
Criminal Justice (Sentencing etc) Bill

The Bar of Northern Ireland

1. Introduction

The Bar of Northern Ireland is pleased to contribute to the Committee's scrutiny of the draft legislation. We recognise that the Bill seeks to deliver on a number of ministerial priorities, and the Minister has noted that the key priority of the Bill is to improve the effectiveness and transparency of sentencing and enhance public confidence in sentencing decisions.

The Bill will introduce a series of reforms which will modify key aspects of Northern Ireland's sentencing framework. We will now set out below a number of observations on the proposed legislation.

2. Policy Intent

The Bill seeks to place sentencing purposes and principles on a statutory footing and introduces a duty concerning the application of sentencing guidance, with the stated intention of improving awareness, understanding and clarity in how sentencing decisions are reached. However, the Bar questions whether the provisions in the Bill will achieve this.

Part 1 of the Bill places the purposes and principles of sentencing on a statutory footing, and is intended to "improve awareness, understanding and clarity in how sentencing decisions are reached". Various studies have demonstrated that the public's understanding of legal frameworks and processes are generally poor.

In particular, public understanding of sentencing in the UK is poor, as evidenced by JUSTICE's 'Understanding Courts' report which identified sentencing as a gap in the knowledge of lay users'.¹ There is evidence of public and media discourse of sentences that are 'unfair' or being implemented 'incorrectly'.² Sentencing in Northern Ireland directly affects defendants, victims and public confidence in the criminal justice system. Therefore, the Bar supports efforts to make sentencing decisions and sentencing law more understandable.

However, there is limited evidence to demonstrate that these statutory provisions alone will achieve the stated objectives of the Bill. A comparable statutory framework already operates in England and Wales. Section 57 of the Sentencing Act 2020 places the purposes of sentencing on a statutory footing, while Section 59 requires courts to follow relevant sentencing guidelines unless satisfied that it would be contrary to the interests of justice to do so.

A 2023 House of Commons Justice Committee report described public understanding of how sentencing works as "low", knowledge of different types of sentences as "poor" and detailed how the Parole Board of England and Wales had stated that there "is significant misunderstanding regarding different sentence types" amongst the public.³

¹ Sir Nicholas Blake, "Understanding Courts: A report by JUSTICE" (2019)

² See Jonathan McCambridge, "Winston Irvine court case impacted confidence in entire criminal justice system, says senior officer" (Newsletter, June 2025) <<https://www.newsletter.co.uk/news/crime/winston-irvine-court-case-impacted-confidence-in-entire-criminal-justice-system-says-senior-officer-5163950>>

See also: Scottish Sentencing Council "Public attitudes to sentencing following a guilty plea: findings from a mixed methods research project" (March 2025)

³ House of Commons Justice Committee, *Public Opinion and Understanding of Sentencing* (Tenth Report of Session 2022–23, HC 305, 2023) paras 13 and 23.

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A 2022 report published by the Sentencing Academy found that only 2% of respondents correctly identified the increase in the average minimum term for murder since 1996.⁴

The available evidence therefore raises questions as to whether placing sentencing purposes and principles on a statutory footing will, in itself, materially improve public understanding or deliver the intended clarity. Therefore, the Bar emphasises that rather than seeking to implement changes to sentencing provisions, the Department of Justice and other criminal justice partners should focus efforts on improving public education of existing sentencing provisions and the process of applying sentences.

3. Plain Language Explanations & Public Legal Education

Part 3 of the Bill places particular emphasis on improving understanding of sentencing through the provision of reasoning in “ordinary language”. In particular, Clause 18 requires the court, when determining a tariff, to state its reasons in open court and explain the effect of the order to the offender in ‘ordinary language’. However, the Bill stops short of introducing a general system of plain language sentencing explanation, or place any kind of emphasis on public legal education.

