

CRIMINAL JUSTICE (SENTENCING ETC) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department of Justice ('the Department') in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So, where a clause or part of a clause or Schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. This Bill will make provision in relation to the policy issues arising from the Department's Sentencing Policy Review; offenders who fail to disclose information about victims' remains; and a statutory aggravator model for hate crime offences.

Sentencing Policy Review

4. On 9 June 2016, Justice Minister, Claire Sugden, announced a review of policy issues in relation to sentencing. The Review planned to look at the legislative framework for certain categories of crime, the setting of tariffs for murder, the arrangements for unduly lenient sentences and the effectiveness of the current sentencing guidelines mechanism to enhance public confidence, consistency and transparency in sentencing.
5. The Minister's announcement is available to view at: [justice-minister-announces-sentencing-review](#)
6. As part of the Review, the Department worked closely with a group of experts in the field of sentencing, who provided regular assistance and guidance; it conducted significant desk research, considering information from many common law jurisdictions around the world; and held a series of engagement events and individual meetings with relevant voluntary organisations, statutory agencies, stakeholders, victims and victims' families, and other interested parties.

Failing to disclose information about the victim's remains

7. During a 2020 debate on the [Northern Ireland Assembly motion to introduce legislation similar to Helen's Law](#)¹, inspired by the campaign led by Charlotte Murray's family and supported by missing Bangor woman Lisa Dorrian's family, Minister Long expressed her intention to give careful consideration to the need for change in murder cases where the suspect or offender refused to provide information about the location of their victim's remains ('no body' murders); and, if change was appropriate, how this could be best tailored for Northern Ireland.
8. The Department identified a range of measures which could encourage disclosure of information leading to the recovery of the victim's remains, or about how the victim's remains were disposed of, at every stage of the criminal justice process, from the earliest point in an investigation right through to the final parole hearing.
9. The recommendations which would require legislation formed the basis of a public consultation ([Consultation on Charlottes Law | Department of Justice](#)), the outcome of which led to the provisions included in the Bill.

Aggravation by hostility

10. Judge Marrinan's Review of Hate Crime Legislation in Northern Ireland, ([hate-crime-review](#)) considered whether the existing legislation represents the most effective approach for the justice system to deal with criminal conduct motivated by hatred, malice, ill-will or prejudice, including hate crime and abuse which takes place online.
11. The provision of a new statutory aggravation model for prosecuting hate crimes in Northern Ireland was sought on the basis of recommendations from Judge Marrinan's Review.

CONSULTATION

12. The policies proposed for inclusion within the Bill have been the subject of public consultation exercises. For each consultation exercise, the Justice Committee received briefings on summaries of responses and ways forward. The various consultation and response documents are available to view at the hyperlinks included in the following commentary.

Sentencing Policy Review

13. In October 2019, the Department launched a public consultation seeking views on issues raised during engagement with partner organisations and other stakeholders throughout the Sentencing Policy Review. The consultation sought views on:
 - the principles and purposes of sentencing;
 - public confidence in the sentencing process;

¹ 'Helen's Law' makes provision, in England and Wales, for the failure to disclose the location of victims' remains, or how they were disposed of, to be considered at the prisoner's parole hearing.

- the current legislative framework for sentencing for certain categories of crime;
 - the setting of tariffs for murder;
 - arrangements for unduly lenient sentences;
 - the use of community sentences; and
 - the effectiveness of current sentencing guidance.
14. The consultation document is available to view at: [sentencing-review-northern-ireland-consultation](#).
15. This public consultation concluded in February 2020, following an extended consultation period and a number of public engagement events.
16. In September 2020, the Department published a summary of the responses to the consultation. However, before concluding its recommendations flowing from the Sentencing Policy Review, the Department sought to reflect on and resolve a number of issues raised in response to the consultation.
17. The summary of responses document is available to view at: [sentencing-policy-review-consultation-responses](#)
18. In April 2021, the Department published its proposed ‘way forward’, which included proposals to legislate in the following areas:
- Principles and purposes of sentencing;
 - Measures to assist with the issuing and following of sentencing guidance;
 - Tariff setting for murder cases;
 - Expansion and simplification of the unduly lenient sentencing arrangements;
 - Measures to allow further use of community sentencing;
 - A new offence of assaulting a person providing services to the public, performing a public duty or providing a public service;
 - A statutory aggravator for sentencing for attacks on vulnerable people; and
 - Increase in the maximum penalty and minimum disqualification periods for offences causing death or serious injury by driving.
19. The Department’s proposed ‘way forward’ is available to view at: [sentencing-review-policy](#)

Failing to disclose information about victims' remains

20. The Department consulted on proposals in relation to 'no body' murders from 29 November 2021 to 14 February 2022 and published a summary of responses and 'way forward' document on 27 September 2024.
21. The consultation document is available to view at: [consultation-charlottes-law](#)
22. The summary of responses and way forward document is available to view at: [charlottes-law-report-response-and-way-forward](#)
23. Following the consultation, the Department agreed to include legislative proposals in respect of 'no body' murders within the planned Sentencing Bill.

Aggravation by hostility

24. Following Judge Marrinan's Review of Hate Crime Legislation in Northern Ireland, the Department published its Departmental Response in July 2021. The following recommendations from that Review were accepted by the Minister and therefore required no further consultation:
 - Recommendation 2 – statutory aggravations should be added to all existing offences meaning any criminal offence could be charged in its aggravated form i.e. a statutory aggravation model will be the core method of prosecuting hate crimes in NI.
 - Recommendation 3 – repeal enhanced sentencing provision (Article 2) of the Criminal Justice (No.2) (Northern Ireland) Order 2004.
 - Recommendations 3 – Articles in the 2004 Order providing for higher maximum sentences for certain criminal offences should be retained.
 - Recommendation 4 – no increase in maximum sentences / penalties for any criminal offence is required.
 - Recommendation 8 – consequences of aggravation when it is proved that an offence is so aggravated and what the court must do.
25. The Departmental response document is available to view at: [review-hate-crime-legislation-ni-departmental-response](#)
26. In relation to Recommendation 9 (All current protected characteristics in Northern Ireland – race, religion, disability and sexual orientation should continue to receive protection under the proposed model set out in Recommendation 2, together with the new recommended protected characteristics of age, sex/gender and variations in sex characteristics.), the Department concluded that the current protected groups (racial, religious, sexual orientation, disability) should remain in legislation.

27. Where a recommendation was not accepted by the Minister it was agreed that the Department would carry out further consultation to seek further clarification on the nature and extent of the issues. This decision was made so as not to duplicate Judge Marrinan's already extensive consultation on issues the Minister had agreed to.
28. The key proposals consulted on in respect of the introduction of a statutory aggravation model were:
 - That the current threshold of hostility is maintained in legislation as that threshold.
 - That the attitudes of bias, prejudice, bigotry and contempt, as suggested by Judge Marrinan, could be included as indicators of hate.
 - That a third 'by reason of' threshold should not be added to the current thresholds in legislation.
29. The consultation on proposals to improve legislation governing hate crime in NI was split into two phases. Phase One Consultation and Call for Views ran for 8 weeks from 31 January 2022 to 28 March 2022.
30. The consultation document is available to view at: [consultation-hate-crime-legislation-northern-ireland](#)
31. The summary of responses document is available to view at: [phase-one-summary-responses-hate-crime-review-legislation](#)

OPTIONS CONSIDERED

Purposes and principles

32. Taking account of the available evidence, the Review considered that it would be desirable to have a clear understanding of the principles and purposes of sentencing in Northern Ireland, to:
 - improve awareness, understanding and clarity in how sentencing decisions are reached;
 - provide a definitive benchmark of the qualities that all sentences should incorporate and reflect; and
 - ensure compliance with international obligations.
33. The Review proposed the following principles of sentencing:
 - Proportionality;
 - Fairness;

- Use punishment sparingly; and
 - Transparency.
34. The Review proposed the following purposes of sentencing:
- Punishment;
 - Protection of the public;
 - Deterrence;
 - Rehabilitation; and
 - Reparation.
35. Following consultation, the Minister agreed that the purposes and principles of sentencing should be set out in legislation, and sentencers should be required to have regard to these principles and purposes when making sentencing decisions.
36. Respondents to the consultation who commented on the principles unanimously supported the principles of proportionality, fairness and transparency.
37. The principle that punishment should be used sparingly caused some concern, and some respondents felt it was unclear, as “punishment” can have different meanings to different people. While all agreed that every sentence should contain an element of punishment, it was considered important to distinguish between this and incarceration, which should be used sparingly where suitable alternatives exist.
38. Alternative principles were proposed, but the Review Team concluded that each would already be achieved through the application of the other widely supported principles and purposes put forward in the consultation.
39. Therefore, the Minister agreed that the principles of sentencing should be proportionality, fairness and transparency.
40. Respondents to the consultation offered varying degrees of support for the proposed purposes of sentencing, and the Review team gave some consideration to alternative approaches and wording. However, the Minister ultimately agreed to implement the purposes of sentencing as proposed by the Review team, namely punishment, protection of the public, deterrence, rehabilitation, and reparation. It was also agreed that it was important to recognise victims specifically, and so a reference to victims was added to the purpose of protecting the public.

Suspended sentences

41. The Review team considered the effectiveness of current community sentences, with a particular focus on reoffending rates for persons subject to community sentences in

comparison with those sentenced to custody and consulted on whether the courts should make greater use of community sentences as an alternative to short prison sentences.

