate to the legitimate aim pursued.

The additional custodial period (see clause 24) is given by the court where there has been a failure to disclose where or how a body was disposed of. The reduction in sentence is given where the offender makes a relevant disclosure about where or how the body was disposed of.

The legitimate aim pursued is to try to obtain information about the victim's remains. At the heart of this is that this information will be of benefit to the victim's family. It is considered proportionate that the reduction in sentence, given where information which will be to the victim's family's benefit is provided, is a proportionate means of achieving that aim.

However, should there ever be a case where the victim's family was not concerned with information about the victim's remains, it is the Department's view that the legitimate aim remains for the benefit of society generally, and that the proposed reduction remains proportionate to it.

Clause 31 (*Duty to consider failure to disclose*)

As regards the test applied by the parole commissioners we can confirm that this remains unchanged under the provisions of the bill and is still based on individual risk.

Clause 33 (*Aggravation by hostility*)

The Committee has asked for views on clause 33 and the balance of rights. The ALS memorandum specifically mentions Article 10 ECHR (freedom of expression).

Article 10(2) provides that the exercise of the right of freedom of expression carries with it duties and responsibilities and may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of certain matters including public safety, the prevention and detection of crime and protection of the rights of others.

Prescribed by law means that the provision must be clear and precise, its consequences foreseeable and that it is accessible. Clause 33 fulfils these criteria.

Clause 33 pursues a legitimate aim, namely the protection of certain groups within society based on race, religion, sexual orientation and disability. It is also aimed at the protection of society as whole and the prevention of crime.

While the aggravation, if made out, will be taken into account by the court at the point of sentencing it does not mean that a higher than maximum penalty for the offence can be given. The maximum penalty for the offence remains unchanged. It is considered that this a proportionate means of recognising the aggravation without allowing for increased maximum penalties because of it.

It is also worth noting that aggravation by hostility is already provided for in Article 2 of the Criminal Justice (Northern Ireland) Order 2004. In that respect this clause does not introduce a new concept. What it does do it change how the aggravator of hostility is handled. Under clause 33 the aggravator must be specified alongside a charge of the offence. The aggravator must be proved before the court in order for the court to treat the offence as so aggravated. This allows for the evidence around the aggravator to be tested and for any arguments to be made by the defence that the aggravator is not made out because the actions of the defendant did not demonstrate hostility and were not motivated by hostility towards a specified group. This is an important safeguard – the evidence will be tested before the court.

Clauses 41 and 42 (*Period of imprisonment for certain offences and repeat offences*)

The Department is content that the proposed increase in maximum sentences for the offences of causing death by driving (and repeat offences) is not arbitrary in accordance with Article 5.

This increase has been the subject of significant consultation and comparative research and is considered appropriate and proportionate to reflect the seriousness of the criminal

offending it addresses, and achieving the legitimate aim of punishing those who cause death and serious injury through their driving behaviours.

The increased maximum will provide further flexibility for the courts to choose the appropriate sentence taking all the factors of the case into consideration.

As mentioned above, the Article 8 right to private and family life is a qualified, and the Department is satisfied this increase is proportionate and any interference with Article 8 can be justified.

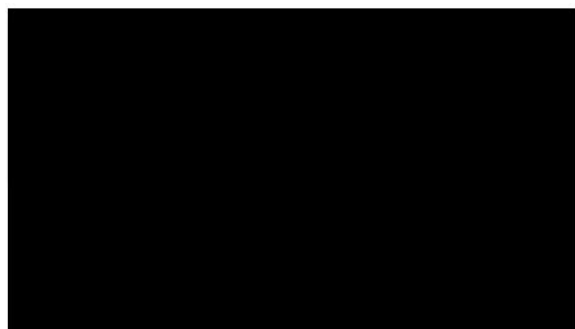
Clauses 43 and 44 (*disqualification for certain offences and repeat offences*)

The Department considers that any interference with the qualified rights enshrined in Article 8 or Article 1, Protocol 1 as a result of the proposed increase in minimum disqualification periods for the offences of causing death by driving (and repeat offences) is proportionate and can be justified.

These increased have been the subject of significant consultation and comparative research and are considered appropriate and proportionate to reflect the seriousness of the criminal offending they seek to address, in terms of punishing those who cause death and serious injury through their driving behaviours.

I trust the above comments will be of assistance to the Committee.

Yours sincerely,



DALO



**Northern Ireland Assembly
Committee for Justice**

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05 June 2026

Dear Fiona

**CRIMINAL JUSTICE (SENTENCING ETC) BILL – ASSEMBLY LEGAL SERVICES
CONVENTION RIGHTS MEMORANDUM**

At its meeting on 21 May 2026, the Committee Justice considered a briefing on the Assembly Legal Services Human Rights Memorandum on the Sentencing Bill.

The Committee agreed to forward the Convention Rights Memorandum to the Department for comment, with particular regard to the compliance of Clause 27 with Article 7 rights, Clause 29 with Article 8 rights and the balance of rights in respect of Clause 33.

I would be grateful if the Committee could receive a response by 19 June 2026.

Yours sincerely

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