The Independent Review of Hate Crime Legislation in Scotland found evidence of confusion about what constitutes hate crime and observed that such confusion could make people less likely to report or challenge their experiences. It indicated a need for simpler ‘user-friendly’ language in this legislation and that it should be as clear as possible to people affected by it. The review noted that to a layperson a phrase such as ‘demonstrating hostility’ is more easily understood than ‘evincing malice and ill-will’, while stressing that the recommended change in language was not intended to alter the meaning or legal threshold, but solely to simplify the terminology used.⁵

This illustrates the importance of ensuring that legislative terminology is accessible to those affected by it and supports consideration of how the Bill, and any accompanying guidance, can be communicated in clear and readily understandable language. Doing so would help address broader issues relating to public understanding and accessibility, rather than treating comprehension as a standalone consideration.

The Bar supports the development of accessible, plain language explanatory material alongside the statutory framework as part of a wider programme of public legal education. The Committee may wish to seek clarification from the Department as to what public-facing guidance or educational resources will accompany the Bill and how effectiveness in improving public knowledge will be assessed.

4. Proportionality

Sentencing necessarily operates within a legislative framework, and the legislature is entitled to prescribe offences, maximum penalties and sentencing principles. However, the exercise of sentencing in an individual case remains fundamentally judicial and requires sufficient flexibility to reflect the circumstances of the offence and offender. The relevant issue is therefore not whether sentencing may

⁴ Sentencing Academy, ‘Public Knowledge of Sentencing Practice & Trends’ (Sentencing Academy) <https://www.sentencingacademy.org.uk/sentencinghub/public-perceptions/public-knowledge-of-sentencing-practice-and-trends/> accessed 14 August 2026.

⁵ Lord Bracadale, Independent Review of Hate Crime Legislation in Scotland: Final Report (Scottish Government 2018) ch 3 [Chapter 3 - Current Statutory Aggravations - Independent review of hate crime legislation in Scotland: final report - gov. scot](#) accessed 28 August 2026.

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be regulated by statute, but whether the degree of prescription proposed by the Bill is necessary and proportionate to its stated objectives.

Part 1 of the Bill proposes to place the purposes and principles of sentencing on a statutory footing and creates a statutory duty concerning the application of sentencing guidance. In sentencing an adult offender, the court will be required to have regard to the statutory purposes and principles where applicable and must follow any relevant sentencing guidance unless satisfied that it would be contrary to the interests of justice to do so.

The Bar does not support placing the principles and purposes of sentencing on a statutory footing and considers that policy guidance would be preferable. Statutory guidance does not provide additional clarity or awareness of sentencing, and the Bar is concerned that the wording in the legislation may be unduly restrictive. In particular, the legislation notes that the judiciary “must follow” statutory guidance, rather than “have regard” to relevant guidelines.

The Department of Justice itself, in its 2019 consultation paper, recognised that the former is more restrictive, and that a duty to ‘have regard’ offers more flexibility or discretion to a judge. This distinction is significant as the proposed approach represents a deliberate move towards a more prescriptive approach to sentencing guidance. In *R v Nelson [2020] NICA 7*, the Court of Appeal reiterated that, “sentencing is an art and not a science” and that sentencing judges must therefore be afforded a “margin of appreciation” in determining the appropriate sentence. The Court further recognised that the assessment of aggravating and mitigating features does not entail, “an arithmetical tally and must take into account any aggravating features of substantial gravity”. These observations underline the importance of retaining judicial discretion and sufficient flexibility to respond to the individual circumstances of each case.

Part 3 of the Bill makes provision for the determination of tariffs for adult life sentences. It places tariff starting points on a statutory footing and requires courts to give reasons in open court when imposing a life sentence and explain its effect to the offender. However, the existing approach to tariff starting points in Northern Ireland has developed through Court of Appeal jurisprudence. *R v McCandless [2004] NICA 1* distinguished between murders of normal and higher seriousness.