42. Furthermore, the Review team analysed potential options for improving existing community sanctions, including the use of restorative justice and problem-solving justice, and consulted on increased use of these practices as part of community sentencing. The Review also proposed increased roll-out of the Enhanced Combination Order and increased judicial involvement during community sentencing.
43. The Review Team also sought views on the creation of the following new options to use community elements in sentencing:
 - Enhanced Conditional Discharge;
 - Structured Deferred Sentences;
 - Supervised Suspended Sentence Orders; and
 - Adult Diversionary Sentences.
44. In response to the feedback received to the consultation, the Minister agreed to the further development and promotion of community sentences, given the strong level of support for this approach evidenced in response to the consultation.
45. The Minister also agreed that:
 - the inclusion of restorative or reparative elements should continue to be a matter for case-by-case decision;
 - a communications programme will focus on making the public aware of the benefits to communities of unpaid work and reparative activities;
 - non-justice input to community sentence programmes should continue where this can be facilitated and managed effectively;
 - the roll out of the Enhanced Combination Order should continue;
 - opportunities for further judicial involvement be considered where appropriate;
 - further modelling work be carried out before definite commitments were made to introduce any of new community sentencing options consulted upon.
46. Following further modelling work, the Minister decided to legislate in the Sentencing Bill to add community-based requirements to suspended sentences. The intention behind this approach is to allow:
 - rehabilitation work to be undertaken in suspended sentence cases where this was considered helpful;

- visible reparation to be factored into a sentence where the custodial threshold has been met but immediate custody is not considered necessary; and
- the court to suspend a sentence on the basis of the benefits that could be realised from the addition of a community-based requirement.

Life sentences

47. In respect of the imposition of a mandatory life sentence for a conviction of murder, the Review team considered whether the existing process should remain unchanged, or to legislate to provide for a more regulated approach to tariff setting. The consultation also posed questions in relation to the adequacy of current starting points, and the retention of the Whole Life Tariff.
48. Based on feedback to the consultation and the analysis completed by the Review team, the Minister agreed that legislation should be introduced to provide that:
- 12 years would become the starting point for adults under the age of 21, unless the judge was satisfied that it was not appropriate or just;
 - the usual mitigating factor of the age of the offender would not apply where age plays a part in the selected starting point;
 - 15 years would become the starting point for adults aged 21 and older where there are no aggravating factors;
 - 20 years would become the starting point for murders with identified exceptional culpability;
 - exceptional culpability would reflect factors already identified in Northern Ireland case law;
 - the whole life tariff would still be available for “rare and exceptionally serious murders”;
 - where a whole life tariff is imposed, the judge would be required to be satisfied beyond reasonable doubt that the offender must be kept in prison for the rest of their life;
 - that a guilty plea would not lead to a reduction if the case were otherwise sufficiently serious to warrant a whole life tariff; and
 - there should be an obligation to publish guidance on the power vested in a Minister to “direct release as being appropriate”.
49. The Way Forward report was published in early 2024. A subsequent decision of the Court of Appeal changed the previous guidance to courts about the appropriate starting points for murder tariff calculations and led to a revision of the first of the Minister’s decisions.

As a result, the Bill includes two starting points – 15 years and 20 years, acknowledging that the courts will take the offender’s age into account in forming its decisions.

50. In relation to the final bullet point above, it became clear that in the absence of any offender serving a whole life tariff there was no pressing requirement to impose a statutory obligation upon the Department. Further as no such direction would fall to be considered until a substantial period of such a tariff had been served, an administrative solution could address the issue in a timely fashion taking account of experience in neighbouring jurisdictions within the UK. Accordingly, no such obligation is included in the Bill.

Unduly lenient sentences

51. The Review team analysed the existing unduly lenient sentences referral scheme in Northern Ireland, and the approaches to this issue in other jurisdictions, before proposing the following options for reform:
- 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.
52. The Review team also welcomed views on the provision of information and advice, at court, about unduly lenient sentencing, to better inform victims and their families on whether or not to pursue an unduly lenient sentence referral.
53. In response to the public consultation, no clear preference emerged between the three options consulted upon. However, taking account of the available evidence and the feedback received, the Review Team considered that an extension of the arrangements to all Crown Court sentences would result in a consistent approach for those offences considered sufficiently serious to merit trial on indictment. To extend the arrangements to some magistrates’ courts sentences would risk diminishing their purpose and adding to confusion over which offences were included.
54. Respondents to the consultation were also unanimously in favour of additional information being given, noting this should not be restricted to information being given at court where the stressful nature of the proceedings may result in victims not fully taking all the information on board.
55. Therefore, the Minister agreed that the range of sentences that should be referable as being unduly lenient should be extended to include all sentences imposed in the Crown Court, and the issue of further information being provided about the scheme should be taken forward administratively.

Failing to disclose information about the victim’s remains

56. The Department’s consultation focused on three distinct issues:

- How should failure to disclose information about the location of the victim’s body be treated at the point of sentence?
 - Should measures to allow a reduction in the prisoner’s life sentence tariff be introduced for cases where a significant disclosure is made post sentence?
 - Should legislation similar to Helen’s Law be introduced?
57. Due to significant legal and human rights impediments to doing so, the Department decided against putting ‘no body’ cases into the whole life tariff category of murders. The Department also decided against legislating for ‘no body’ murders to be placed in the very serious murder category, and instead proposed that ongoing concealment of the victim’s remains at the point of sentence, including failure to disclose how they were disposed of, should be treated as an aggravating factor in sentencing.
58. However, the Department did make the following proposals for change in response to consultation feedback:
- ongoing failure to disclose the location of the victim’s remains, or how the remains were disposed of, at the point of sentence should become a statutory aggravating factor, adding a minimum of 30% on to the sentence or life sentence tariff which would otherwise be imposed by the Court, subject to this being in the interests of justice;
 - the introduction of sentence or tariff reductions where post sentence disclosures about the location of victims’ remains or detailing what happened to the remains are made;
 - the amount of any reduction in sentence or tariff available for a post sentence disclosure will never exceed the aggravation applied at the point of sentence to ensure there is no incentive to wait until after sentencing to make a disclosure ;
 - disclosure of information about the location of a victim’s remains or detailing how they were disposed of will automatically entitle the prisoner to a reduction in their sentence or life sentence tariff calculated as a proportion of the aggravation applied at the time of sentence, and reducing on a sliding scale as time goes on. There will be no need to return to Court for a review hearing; and
 - those prisoners sentenced in ‘no body’ cases before the provisions come into effect should be able to avail of the new arrangements.
59. In light of the strong level of support in the feedback to the consultation, the Department also proposed that:
- provision similar to Helen’s Law should be introduced in Northern Ireland;
 - the Parole Commissioners should be required to address ongoing failure to disclose information about the location of the victim’s remains or how they were disposed of in their decisions; and

- the Parole Commissioners should be required to provide a report setting out their reasons and detailing any co-operation the prisoner has provided, which will be accessible to victims' families.

Attacks on frontline public services

60. The Review team noted the prevalent view that sentencing for attacks on people providing frontline public services, particularly in hospitals, does not reflect the gravity of the offence nor act as a sufficient deterrent.
61. Having considered the existing policy and legislation in Northern Ireland, and analysed comparable approaches in other jurisdictions, the Review team proposed the following options for public consultation:
 - Option A: No change;
 - Option B: Higher penalties;
 - Option C: Additional categories of public servant; and
 - Option D: A statutory aggravating factor.
62. Based on feedback to the consultation and the analysis completed by the Review team, the Minister agreed that:
 - The maximum sentence available for assault on front line workers on summary conviction be increased from 6 months to 12 months;
 - The fact that the victim of a more serious assault was a frontline worker should become a statutory aggravating factor; and
 - Where a statutory aggravating factor applies, the court should be required to publicly state this and record the impact the aggravation had on the sentence.
63. The Minister also agreed that:
 - A new offence of assaulting a front-line care provider or emergency worker should replace the existing 3 occupation-specific offences. This new offence would extend the range of front-line workers given special recognition to include all of the occupations highlighted in the consultation; and
 - Further consideration be given to the extension of any new sentencing provision to retail workers.
64. In light of ongoing concerns about the vulnerability to attack of a wider range of those providing public services, the Minister subsequently agreed that the new offence and statutory aggravator should apply to all those workers assaulted while providing a public service, providing services to the public or performing a public duty.

Crimes against older and vulnerable people

65. Noting a long-standing perception that current sentences are neither a sufficient punishment nor an adequate deterrent to those who commit crimes against older people, the Review team considered the existing sentencing framework for crimes of this nature, as well as recent policy developments in this area, before proposing the following options for consultation:
- Option A: No change;
 - Option B: Statutory aggravating factors; and
 - Option C: A new offence.
66. Based on feedback to the consultation and the analysis completed by the Review team, the Minister agreed that:
- Vulnerability rather than age was the relevant factor;
 - Legislation should provide that the fact that a victim's vulnerability was obvious or the victim was targeted due to their perceived vulnerability is an aggravating factor;
 - No new offence of assault on a vulnerable person is required.

Aggravation by hostility

67. The Department's Phase One Consultation focused on three of the recommendations (recommendations 1, 5, 6) on a statutory aggravation model that had not been initially accepted by the Minister and were indicated in the Departmental Response as 'accepted in principle' or requiring further consideration.
68. The options considered were:
- (1) Do Nothing;
 - (2) Follow Judge Marrinan's proposals;
 - (3) Take on board feedback received as part of the consultation process and amend proposals.
69. The Department's assessment of these proposals was as follows:
- (1) Do nothing – As the Minister had given a commitment to reform hate crime legislation this option was not considered.
 - (2) Follow Judge Marrinan's Proposals – The key proposals consulted on in respect of the introduction of a statutory aggravation model were:

- That the current threshold of hostility is maintained in legislation as that threshold;
- That the attitudes of bias, prejudice, bigotry and contempt, as suggested by Judge Marrinan, could be included as indicators of hate;
- Whether a third ‘by reason of’ threshold should or should not be added to the current thresholds in legislation,

(3) Take on board feedback received as part of the consultation process and amend proposals: Given the nature of the subject matter, there was a mix of views received in response to the consultation. In response, the Minister / Department made the following decisions based on the feedback provided with some revisions to the original policy proposals.