More recently, in *The King v Whittle [2024] NICA 65*, the Court of Appeal reviewed and updated the McCandless tariff guidance to reflect the development of murder sentencing in Northern Ireland over the previous 20 years. The Committee may therefore wish to consider whether it is necessary to place tariff starting points on a statutory footing and what additional benefit would be achieved, particularly where the existing framework continues to develop through Court of Appeal jurisprudence.

Tariff setting is an important judicial function. In *R (Anderson) v Secretary of State for the Home Department*, the House of Lords held that the fixing of tariffs for mandatory life sentence prisoners was, in substance, a judicial act. The Court emphasised that tariff setting is legally indistinguishable from sentencing and must therefore comply with the requirements of Article 6. This underlines the importance of preserving judicial responsibility for tariff determination and ensuring that any statutory framework respects the court’s sentencing function. Moving tariff starting points into primary legislation therefore constitutes a change of legal status, but also the mechanism through which the framework may develop in future.

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The Bill nevertheless retains important elements of judicial flexibility. Schedule 3 provides that, after selecting the applicable starting point, the court must take account of relevant aggravating and mitigating factors, and that this assessment may result in a tariff of any length irrespective of the starting point. In addition, any regulations made by the Department to amend the statutory starting points must be laid before and approved by resolution of the Assembly. These safeguards are relevant when assessing the proportionality of the proposed framework, although the broader question remains whether moving tariff guidance from appellate jurisprudence into statute is necessary to achieve the stated policy objectives.

The Committee may wish to consider whether the additional degree of statutory prescription proposed by Part 3 is proportionate to the policy objective being pursued, and whether the Bill retains sufficient flexibility to accommodate the individual circumstances of cases and the continued development of sentencing principles by the courts.

5. Rehabilitation

Part 2 of the Bill enables the Judiciary to impose community requirements alongside suspended sentences, allowing rehabilitative work to be undertaken during the period of suspension.

The Bar has been long supportive of greater usage of community requirements and suspended sentences when used as an alternative to short prison sentences. Evidence from England and Wales indicates that community and suspended sentences are associated with lower rates of proven reoffending than short custodial sentences. The proven reoffending rate for adult offenders given a community or suspended sentence was 30.6%, compared with 55.1% for adult offenders released from a custodial sentence of less than 12 months.⁶ Community and suspended sentences allow for “the maintenance of family ties, jobs, and childcare responsibilities – all factors which reduce the risk of reoffending.”⁷

Clause 4 allows a suspended sentences to also specify community requirements that the offender must comply with during the supervision period. Under this Clause, there can be one or more community requirements attached to each suspended sentence order. This gives the courts greater opportunities to address offending behaviour through rehabilitation, where immediate imprisonment is not necessary. We are, therefore, supportive of these provisions.

6. Aggravating and Mitigating Factors

The Sentencing Bill also makes provisions in relation to aggravating and mitigating factors, which are circumstances that the judiciary consider when determining a sentence length. Schedule A1 legislates on determining tariffs in cases of mandatory life sentences for murder, paragraph 5 and 6 places on statutory footing, mitigating and aggravating circumstances which “may be relevant” to the offence of murder. This in effect, begins to create structured sentencing guidelines for offences of this nature.

A criticism that has been levelled at structured sentencing guidelines is what is referred to as the bias effect, whereby the inclusion of sentencing factors in statute can constrain judges’ capacity to consider

⁶ House of Lords Justice and Home Affairs Committee, “*Cutting crime: better community sentences*” (1st Report of Session 2023-24, HL Paper 27, 28 December 2023), 19, Box 3.

⁷ Prison Reform Trust, “Written evidence to ‘Cutting crime: better community sentences’” (June 2023) para 2.

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all pertinent case characteristics.⁸ In common law jurisdictions, there is a notable hesitation in implementing sentencing guidelines for criminal offences, with a prevailing belief that judges should be accorded broad discretion to consider all the relevant facts of the case.⁹

The Bar recognises that the wording of this provision still affords some level of judicial discretion, which is a crucial component of fair sentencing as it enables, “abstract legal rules to be applied to real-life offences”.¹⁰ Nevertheless, we question the benefit of placing these mitigating and aggravating factors on statutory footing.