- That the current threshold of hostility is maintained in legislation as that threshold: Following consultation and due to opposing views, the Minister agreed a definition of hate crime should not be explicitly included in legislation. It was also agreed that ‘hostility’ in legislation will remain to be the threshold in hate crime legislation.
- That the attitudes of bias, prejudice, bigotry and contempt, as suggested by Judge Marrinan, could be included as indicators of hate. It was agreed the proposed additional attitudes should not be included alongside ‘hostility’ in legislation which will remain to be the threshold in hate crime legislation.
- Whether a third ‘by reason of’ threshold should or should not be added to the current thresholds in legislation: It was agreed the Department will not include the ‘by reason of’ threshold in legislation as a threshold for proving an offence. Following consultation, the Minister did not accept this addition.

Road Traffic Offences

70. In respect of sentencing for serious road traffic offences, the Review team posed the following questions for consultation:
- Should the maximum sentence for each of the 3 offences (causing death by dangerous driving; causing death by careless driving while under the influence of drink or drugs; or causing death or grievous bodily injury by driving while disqualified) be increased?
 - Should a distinction in maximum sentence be made between any of the 3 offences?
 - Should parity be maintained with the equivalent sentences for the equivalent causing grievous bodily injury by driving offences?
 - Should the current minimum periods of disqualification be increased for these offences?

- Should the maximum sentence for causing death or grievous bodily injury when driving while disqualified be increased?
 - Should restrictions apply to right to seek a reduction in any disqualification period imposed?
 - Should any driving disqualification take account of the custodial component of a sentence?
71. Based on feedback to the consultation and the analysis completed by the Review team, including consideration of developments in other jurisdictions since the conclusion of the Review, the Minister agreed to legislate within the Sentencing Bill to:
- increase the maximum sentence of imprisonment for the offence of causing death or grievous bodily injury by dangerous driving or by careless driving while under the influence of drink or drugs from the current fourteen years to twenty, with a discretionary life sentence as the maximum sentence for a repeat offender;
 - maintain parity in maximum sentences whether death or grievous bodily injury is caused;
 - increase the maximum sentence for causing death or serious injury when driving while disqualified to 4 years when tried on indictment and 12 months when tried summarily;
 - increase the minimum period of mandatory disqualification for the offences of causing death or grievous bodily injury by dangerous driving or by careless driving while under the influence of drink or drugs to 4 years.;
 - mandate that a repeat offender within a 10-year period for a second or further conviction should be subject to an increased mandatory minimum disqualification period.

OVERVIEW

72. The Bill has 51 clauses divided into 8 Parts and 7 Schedules.
73. This section provides an overview description for each Part of the Act in sequential order. A more detailed Section by Section commentary follows in the next section.

Exercise of the court's discretion when sentencing

74. Part 1 of the Bill sets out the purposes and principles of sentencing to which the Court must have regard in certain circumstances when sentencing adult offenders. It also creates a duty for the court to follow any relevant sentencing guidance.

Suspended sentences

75. Part 2 of the Act creates a new suspended sentence order for adult offenders. A suspended sentence order is an order that suspends a sentence of imprisonment or (in the case of a person under the age of 21) detention in a young offender's centre for a certain period, referred to as the operational period. Where the offence is not a serious offence the court may make a suspended order if the term of the sentence is not more than 2 years. Where the offence is a serious offence, the court may make a suspended sentence order if the term of the sentence is not more than 7 years. A suspended sentence order may specify one or more community requirements, such as requiring an offender to work unpaid, or to be subject to a curfew. Where a community requirement is imposed the offender will be under the supervision of the responsible officer, during a period referred to as the supervision period.
76. The suspension of the sentence ceases where the offender commits another imprisonable offence in Northern Ireland during the operational period of the order or during the supervision period the offender breaches any requirement in the order.
77. Provision is made to deal with where an offender fails to comply with any requirement of an order, where an offender receives a further conviction and where an order requires amendment.

Life sentences

78. Part 3 makes provision in respect of mandatory life sentences for adults. It places a duty on the court, when passing a life sentence, under paragraph (1) or (3) of Article 5 of the Life Sentences (Northern Ireland) Order 2001 ("the 2001 Order"), to state in open court its reasons for deciding such a sentence and explain to the offender the effect of it.
79. It also provides that when passing a life sentence for the offence of murder, where the offender was aged 18 or over when the offence was committed. the court must, when considering the seriousness of the offence, have regard to the general principles set out in Schedule A1 to the 2001 Order. Schedule A1, as inserted by Schedule 3 to this Bill. Such principles include aggravating and mitigating factors. Schedule 3 also sets out the starting points when determining the tariff part of a life sentence and gives the Department regulation making power in relation to such starting points.

Unduly lenient sentences

80. Part 4 makes provision allowing any case in which a person is sentenced by the Crown Court, to be referred to the Court of Appeal by the Director of Public Prosecutions where it appears the Director that the sentencing has been unduly lenient.
81. Provision is also made for the arrangements to apply to sentences imposed on summary trial for offences of a description specified by the Department in regulations.
82. The provisions allow for referral to the Supreme Court on a point of law, by either the Director of Public Prosecutions or the offender to whom the sentencing relates, after the Court of Appeal has concluded its review. Such a referral may only be made with the leave of the Court of Appeal or the Supreme Court. Schedule 4 to the Bill contains

supplementary provision relating to reviews of sentencing and references to the Supreme Court.

Failure to disclose information about the victim's remains

83. Part 5 provides that where –

- a person has been convicted of murder or manslaughter;
- the court dealing with the offender does not know where the victim's remains were disposed of;
- the court believes the offender has information about where or how the victim's remains were disposed of;
- the court is imposing a custodial sentence of a kind specified in this Part,

the sentence passed by the court must contain an additional custodial period to take account of effect of the non-disclosure, unless the court considers it would be contrary to the interests of justice.

84. This Part also allows that where an offender, in respect of whom a specified custodial sentence has been passed in accordance with this Part, makes a statement which contains information about where or how the victim's remains were disposed of (whether or not that information leads to the recovery of the body), and that statement is not rejected by the Department, the Department must reduce the additional custodial period in line with the calculation set out in this Part.

85. These provisions will apply to sentences passed before commencement.

86. Provision is also made to place a duty on the Parole Commissioners to consider a failure to disclose.

Particular persons or groups

87. Part 6 creates a number of statutory aggravators in respect of aggravation by hostility, aggravation by reason of vulnerability and aggravation where an offence is committed against a public worker. It also creates a new offence of assault on a public worker or a person assisting a public worker who is acting in exercise of their functions.

Road traffic offences

88. Part 7 makes provision increasing penalties for certain road traffic offences where death or serious injury is caused. In determining the maximum sentence or the period of disqualification for certain repeat offences regard is had to the offender's previous convictions. Schedule 6 makes amendments relating to the extension of disqualification for driving which will reflect any custodial period imposed by a court at the same time as the driving ban.

General

89. Part 8 makes general provision including general regulation making powers, interpretation, transitional and saving provisions and commencement.

COMMENTARY ON CLAUSES

PART 1

EXERCISE OF COURT'S DISCRETION WHEN SENTENCING

Clause 1: Purposes and principles of sentencing: adults

Subsection (1) sets out that this section applies where a person aged 18 or over is convicted of an offence and a court is dealing with that person in respect of the offence.

Subsection (2) sets out the sentencing purposes that the court must have regard to. The court must consider the punishment of offenders, protection of the public (including victims of crime), reduction of crime by deterrence, rehabilitation of offenders and offenders making reparation to persons affected by their offences.

Subsection (3) makes provision for the sentencing principles that the court must have regard to. The court must have regard to the fact that a sentence passed must be proportionate, fair and transparent.

Subsection (4) makes provision for the interpretation of proportionate.

Subsection (5) provides for the exceptions where this section does not apply.

Subsection (6) provides that references to any sentence described in section 1(5)(b) are also to be read in conjunction with Article 4(2) of the Criminal Justice (Northern Ireland) Order 2008.

Subsection (7) provides that the duty to have regard to the principles in subsection (3) is subject to any other statutory provision or rule of law which requires or permits a court to consider any other matter for the purposes of sentencing.

Clause 2: Duty to follow and give reasons in relation to sentencing guidance

Subsection (1) provides that a court must, in sentencing an offender, follow any sentencing guidance which is relevant to the offender's case, unless the court is satisfied that it would be contrary to the interests of justice to do so.

Subsection (2) provides that this duty is subject to any statutory provision or rule of law that requires a court when sentencing an offender to impose, or not to impose a particular sentence or sentence of a particular description or take any matter into account or to exercise its discretion in a particular way.

Subsection (3) provides that in stating its reasons for deciding on the sentence, the court must identify any sentencing guidance which is relevant to that case and explain how it discharged the duty imposed by subsection (1).

Clause 2(4) defines “sentencing guidance”.

Subsection (5) provides that nothing in this section is to be taken as restricting any power which enables a court to deal with an offender suffering from a mental disorder in the manner it considers to be most appropriate in the circumstances.

PART 2

SUSPENDED SENTENCES

Availability and effect of suspended sentence orders

Clause 3: Suspended sentence order: availability

Subsection (1) makes provision for this section’s application. It will apply where a court passes a sentence of imprisonment or detention in a young offenders centre.

Subsections (2) and (3) make provision for when a suspended sentence order may be made. The court may make a suspended sentence order where the offence is not serious, and the term of the sentence is not more than 2 years or where the offence is serious and the term of the sentence is not more than 7 years.

Subsection (4) provides a definition for the term “serious offence” as it applies in subsections (2) and (3).

Clause 4: suspended sentence order

Subsection (1) provides for what a suspended sentence order is and indicates that it cannot take effect until an activation event occurs (see subsection (4) below) and the court orders (paragraph 8 of Schedule 2) that the sentence is to take effect.

Subsection (2) indicates that a suspended sentence order may also specify community requirements that the offender must comply with during the supervision period. There can be one or more community requirements attached to each suspended sentence order.

Subsection (3) outlines that where there is a community requirement, the suspended sentence order must also state that the offender is to be under the supervision of a responsible officer.

Subsection (4) defines an activation event as referred to in subsection (1) above. An activation event will occur if the offender commits another imprisonable offence in Northern Ireland during the operational period, or breaches any requirement specified in the suspended sentence order during the supervision period.

Subsection (5) directs the reader to further provisions relating to operational and supervision periods, community requirements, and the responsible officer.

Subsection (6) provides definitions for “imprisonable offence”, “suspended sentence” and “suspended sentence order”.

Subsection (7) outlines that a reference in this Part to a community requirement or requirement in relation to a suspended sentence order is to a community requirement specified under subsection (2) or a to a requirement specified under subsection (2) or (3) respectively.

Clause 5: Operational period and supervision period

Subsection (1) states that a suspended sentence order must specify the operational period.

Subsection (2) requires that the operational period is a period of at least one year beginning with the day the suspended sentence order is made but not more than 3 years (if the suspended sentence order is made under section 3(2)) or more than 5 years (if the suspended sentence order is made under section 3(3)).

Subsection (3) states that if a community requirement is imposed by the suspended sentence order, then the order must state the supervision period.

Subsection (4) requires that the supervision period is a period of at least 6 months but not more than 3 years beginning with the day the suspended sentence order is made. If less than 3 years, then its duration should be the operational period.

Subsection (5) outlines the supervision period where the suspended sentence order imposes an unpaid work requirement. In such cases, the supervision period continues until the offender has worked under the order for the number of hours specified in the order but will not continue beyond the end of the operational period.

Clause 6: Provision of copies of the orders and explanation of effect

Subsection (1) provides that this section applies on the making of a suspended sentence order.

Subsection (2) states that the court must explain to the offender in ordinary language the offender’s liability under paragraph 8 of Schedule 2 if an activation event occurs.

Subsection (3) states that subsection (4) and (5) apply where the suspended sentence order imposes one or more community requirements.

Subsection (4) states that the court must explain to the offender in ordinary language why it is imposing the community requirements, their effect and that the court can review the order under Schedule 2.

Subsection (5) states that the court must provide copies of the order to a probation officer assigned to the court.

Subsection (6) sets out who the probation officer must give copies of the order to.

Clause 7: Treatment of suspended sentence

Subsection (1) states how a suspended sentence that has not taken effect should be treated for the purposes of all statutory provisions except those which provide for the disqualification for or loss of office of persons sentenced to imprisonment.

Subsection (2) outlines how to determine the conviction date of a suspended sentence which has taken effect in respect of the excepted statutory provisions.

Subsection (3) outlines that subsection (1) is subject to any provision to the contrary contained in the Treatment of Offenders Act (Northern Ireland) 1968 or any other statutory provision passed or made after the commencement of that Act.

Community requirements

Clause 8: Community requirements

Subsection (1) states the statutory provisions under which a community requirement may be authorised.

Subsection (2) provides that Schedule 1 to the Criminal Justice (Northern Ireland) Order 1996 (“the 1996 Order”) applies to a suspended sentence order as it does to a probation order made under Article 10 of the 1996 Order. Schedule 1 gives details about requirements such as residence, activities, attendance at a day centre and treatment for mental conditions, drug and alcohol dependency.

Subsection (3) modifies Schedule 1 to the 1996 Order as it applies to a suspended sentence order.

Clause 9: Exercise of power to impose community requirements

Subsection (1) states that this section applies where a court intends to make a suspended sentence order that contains community requirements.

Subsection (2) states that the power of the court to impose a community requirement is subject to the provision authorising the requirement.

Subsection (3) states that, where 2 or more community requirements are imposed, the court must, before making the order, consider if they are compatible with each other.

Subsection (4) states that the court must ensure as far as practicable, that community requirements imposed avoid conflict with the offender’s religious beliefs; conflict with any other court order to which the offender may be subject; and interference with times that the offender usually works or attends educational establishment.

Clause 10: Requirement to obtain pre-sentence report

Subsections (1) and (2) state that the court, before deciding whether to impose a community requirement, must obtain and consider a pre-sentence report, unless it is of the opinion this is unnecessary.

Subsection (3) outlines what the court is required to state in open court if it is of the view that a pre-sentence report is unnecessary.

Subsection (4) provides that an order is not invalidated if the court does not obtain a pre-sentence report beforehand.

Subsection (5) sets out the duties on any appeal court in relation to pre-sentence reports.

Subsection (6) outlines when the appeal court is not obliged to obtain a pre-sentence report.

Subsection (7) provides a definition for “pre-sentence report” in this section and allows for the content of the pre-sentence report to be prescribed in regulations made by the Department.

Subsection (8) provides that such regulations are subject to negative resolution.

Responsible officer

Clause 11: Responsible officer

Subsection (1) sets out the application, for the purposes of this Part, of this section as it applies where a suspended sentence order is made which imposes one or more community requirements.

Subsection (2) defines the responsible officer in relation to the offender and outlines their responsibilities.

Subsection (3) clarifies that “the functions conferred by this Part” referred to in subsection (2)(b) includes those functions conferred by Schedule 1 to the 1996 Order and Chapter 5 of Part 2 of the Criminal Justice (Northern Ireland) Order 2008 (“the 2008 Order”).

Subsection (4) provides that the responsible officer must be a probation officer selected by the Probation Board or a person appointed by the Probation Board.

Clause 12: Obligations of the responsible officer

Subsection (1) states that this section applies during the supervision period of a suspended sentence order that imposes a community requirement.

Subsection (2) states that the responsible officer must make any arrangements that are necessary in connection with the requirements imposed by the order and promote the offender’s compliance with those requirements.

Subsection (3) provides that this is subject to paragraphs 4(5) and 5(5) of Schedule 1 to the Criminal Justice (Northern Ireland) Order 1996 (in-patient treatment for a mental health or drug or alcohol dependency).

Subsection (4) sets out that the responsible officer must ensure, as far as practicable, that any instruction given or requirement imposed by the officer is such as to avoid any conflict with the offender's religious beliefs, any conflict with any other court order the offender may be subject to and interference with the times, if any, the offender would normally work or attend any educational establishment.

Clause 13: Duty of offender to keep in touch with responsible officer

Subsection (2) outlines the offender's responsibilities to keep in touch with the responsible officer in accordance with their instructions.

Subsection (3) states that it is the responsibility of the offender to notify the responsible officer of any change of address.

Subsection (4) provides that the obligations in this section are enforceable as if they were community requirements imposed by the suspended sentence order.

Activation of sentence and amendment of order etc.

Clause 14: Breach or amendment of suspended sentence order, and effect of further conviction

This section outlines what is provided for in Schedule 2, which is the effect of any further conviction on the suspended sentence order; and details about the breach or amendment of requirements of an order.

Supplementary

Clause 15: Regulation of suspended sentence orders

Subsection (1) sets out that the Department may make regulations about the supervision of offenders who are subject to suspended sentence orders, the arrangements for work under Article 4(1)(b) of the Probation Board (Northern Ireland) Order 1982 and the functions of responsible officers.

Subsection (2) indicates that such regulations may make provision for limiting the hours an offender can work in one day, reckoning of hours and keeping work records and payment of travelling and other expenses relating to the performance of work.

Subsection (3) provides that such regulations are subject to negative resolution.

Clause 16: Restriction on making both community order and suspended sentence order

This clause restricts the court, when making a suspended sentence order, from making a community order for another offence for which the offender is convicted or dealt with by or before that court at the same time.

Clause 17: Interpretation

Clause 17 sets out definitions of terms used in this Part.

PART 3

LIFE SENTENCES

Clause 18: Duty to give reasons when determining a tariff

Clause 18 inserts new paragraph (3A) into Article 5 of the Life Sentences (Northern Ireland) Order 2001 (“the 2001 Order”) to provide that where the court makes an order under paragraph (1) or (3) the court must state in open court the court’s reasons for making the order and explain to the offender the effect of the order.

Clause 19: Mandatory life sentences for adult offenders: further provision

Subsection (1) inserts new Article 5B into the 2001 Order to make further provision for mandatory life sentences for adult offenders.

This new Article makes provision so that the court must take into consideration the general principles in Schedule A1 which is inserted into the 2001 Order. It also requires the court, when complying with Article 5(3A)(a), to state which of the starting points in Schedule A1 it has chosen and the reasons for that choice together with any reasons for departing from the starting point.

Subsection (2) introduces Schedule 3 which inserts new Schedule A1 into the 2001 Order.

PART 4

UNDULY LENIENT SENTENCES

Clause 20: Cases to which this Part applies

Subsection (1) provides that this Part applies to any cases falling within subsection (2) or (3).

Subsection (2) provides that a case falls within this subsection if a person is convicted on indictment of an offence and a sentence is imposed upon that person.

Subsection (3) provides that a case falls within this subsection if a person is convicted on summary trial of an offence which is described in regulations made by the Department and a sentence is imposed upon that person.

Subsection (4) provides that such regulations will be subject to negative resolution.

Subsection (5) provides a definition for “sentence” in this Part.