In England and Wales, the Sentencing Council gathered views from 20 judges and 20 magistrates’ on proposed new mitigating factors. The prevailing view expressed by participants was that these factors were already being accounted for, with the Sentencing Council concluding it was “unnecessary to formally include them” in sentencing guidelines.¹¹ Therefore, we feel that the justification for statutory recognition of these factors should rest on an identified deficiency in existing practice. We would question as to whether evidence exists which demonstrates that the judiciary is not effectively taking these factors into account, and what the perceived benefits are for placing them on a statutory footing.

7. Statutory Aggravator Model

Part 6 of the Bill introduces statutory aggravations based on hostility, vulnerability, and offences committed against public workers. This approach does not create new offences; rather, it applies where an existing offence is motivated by, or demonstrates, hostility towards one or more protected characteristics. In practice, where a person is convicted of an offence with a statutory aggravation linked to a protected characteristic, that aggravation will be considered at sentencing and recorded on the individual’s criminal record.

A statutory aggravation model already operates successfully in other UK jurisdictions. In Scotland, a 2018 review found that the model was used “extensively”, worked “reasonably well” and should be retained. The Bar supports the introduction of a statutory aggravation model in place of the current enhanced sentencing model. The proposal also gives effect to Recommendation 2 of Judge Marrinan’s Independent Review of Hate Crime Legislation in Northern Ireland, which states that “statutory aggravations should be added to all existing offences in Northern Ireland.”

The Bar takes the view that this model could provide a clearer and more comprehensive framework for addressing hate crime. It would require police and the wider criminal justice system to consider potential identity-based hostility at the investigation stage, support more accurate recording of hate crime, and would improve the monitoring of relevant statistics and trends over time.

⁸ Ben Grunwald, “Questioning Blackmun’s Thesis: Does Uniformity in Sentencing Entail Unfairness?” (2024) Cambridge University Press, Law & Society Review 49(2)

⁹ George Zdenkowski, “Limiting Sentencing Discretion: Has there been a paradigm shift?” (2000) Current Issues in Criminal Justice 12(1)

¹⁰ Sarah Krasnostein and Arie Freiberg, “Pursuing Consistency in an Idealistic Sentencing Framework: If You Know Where You’re Going, How Do You Know When You’ve Got There?” (2013) Law and Contemporary Problems 76

¹¹ Sentencing Council, “Aggravating and mitigating factors in sentencing guidelines and their expanded explanations: Research report” (2024)

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However, the Bar would also like to highlight a potential practical consequence of this approach. If an aggravated sentence is recorded on a Criminal Record Viewer, hostility would need to be proven to the criminal standard. Where hostility is denied by the offender, this may require a Newton hearing.

This could have implications for victims who have been told that an offender has plead guilty but are then required to attend a further hearing and give evidence under cross-examination. There is also a risk that, even after a victim gives evidence, hostility may not be proved to the criminal standard. This could leave victims feeling dissatisfied with the process and may undermine confidence in the criminal justice system.

At this opportunity, the Bar would also like to voice its support for the Law Society's call for statutory recognition of an officer of the court as providing services to the public, with attacks on officers of the court being aggravating factors in sentencing. The Bar recognises that legal professionals are one of a number of professions who face threats, harassment and abuse in the course of carrying out their professional duties. We are conscious of the challenges faced by many professionals working in public facing services and recognise the importance of ensuring that the appropriate protections are available to those who face such challenges in the course of their work.

The Law Society's call came amongst the concerning growth in threats against legal professionals in the course of conducting their professional duties. A recent internal survey of the Bar's membership found that around 50% of members had often or occasionally felt unsafe whilst performing their duties over the last 12 months, with just under 30% experiencing threats whilst performing their professional duties. These threats included threats of violence, threats of reputational damage, and online threats. Furthermore, over 60% of respondents agreed that incidents of harassment, threats, or improper interference had increase in the last 3-5 years.