Clause 21: Review of sentencing

Subsection (1) makes provision for the Director of Public Prosecutions Northern Ireland (“the Director”) to refer a case, where it appears to the Director that the sentencing of a person has been unduly lenient, to the Court of Appeal to review.

Subsection (2) sets out the circumstances which may fulfil subsection (1)(a). This may be where the judge erred in law as to the sentencing powers available or failed to impose a sentence required by various statutory provisions specified.

Subsection (3) makes provision about how references to sentences falling to be imposed are to be read.

Subsection (4) provides that the Director must obtain leave from the Court of Appeal before referring a case.

Subsection (5) gives the Court of Appeal power to quash the sentence and pass a sentence it considers more appropriate. This new sentence must be one which the court below had power to pass when dealing with the case.

Subsection (6) provides that for the purposes of subsection (5)(a) two or more sentences are treated as being in the same proceedings if they are so treated for the purposes of section 10(2) of the Criminal Appeal (Northern Ireland) Act 1980.

Subsection (7) provides that where a reference is made under subsection (1) and relates to an order under Article 5(1) of the Life Sentences (Northern Ireland) Order 2001, the Court of Appeal must not make any allowance for the fact that the person is being sentenced for a second time.

Subsection (8) provides that a judge must not sit as a member of the Court of Appeal when hearing a reference or determining a related application where the sentence being considered is one where the judge made the original decision.

Clause 22: Reference to the Supreme Court

Subsection (1) sets out the application of this section. It applies where the Court of Appeal has concluded its review on a case referred to under section 21(1).

Subsection (2) allows the Director or any person to whose sentencing the reference relates to refer a point of law to the Supreme Court for its opinion.

Subsection (3) provides for the obligations of the Supreme Court when a point of law is referred to it. It must consider the point and give its opinion and then either deal with it or remit it to the Court of Appeal to be dealt with.

Subsection (4) provides that a reference made under subsection (2) is only permitted with leave of the Court of Appeal or Supreme Court.

Subsection (5) provides that leave must not be granted unless it is certified by the Court of Appeal that the point of law is of general public importance and it appears to the Court

of Appeal or the Supreme Court that it is a point that ought to be considered by Supreme Court.

Subsection (6) provides that in dealing with any case under this section the Supreme Court may exercise any of the Court of Appeal's powers.

Clause 23: Supplementary provision

Clause 23 introduces Schedule 4 which contains supplementary provisions.

PART 5

FAILURE TO DISCLOSE INFORMATION ABOUT VICTIM'S REMAINS

Increase to sentence following failure to disclose

Clause 24: Determining the length of the custodial period

Subsection (1) sets out that this section applies where –

- a person ("A") has been convicted of the offence of murder or manslaughter,
- the court dealing with A in respect of the offence does not know where the victim's remains were disposed of,
- the court believes that A has information about where, or how, the victim's remains were disposed of which A has not disclosed ("A's non-disclosure"), and
- the court is imposing a specified custodial sentence on A in respect of the offence and determining the relevant custodial period.

Subsection (2) provides that this section does not apply where the court considers that it would not be in the interests of justice for it to apply.

Subsection (3) sets out the steps to be taken by the court in determining the relevant custodial period.

Subsection (4) provides that the additional custodial period is such additional period in custody as the court considers appropriate to take account of the effect of the non-disclosure of the victim's remains. In doing so the court may have regard to the time elapsed since the offence and any other matter it considers relevant.

Subsection (5) makes provision about the length of the additional custodial period; that it must not be less than 30% of the notional custodial period in certain cases and not less than 30% of the term of the notional custodial sentence in others.

Subsection (6) places a duty on the court to specify the additional custodial period, when passing a sentence in accordance with this section.

Clause 25: Calculation of term of certain sentences where section 24 applies

Subsection (1) sets out that this section applies when the court has determined the relevant custodial period in accordance with section 24 and the sentence imposed is listed in subsection (2).

Subsection (2) lists the sentences to which this section applies.

Subsection (3) provides that the term of the sentence must be the aggregate of the term of the notional custodial sentence and the additional custodial period. .

Clause 26: Effect of sections 24 and 25 on other sentencing provisions

This section makes provision in relation to existing statutory provision relating to particular sentences and how those provisions operate alongside section 24 and 25.

Subsection (1) provides that where a court passes a specified custodial sentence in accordance with any statutory provision, it is subject to sections 24 and 25.

Subsection (2) states that certain statutory provisions listed in subsection (3) do not apply to the extent specified in those provisions where the court is determining the relevant custodial period in accordance with section 24 or the term of a specified custodial sentence in accordance with section 25.

Subsection (3) lists the statutory provisions referred to in subsection (2).

Schedule 5 makes further provision in relation to this.

Clause 27: Meaning of “specified custodial sentence” and “relevant custodial period”

This section sets out a table which defines the terms “specified custodial sentence” and “relevant custodial period” for the purposes of this Part.

Reduction to sentence following disclosure

Clause 28: Relevant disclosure

Subsection (1) provides what a relevant disclosure is for the purposes of sections 28 – 30. A relevant disclosure is one that is made by the offender in respect of whom a specified custodial sentence is passed in accordance with section 24, which is made before the end of the relevant custodial period of that sentence, is made on oath to any person nominated by the Department, and contains information about where or how the victim’s remains were disposed of (whether or not the information leads to the recovery of the victim’s remains).

Subsection (2) provides that where an offender makes a relevant disclosure the Department must take reasonable steps to verify the accuracy of it.

Subsection (3) states that the Department must reject a relevant disclosure if the information is false in a material way or the offender has further information about where or how the victim’s remains were disposed of which the offender has not disclosed.

Subsection (4) states that in any other case the Department must accept the relevant disclosure.

Subsections (5) and (6) provide the Department with a regulation making power in respect of relevant disclosures.

Subsection (7) provides that such regulations are subject to draft affirmative resolution before the Assembly.

Clause 29: Reduction to sentence

Subsection (1) states that this section applies where an offender makes a relevant disclosure and the Department accepts it.

Subsection (2) provides that this section does not apply if the relevant disclosure is made during the period of 1 month ending with the day on which the relevant custodial period is due to end.

Subsections (3) to (7) make provision for and set out the formula by which the relevant custodial period must be reduced where a relevant disclosure is accepted.

Subsection (8) is an interpretation provision.

Clause 30: Application to sentences passed before commencement

Subsection (1) states that this section applies where an offender is detained under a specified custodial sentence passed in respect of murder or manslaughter, before the commencement date, and when sentencing the offender the court did not know, where the victim's remains were disposed of, believed the offender had information about where or how the remains were disposed of, and treated that non-disclosure as an aggravating factor.

Subsections (2) to (8) make provision as to how the provision about relevant disclosure and reduction of custodial period apply in such circumstances.

Parole Commissioners

Clause 31: Duty to consider failure to disclose

This section provides that the Parole Commissioners must obtain and consider information relating to the prisoner's non-disclosure where they are making a public protection decision in respect of a prisoner, where the sentence was passed for murder or manslaughter, the Commissioners do not know where the victim's remains were disposed of and they believe that the prisoner has information about where or how the remains were disposed of which the prisoner has not disclosed.

Subsection (3) sets out what the Commissioners must take into account when making the public protection decision. But this does not limit other matters which they must or may take into account (subsection (4)).

Subsection (5) explains what the references to murder and manslaughter in subsection (1)(b) include.

PART 6

PARTICULAR PERSONS OR GROUPS

Aggravation by hostility

Clause 33: Aggravation by hostility

Subsection (1) makes provision that it may be specified as an allegation alongside the charge of an offence that the offence is aggravated by different types of hostility. Paragraphs (a)-(d) outline the categories of hostility – racial, religious, sexual orientation, or disability.

Subsection (2) sets out the conditions to be satisfied for an offence to be aggravated by hostility. Such hostility may either be demonstrated towards a victim based on the victim's membership (or presumed membership) of a particular group or an offence may be motivated by hostility towards members of a group. Membership of a group includes those who associate themselves with members of a group.

Subsection (3) provides that for the purpose of subsection (2) it is irrelevant if the alleged perpetrator's hostility is based to any extent on any other factors.

Subsection (4) provides for definitions of terms used in this section.

Clause 34: Consequences of aggravation by hostility

Subsection (1) provides for when subsection (2) applies. It applies when the allegation of aggravation is specified and both the charge and allegation of aggravation are proven.

Subsection (2) states the court's obligations. The court must state on conviction that the offence is aggravated by the offender's hostility and give its reasons, record the offence to show it is aggravated, when determining sentence, treat the aggravation as a factor that increases the seriousness of the offence and on imposing sentence, explain how it affects the sentence.

Subsection (3) sets out how the offence should be treated if the offence is proven but not the aggravator. If this is the case the conviction should continue as if there was no reference to the aggravator alongside the charge.

Clause 35: Power to add further kinds of hostility

Subsection (1) empowers the Department to make regulations to amend section 34 to add further kinds of hostility and specify circumstances where an offence is aggravated by hostility.

Subsection (2) limits the regulations to the kinds of hostility which relate to a group or characteristic.

Subsections (3) and (4) make provision to allow the regulations to make supplementary, incidental or consequential provision and transitory, transitional or saving provisions as the Department considers necessary or expedient to the making of such regulations. It also allows the regulations to amend, repeal, revoke or otherwise modify any statutory provision, including the Bill.

Subsection (5) provides that regulations made under this section are subject to draft affirmative resolution procedure.

Aggravation by reason of vulnerability

Clause 36: Aggravation by reason of vulnerability

Subsection (1) provides that an allegation can be specified alongside a charge of an offence that the offence is aggravated by reason of victim's vulnerability. This is subject to subsection (6) which states that the vulnerability aggravator cannot be alleged where the vulnerability characteristic relied on to prove that the victim is vulnerable e.g. a child, is also an element of the offence.

Subsection (2) provides for the conditions which must be fulfilled before an offence can be categorised as being aggravated by way of the victim's vulnerability: at the time of the offence the victim was a vulnerable person and the offender knew or ought reasonably to have known that the victim was a vulnerable person.

Subsection (3) makes provision for the circumstances where subsection (4) will apply. There must be a specified allegation of aggravation and both the aggravation, and the charge must be proven for subsection (4) to apply.

Subsection (4) states the court's obligations when dealing with conviction and sentence. The court must state on conviction that the offence is aggravated by the victim's vulnerability, record the offence to show it is aggravated, when determining sentence, treat the aggravation as a factor that increases the seriousness of the offence and, on imposing sentence, explain how it affects the sentence.

Subsection (5) makes provision for how the offence should be treated if the offence is proven but not the aggravator. If this is the case, the conviction should continue as if there was no previous reference to the aggravator alongside the charge.

Subsection (6) outlines the circumstances where this section does not apply.

Subsection (7) provides the definition of "vulnerable person" when referred to in this section.

Public workers etc

Clause 37: Assaults on public workers etc.

Subsection (1) creates the offence of assault on a public worker who is acting in the exercise of their functions where the offender knows or ought reasonably to know that the person was a public worker.

Subsection (2) provides that a person commits an offence if the person assaults a person assisting a public worker who is acting in the exercise of their functions and the person knows or ought reasonably to know that the person was assisting a public worker.

Subsection (3) provides a definition of “a public worker”.

Subsection (4) makes provision so that it is irrelevant whether the exercise of functions as a public worker is paid or unpaid.

Subsection (5) makes provision about sentence on conviction.

Subsection (6) explains what reference to providing services to the public in this section include.

Clause 38: Aggravation where offence committed against public workers

Subsection (1) provides for an allegation of aggravation by reason of being committed against a public worker to be specified alongside a charge of a specified offence.

Subsection (2) says that an offence is aggravated by reason of being committed against a public worker if it is committed against a public worker acting in the exercise of their functions and the person charged with the offence knew or ought reasonably to have known that the victim was a public worker.

Subsection (3) lists the specified offences to which this section applies.

Subsection (4) sets out the definitions of terms used in this section.

Subsection (5) makes provision for when it is considered that an offence of encouraging or assisting offenders is related to another offence or offences.

Subsection (6) allows a court to consider the fact that the offence was committed on a public worker as an aggravating factor when dealing with an offence not listed in subsection (3).

Clause 39: Consequences of aggravation where offence committed against public workers

Subsection (1) provides for the application of this section. It applies where an allegation of aggravation is specified and both the aggravation and the original charge are proven.

Subsection (2) states the court’s obligations when dealing with conviction and sentence. The court must state on conviction that the offence is aggravated by reason of being committed against a public worker exercising their functions and record the offence to show it is aggravated. The court must also, when determining sentence, treat the

aggravation as a factor that increases the seriousness of the offence and on imposing sentence, explain how it affects the sentence.

Subsection (3) makes provision for how the offence should be treated if the offence is proven but not the aggravator. If this is the case, the conviction should continue as if there was no reference to the aggravator alongside the charge.

PART 7

ROAD TRAFFIC OFFENCES

Clause 40: Causing death or grievous bodily injury by driving while disqualified

Subsection (1) inserts new Article 12C to the Road Traffic (Northern Ireland) Order 1995. That new Article contains the offence of causing death or grievous bodily injury by driving while disqualified, which was previously included in Article 12B of that Order.

Subsection (2) amends Part 1 of Schedule 1 to the Road Traffic Offenders (Northern Ireland) Order 1996 to increase 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.

Clause 41: Period of imprisonment for certain offences

This section amends Part 1 of Schedule 1 to the Road Traffic Offenders (Northern Ireland) Order 1996.

Subsection (2) amends column 4 of the entry relating to Article 9 of the Road Traffic (Northern Ireland) Order 1995 (causing death or grievous bodily injury by dangerous driving) to increase the maximum penalty to 20 years.

Subsection (3) amends column 4 of the entry relating to Article 14 of the Road Traffic (Northern Ireland) Order 1995 (causing death or grievous bodily injury by careless driving when under the influence of drink or drugs) to increase the maximum penalty to 20 years.

Clause 42: Period of imprisonment for certain repeat offences

Section 42 inserts new Article 34A into the Road Traffic Offenders (Northern Ireland) Order 1996. The new Article provides for an increased maximum sentence where an offender has a previous relevant conviction for an offence under Article 9 or Article 14 of the Road Traffic (Northern Ireland) Order 1995 and commits a further offence under these provisions within the 'relevant period'. Where a custodial sentence (other than a suspended sentence) was imposed for the earlier offence, the relevant period will begin at the date of conviction and end 10 years after the person has served the 'required custodial period' for the earlier offence. In any other case, the relevant period is 10 years beginning at the date of conviction for the earlier offence.

Paragraph (4) of the new Article defines “required custodial period”. Paragraph (5) provides that where the earlier offence was one of two or more associated offences, and the court imposed two or more custodial sentences, the court must treat the longest of the custodial periods as the required custodial period. This accounts for the period that the offender will be unable to drive whilst in custody.

Section 42 also inserts new Article 34B which provides that where a sentence has been imposed on a person in reliance on Article 34A but the conviction for the earlier relevant offence has been set aside or modified, and, in the absence of that conviction or in light of the modification, the requirement in Article 34A(1)(a) would not have been met, a notice of appeal against sentence may be submitted at any time within 28 days beginning with the date on which the previous conviction was set aside or modified.

Clause 43: Disqualification period for certain offences

Section 43 amends Article 35 of the Road Traffic Offenders (Northern Ireland) Order 1996.

Subsection (2) inserts new paragraph (4ZA) which provides that the minimum disqualification period for offences under Article 9 or Article 14 of the Road Traffic (Northern Ireland) Order 1995 will be increased to 4 years.

Subsection (3) makes consequential amendments to paragraph (4).

Clause 44: Disqualification period for certain repeat offences

Section 44 makes further amendments to Article 35 of the Road Traffic Offenders (Northern Ireland) Order 1996. It substitutes new paragraph (3) to (3ZB) for existing paragraph (3).

The new paragraph (3) provides for an increase in the minimum disqualification period prescribed in paragraph (1) for certain repeat offences.

Where a person has been convicted of an offence listed within paragraph (3)(a) and is convicted of a further offence falling within that paragraph (“the new offence”) during the relevant period, the period specified in paragraph (3ZB) will apply instead of the minimum disqualification period of 12 months referred to in paragraph (1).

Paragraph (3ZB) is subject to paragraph (4ZA) in cases where the new offence falls within paragraph (3)(a)(i) or (ii) but the earlier offence falls within paragraphs (3)(a)(iii) to (3)(a)(vi).

New paragraph (3ZA) provides that the ‘relevant period’ referred to in paragraph (3)(b) has the same meaning as in Article 34A.

New paragraph (3ZB) specifies the period referred to in paragraph (3) which will apply instead of the minimum disqualification period of 12 months referred to in paragraph (1).

Sub-paragraph (3ZB)(a) provides that where the new offence and the earlier offence fall within Article 9 or Article 14 of the 1995 Order, the minimum obligatory disqualification period for the new offence will be 6 years.

By virtue of paragraph (3), paragraph (3ZB) is subject to paragraph (4ZA) in cases where the new offence is an offence under Article 9 or Article 14 of the 1995 Order and the earlier offence falls within paragraphs (3)(a)(iii) to (3)(a)(vi). This has the effect that the minimum obligatory disqualification period for the new Article 9 or Article 14 offence in those circumstances will be 4 years.

Sub-paragraph (3ZA)(b) provides that, in any other case, the minimum disqualification period for the new offence is 3 years.

Clause 45: Extension of disqualification for driving

Section 45 introduces Schedule 6 which makes amendments to provisions that will be commenced separately by order to give effect to the requirement that when a Court imposes a custodial sentence and a period of disqualification from driving, an extension period should be added to the disqualification period to account for time that the offender will spend in custody.

PART 8

GENERAL

Clause 46: Further provision

This section confers, on the Department, power to make regulations for general or particular purposes or in consequence of, or for giving full effect to, any provision made by this Bill.

Clause 47: Interpretation

This section deals with matters of interpretation in the Bill.

Clause 48: Minor and consequential amendments

This section introduces Schedule 7 which contains minor and consequential amendments.

Clause 49: Transitional provisions and savings

This section sets out transitional provision and saving provision for the Act.

Clause 50: Commencement

This section sets out the commencement provision for this Act.

Section 51: Short title

This section is the short title of the Act.

SCHEDULES

SCHEDULE 1: SUSPENDED SENTENCE ORDERS: UNPAID WORK REQUIREMENT

Requirement and obligation of offender

Paragraph 1(1) makes provision for unpaid work to be included in a suspended sentence order. An offender must perform the unpaid work in accordance with the instructions provided by the responsible officer as to the work to be performed and the times it is to be performed at.

Paragraph 1(2) makes provision for when the unpaid work must be performed, subject to an extension provided for by paragraph 19 of Schedule 2.

Paragraph 1(3) sets out what the responsible officer must, so far as practicable avoid when giving instructions. This mirrors the provisions of section 9(4) in relation to what the court must ensure when imposing community requirements.

Number of hours of unpaid work to be specified in order

Paragraph 2(1) sets out that the number of hours an offender may be required to work under an unpaid work requirement must be specified in the order and in the aggregate be not less than 40 and not more than 240.

Paragraph 2(2) provides that the maximum number of hours is subject to paragraph 12(4) and 17(3) of Schedule 2.

Paragraph 2(3) sets out that sub-paragraphs (4) and (5) apply where a court makes suspended sentence orders in respect of two or more offences of which the offender is convicted on the same occasion and includes unpaid work requirements in each of them.

Paragraph 2(4) makes provision for the court to direct that the hours of work specified in any unpaid work requirement is to be concurrent with or additional to those specified in any of the suspended sentence orders.

Paragraph 2(5) provides that the total number of hours which are not concurrent must not exceed the maximum number of hours as outlined in sub-paragraph (1)(b)(ii).

Restriction on imposing unpaid work requirement

Paragraph 3(1) provides the conditions on which the court must be satisfied before it imposes an unpaid work requirement.

Paragraph 3(2) provides that in deciding whether the offender is a suitable person to perform work under an unpaid work requirement, the court thinks necessary to hear from a probation officer, it must do so.

SCHEDULE 2: BREACH OR AMENDMENT OF SUSPENDED SENTENCE ORDER, AND EFFECT OF FURTHER CONVICTION

PART 1

PRELIMINARY

Interpretation

Paragraphs 1 and 2 are interpretation provisions for this schedule.

PART 2

BREACH OF REQUIREMENT OF ORDER OR CONVICTION FOR FURTHER OFFENCE

Breach of requirement: issue of summons or warrant by lay magistrate

Paragraph 3(1) sets out where this paragraph applies. It applies when it appears, on a complaint made to a lay magistrate during the supervision period of a suspended sentence, that an offender has breached any requirement of the order.

Paragraph 3(2) sets out lay magistrates' powers to issue a summons or warrant of arrest for the offender, subject to sub-paragraphs (3) and (4).

Paragraph 3(3) sets out that a warrant or summons issued under this paragraph must direct the offender to appear or be brought to the court by which the order was made.

Paragraph 3(4) allows a warrant or summons requiring the offender to be brought before the Crown Court to have the same effect as if it directed the offender to be brought before the magistrates' court, if the Crown Court is not being held.

Paragraph 3(5) provides for the scenario in sub-paragraph (4) and requires the magistrates' court to commit the offender in custody or on bail to the Crown Court.

Magistrates' court: breach of requirement

Paragraph 4 requires a magistrates' court to deal with an offender under paragraph 8 where the court is satisfied a breach of a requirement has occurred without reasonable excuse.

Magistrates' court: further conviction

Paragraph 5(1) requires a magistrates' court to deal with an offender under paragraph 8 where an offender is convicted of a further offence or subsequently appears or is brought before a magistrates' court.

Paragraph 5(2) prescribes the procedure for dealing with an offender who has been convicted by magistrates' court of an imprisonable offence, and the court is satisfied it

was committed during the operational period of a suspended sentence order made by the Crown Court.

Crown Court: breach of requirement

Paragraph 6(1) and (2) make provision requiring the Crown Court to deal with breaches of requirements under paragraph 8.

Paragraph 6(3) makes provision for any proceedings under this paragraph where a question arises about whether the offender has breached a requirement to be dealt with by the court and not by verdict of the jury.

Crown Court: further conviction

Paragraph 7(1) and (2) make provision requiring the Crown Court to deal with further convictions under paragraph 8.

Paragraph 7(3) makes provision for any proceedings under this paragraph where a question arises about whether the offender has breached a requirement to be dealt with by the court and not by verdict of the jury.

Powers of court to deal with offender on breach of requirement or subsequent conviction

Paragraph 8 prescribes the ways in which an offender may be dealt with under this paragraph.

Paragraph 8(2) provides the notification requirements when a court other than the court which passed the suspended sentence order, deals with an offender under sub-paragraph (1).

Paragraph 8(3) provides that where a case is considered and no order made, the appropriate officer must record that fact.

Paragraph 8(4) makes provision for the way an order is to be treated for the purposes of Article 140 of the Magistrates' Court (NI) Order 1981.

Exercise of power in paragraph 8: duty to activate suspended sentence where not unjust

Paragraph 9(1) provides that where a court deals with a case under paragraph 8, it must make an order (under paragraph 8(1)(a)) unless it would be unjust in all the circumstances and this includes matters in sub-paragraph (2).

Paragraph 9(2) defines matters referred to in sub-paragraph (1): compliance with requirements of the suspended sentence order and the facts of any further offence.

Paragraph 9(3) provides that where a court is of the view it would be unjust to make an order, it must state its reasons.

Activation of suspended sentence: further provision

Paragraph 10(1) sets out the timing of when an order under paragraph 8(1)(a) or (b) is to take effect.

Paragraph 10(2) provides that sub-paragraph (1) has effect notwithstanding other provisions relating to restrictions on consecutive sentences.

Paragraph 10(3) makes provision for the treatment of an order for detention in a young offenders centre where an order under paragraph 8(1)(a) or (b) is to take effect.

Paragraph 10(4) makes provision for the way an order made by the Crown Court under paragraph 8(1)(a) or (b) is to be treated for the purposes of section 9(2) of the Criminal Appeal (Northern Ireland) Act 1980.

Power under paragraph 8 to fine

Paragraph 11 provides that a fine imposed under paragraph 8(1)(c) is to be treated as a sum paid by a conviction.

Power under paragraph 8 to amend community requirements: further provision

Paragraph 12 applies where a court is amending a suspended sentence order by imposing a community requirement under paragraph 8(1)(d)(ii) or (e)(i).

Paragraph 12(2) provides that a court may only do this if the court could have included the requirement at the time of the conviction.

Paragraph 12(3) provides that the power to vary or impose requirements made under paragraph 8(1)(d)(ii) or (e)(i) is subject to any provision that applies to the court in making a suspended sentence order as if the court were making the order.

Paragraph 12(4) places a restriction on the court as to how many unpaid work hours the offender is required to do when a suspended sentence order does not contain an unpaid work requirement and the court inserts one.

Exclusion: refusal to undergo certain treatment

Paragraph 13(1) sets out when sub-paragraph (2) applies: where the offender is subject to a treatment requirement and refused to undergo any surgical, electrical or other treatment.

Paragraph 13(2) provides that if in the opinion of the court the breach was reasonable in all the circumstances, it should not be treated as a breach.

Paragraph 13(3) defines the term “treatment requirement” for the purposes of this paragraph.

Issue of summons or warrant where court convicting of further offence does not deal with suspended sentence

Paragraph 14(1) sets out how this paragraph applies. It applies where it appears to a lay magistrate that an offender has been convicted in Northern Ireland of an imprisonable offence committed during the operational period of a suspended sentence order and has not been dealt with in respect of the suspended sentence.

Paragraph 14(2) confers powers on the lay magistrate to issue a summons or warrant of arrest (subject to sub-paragraphs (3) and (4)).

Paragraph 14(3) prevents the lay magistrate under this paragraph from issuing a summons except on complaint, or a warrant except on complaint in writing and on oath.

Paragraph 14(4) requires the summons or warrant issued to direct the offender to appear before the court by which the suspended sentence was passed.

Paragraph 14(5) allows a warrant or summons requiring the offender to be brought before the Crown Court to have the same effect as if it directed the offender to be brought before the magistrates' court if the Crown Court is not being held.

Paragraph 14(6) provides that where an offender is brought before a magistrates' court in pursuance of sub-paragraph (2) that court must commit him to custody or on bail to Crown Court.

PART 3

AMENDMENT OF SUSPENDED SENTENCE ORDER

Application of Part

Paragraph 15 sets out when this Part applies. It applies during the supervision period of a suspended sentence that imposes one or more community requirements.

Cancellation of requirements

Paragraph 16(1) sets out when this paragraph applies. It applies where the offender or responsible officer makes an application to the court for the requirements of the suspended sentence order to be cancelled.

Paragraph 16(2) empowers the court to cancel the requirements of the suspended sentence order, if it is in the interest of justice to do so, taking into consideration the circumstances since the order was made.

Paragraph 16(3) sets out the circumstances in which a requirement may be cancelled. These will include the offender making good progress or responding satisfactorily to supervision.

Paragraph 16(4) prevents an application being made while an appeal is pending.

Amendment of community requirements

Paragraph 17(1) allows a court, on application by an offender or responsible officer to amend any suspended sentence order by cancelling the community requirement or inserting a requirement (in addition or substitution) in the same way that the court could include if the offender had just been convicted and the court was making the order, or by extending the supervision period (subject to section 5(4)).

Paragraph 17(2) outlines how sub paragraph (1)(b) is subject to any provision that applies to the court in making the order.

Paragraph 17(3) provides that where a suspended sentence order does not contain an unpaid work requirement and the court inserts one, the number of hours which the offender may be required to work must be specified and must not exceed 60 in the aggregate.

Paragraph 17(4) prevents the court from amending the suspended sentence order by adding a treatment requirement unless it is made within 3 months after the date of the original order.

Paragraph 17(5) prevents an application being made while an appeal is pending.

Paragraph 17(6) provides that a court must summon the offender to appear before exercising its powers under this paragraph unless the application was made by the offender, the order would cancel a community requirement or would reduce the period of a requirement.

Paragraph 17(7) makes provision that, when an offender fails to answer a summons under sub-paragraph (5), the court can issue a warrant for their arrest.

Paragraph 17(8) provides a definition for “treatment requirement” in this paragraph.

Amendment of treatment requirement on report of practitioner

Paragraph 18(1) sets out when this paragraph applies. It applies where the suspended sentence order contains a treatment requirement and the treatment practitioner is of the opinion that: the treatment should continue beyond the period specified, the offender needs different treatment, the offender is not susceptible to treatment, or the offender does not require further treatment, or for any reason is unwilling to continue to treat/direct the treatment of the offender.

Paragraph 18(2) requires the treatment practitioner to make a report in writing as to the treatment requirement under which the offender is being treated.

Paragraph 18(3) requires the responsible office to make an application under paragraph 17 to a court for the treatment requirement to be replaced or cancelled.

Paragraph 18(4) provides a definition for “treatment requirement” and “treatment practitioner” for the purpose of this paragraph.

Extension of unpaid work

Paragraph 19(1) sets out where this paragraph applies. It applies where the suspended sentence order imposes an unpaid work requirement.

Paragraph 19(2) allows the court to extend the period of one year as specified in paragraph 1(2) of Schedule 1.

Paragraph 19(3) specifies the circumstances in which the power in sub-paragraph (2) is exercisable.

Paragraph 19(4) prevents an application being made while an appeal against a suspended sentence is pending.

PART 4

SUPPLEMENTARY

Provision of copies of orders etc

Paragraph 20(1) sets out when this paragraph applies. It applies on the making by a court of an order amending a suspended sentence order.

Paragraph 20(2) requires the court to provide copies of the amending order to the responsible officer.

Paragraph 20(3) requires the responsible officer to give a copy of an amended order to the offender and person in charge of any institution where the offender is or was required to reside.

SCHEDULE 3: MANDATORY LIFE SENTENCE: ADULT OFFENDERS

MANDATORY LIFE SENTENCES

Paragraph 1 inserts Schedule A1 into the Life Sentences (Northern Ireland) Order 2001. Schedule A1 concerns the determination of minimum tariffs in cases of mandatory life sentences for adult offenders.

Schedule A1: Determination of tariffs in cases of Mandatory Life Sentence: adult offenders

Starting points

Paragraph 1(1) of Schedule A1 concerns starting points where the court considers that the seriousness of the offence is exceptionally high. It provides that the appropriate starting point is 20 years.

Paragraph 1(2) sets out cases that would normally fall into sub-paragraph (1).

Paragraph 1(3) provides definitions for “fire and rescue officer”, “prison officer” and “vulnerable person” referred to in sub-paragraph (2).

Paragraph 1(4) applies section 34(2) (aggravation by hostility) of the Bill for the purposes of determining whether an offence is aggravated in any of the ways mentioned in paragraph 1(2)(i).

Paragraph 2 provides that the appropriate starting point is 15 years if the case does not fall within paragraph 1(1).

Aggravating and mitigating factors

Paragraph 3 of Schedule A1 provides that the court should take into account aggravating and mitigating factors to the extent that it has not already considered them when choosing a starting point.

Paragraph 4 provides that detailed consideration of the aggravating and mitigating factors may result in a term of any length being specified in an order under Article 5(1) or 5(3) of the Life Sentences (Northern Ireland) Order 2001, (whatever the starting point), which relates to release provisions.

Paragraph 5(1) sets out aggravating factors, other than those mentioned in paragraph 1(2) that may be relevant to the offence of murder.

Paragraph 5(2) applies sections 2, 4 and 5 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) Act 2021 for the purposes of paragraph 5(1)(i), as they apply for the purposes of that Act.

Paragraph 6(1) sets out mitigating factors that may be relevant to the offence of murder.

Paragraph 6(2) provides a definition of “mental disorder” referred to in sub-paragraph (1)(g).

Paragraph 7 provides that nothing in Schedule A1 restricts the application of Article 33 or 37 of the Criminal Justice (Northern Ireland) Order 1996.

Power to amend provision relating to starting points

Paragraph 8(1) to (3) of Schedule A1 gives the Department power to amend provision relating to starting points by way of regulations.

Paragraph 8(4) requires that any such regulations may not be made unless a draft has been laid before and approved by a resolution of the Assembly.

SCHEDULE 4 : UNDULY LENIENT SENTENCES

This Schedule makes supplementary provision in relation to the unduly lenient sentences provision.

Paragraph 1 provides that the notice of an application for leave to refer a case to the Court of Appeal under section 21 of this Bill must be given within 28 days, from the day on which the sentence is passed.

Paragraph 2 sets out what happens where the Master (of the Kings Bench and Appeals) is given notice of a reference or application to the Court of Appeal under section 21. The Master must take all necessary steps for obtaining a hearing and obtain and lay before the Court all information necessary for the determination of the reference or application.

Paragraph 3 provides for what the rules of court may do. The rules of court may enable a person to obtain all information from the Master required for the reference or application and allow the Master to make charges for them in accordance with scale fees and rates fixed by the Department.

Paragraph 4(1) provides a time limit of 14 days for an application under section 22 to the Court of Appeal for leave to refer a case to the Supreme Court. The 14-day time limit begins on the date the Court of Appeal concludes its review.

Paragraph 4(2) provides for a time limit of 14 days for an application under section 22 to the Supreme Court for leave to refer a case to the Supreme Court. The 14-day time limit begins on the date the Court of Appeal concludes its review, or refuses leave to refer to the Supreme Court.

Paragraph 5 provides that any time spent in custody by a person awaiting review by the Court of Appeal or Supreme Court must be counted as part of any term of any sentence to which that person is subject.

Paragraph 6 provides that a person whose sentencing is subject to a reference to the Court of Appeal is entitled to be present at a hearing, even if they are in custody. This is subject to paragraphs 7 and 8.

Paragraph 7 provides for the conditions which must be satisfied so that a person in custody can be present at the hearing. A person in custody is not entitled to be present unless the Court of Appeal gives the person leave, either on application by the Director of Public Prosecutions for Northern Ireland or under any proceedings preliminary or incidental to a reference.

Paragraph 8 makes provision permitting the Court of Appeal to exercise its power to pass sentence even if the person is not present.

Paragraph 9 provides that a person whose sentencing is subject to a reference to the Supreme Court under section 22 and is detained pending the hearing of that reference, is not entitled to be present on the hearing of the reference or any preliminary or incidental proceedings. However, this is subject to paragraph 10.

Paragraph 10 provides for when the detained person is entitled to attend the hearing. A person may attend the hearing where there is an order of the Supreme Court allowing the person to be present or the Supreme Court or Court of Appeal gives the person leave to be present.

Paragraph 11 provides for when any term of sentence passed under section 21 or section 22 should begin to run.

Paragraph 12(1) sets out that sub-paragraph (2) applies where a person whose sentencing is subject to a reference to the Court of Appeal under section 21 or the Supreme Court under section 22 appears by counsel for the purpose of presenting an argument to Court of Appeal or Supreme Court.

Paragraph 12(2) provides that a person is entitled to payment of money provided by the Department of such funds as are reasonably sufficient to compensate the person for expenses properly incurred on being represented by counsel.

Paragraph 12(3) provides that any amount recoverable under this paragraph must be ascertained as soon as practicable by the Taxing Master or under the Supreme Court Rules.

SCHEDULE 5: FAILURE TO DISCLOSE DETAILS ABOUT THE VICTIM'S REMAINS: MODIFICATIONS

This Schedule makes amendment to legislation in consequence of the Part 4 (failure to disclose information about victim's remains).

SCHEDULE 6: ROAD TRAFFIC OFFENCES: EXTENSION OF DISQUALIFICATION FOR DRIVING

This Schedule makes amendments to legislation in consequence of Part 7 (road traffic offences).

SCHEDULE 7: MINOR AND CONSEQUENTIAL AMENDMENTS

This Schedule contains minor and consequential amendments which affect certain Parts of the Bill.

FINANCIAL EFFECTS OF THE BILL

90. In terms of financial effects, the Bill as a whole will primarily be delivered within existing resources.
91. Some provisions will be the subject of individual costs and benefits analysis and subsequent proportionate business case requiring appropriate approvals, which will be requested from the Department of Finance as required as and where appropriate.
92. Introduction of community requirements as an option for inclusion with suspended sentences is expected to have significant cost implications for the Probation Board for Northern Ireland. These will be reviewed and subject to a full and up to date costing exercise ahead of implementation.

HUMAN RIGHTS ISSUES

93. All proposals have been screened and are considered to be Convention compliant.

EQUALITY IMPACT ASSESSMENT

94. All of the constituent parts of the proposed Bill have been screened as not having an adverse impact on any of the section 75 categories in the Northern Ireland Act 1998.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

95. The Department considers that no direct costs will be created for the private or voluntary sectors as a result of the provisions of the Bill. As such there is no adverse impact on this sector.

DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

96. Data Protection screening exercises have been carried out in respect of each of the constituent parts of the Bill.
97. While the Bill introduces a new criminal offence of assaulting a public worker, this will have limited effect on existing collection and processing of personal data relating to the parties involved in prosecutions as this offence will be used as a direct substitute for existing assault offences. Data will continue to be processed in line with the robust procedures and protocols already in place for investigating and prosecuting other existing criminal offences.
98. The introduction of statutory aggravators in relation to crimes aggravated by hostility, victim vulnerability and where the victim is a public worker create a formal requirement for certain information to be recorded and used in relation to criminal prosecutions and for sentencing and criminal records purposes.
99. The Department has engaged with the Information Commissioner's Office (ICO) prior to introduction of the Bill and will continue to engage on the information implications of the Bill to ensure compliance with UK GDPR and to identify and mitigate, if necessary, any risks to individuals arising from any of these.

RURAL NEEDS IMPACT ASSESSMENT

100. Rural screening exercises have been carried out in respect of each of the constituent parts of the Bill. This noted that all of the provisions in the Bill were screened out as having no adverse impact on rural needs as all of the provisions of the Bill will apply equally to all areas of Northern Ireland, both urban and rural.

LEGISLATIVE COMPETENCE

101. At Introduction the Minister for Justice had made the following statement under section 9 of the Northern Ireland Act 1998:

"In my view the Criminal Justice (Sentencing etc) Bill would be within the legislative competence of the Northern Ireland Assembly."