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Criminal Justice (Sentencing etc) Bill

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This Bill Paper has been prepared by the Assembly's Research and Information Service (RaISe) to provide an overview of the Criminal Justice (Sentencing etc) Bill. It outlines the background to the Bill, including public consultations undertaken, and should be read in conjunction with the RaISe Review of Costs (NIAR 117-2026). Where relevant, it provides a comparison with approaches taken in other parts of the UK and the Republic of Ireland.

This information is provided to Members of the Legislative Assembly (MLAs) in support of their duties, and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice, or as a substitute for it.

Executive Summary

The [Criminal Justice \(Sentencing etc\) Bill](#) was published on 03 March 2026 and passed [Second Stage](#) on 16 March 2026. The Bill has since been referred to the Assembly's Committee for Justice for consideration.

The following supporting documents have been prepared by the Department alongside the Bill:

- [Explanatory and Financial Memorandum](#)
- [Delegated Powers Memorandum](#)
- Equality Screening
- Overview of European Convention on Human Rights (ECHR) Compatibility

MLAs may wish to consider requesting a broader Human Rights Impact Assessment, including analysis of international standards beyond the ECHR.

In addition to this paper, the following documents have been published by the Northern Ireland Assembly to support scrutiny of the Bill:

- [Review of Costs](#) prepared by RaiSe
- [Convention Rights Memorandum](#), which addresses issues arising under the ECHR and Article 2(1) of the Windsor Framework, prepared by the Legal Services Department

What would the Bill do?

The Bill includes 8 Parts, 51 clauses and 7 schedules. The Justice Minister has highlighted that the measures within it, if enacted, would “*strengthen and improve the existing framework*” for sentencing within the courts.

The Bill follows public consultations on the Department of Justice's [Sentencing Policy Review 2016-2021](#), the [Review of Hate Crime Legislation](#) and [Charlotte's Law](#). Below is an overview of the structure of the Bill and relevant sections within this paper, alongside a number of potential scrutiny points.

Principles and Purposes of Sentencing (clause 1)

This clause would:

- set the principles of sentencing that the court must have regard to as proportionality, fairness and transparency.
- set the purposes of sentencing that the court must have regard to as the punishment of offenders, protection of the public (including victims of crime), reduction of crime by deterrence, rehabilitation of offenders and reparation by offenders to persons affected by their offences.
- commence two months after Royal Assent.

Sentencing Guidance (clause 2)

This clause would:

- create a duty for the courts to follow sentencing guidance relevant to an offender's case unless it would be contrary to the interests of justice to do so.
- provide that a court must state its reasons for deciding on a sentence in open court, identifying any sentencing guidance which is relevant to the case.
- define sentencing guidance as including any guidance issued by the Lady Chief Justice's Sentencing Group, any judgment of the Crown Court or the Court of Appeal identified by the Group for use as a sentencing guideline judgment, any judgment of the Court of Appeal identified by the Court for use as a sentencing guideline judgment and any judgment of the Court of Appeal which contains guidance which is relevant to the court's sentencing function.
- commence two months after Royal Assent.

The Department of Justice consulted on these matters within the [Sentencing Policy Review 2016-2021](#). Members may wish to query why the Bill requires the court to 'have regard to' the principles and purposes of sentencing but 'must follow' relevant sentencing guidance. A majority of consultees had favoured placing an obligation on the courts to 'have regard to' sentencing guidance rather than 'follow'. It may be worth considering whether this wording makes

any practical difference and the extent to which the Bill strikes an appropriate balance between statutory direction and judicial discretion in sentencing.

The Bill does not include the power for the Court of Appeal to issue guidance of its own accord. Members may wish to ask for more detail around the timeframe for the Department's [Sentencing Review](#) announced in January 2026 and how the power for the Court of Appeal to issue guidance (and a number of linked issues) will form part of this. To date, Departmental officials have stated that a [public consultation](#) on the review is expected at some stage in 2027.

See [Section 3](#) of this Bill Paper for more analysis.

Suspended Sentences (clauses 3 – 17)

These clauses would:

- create a new suspended sentence order for adult offenders which can specify one or more community requirements, including [residence and activity requirements](#), [curfew and electronic monitoring requirements](#) and unpaid work requirements ([Schedule 1](#)).
- require that a court must obtain and consider a pre-sentence report before deciding whether to impose a community requirement, unless it is of the opinion this is unnecessary. There is a regulation making power to allow the Department to prescribe the content of pre-sentence reports within regulations ([negative resolution procedure](#)).
- introduce a requirement that the number of hours of unpaid work must be between 40 and 240 hours and be supervised by a responsible officer (under the authority of the Probation Board for Northern Ireland). The responsible officer has a number of obligations set out in these clauses when giving instructions for unpaid work, including to avoid, as far as possible, any conflict with an offender's religious beliefs and interference with work or education.
- cover situations where there is an activation event involving another imprisonable offence or a breach of the requirements in the suspended sentence order. A court must order that the suspended sentence take effect with the original term unaltered unless this would be unjust.

Alternatively, it can substitute a lesser term for the original term, impose a fine, cancel or amend any community requirement or extend any supervision or operational period under the order.

- allow for the cancellation of requirements imposed under a suspended sentence order in certain circumstances where this is in the interests of justice. Community requirements can also be amended by a court in certain circumstances on application by an offender or a responsible officer.
- commence by regulation on a date appointed by the Department.

The Department of Justice consulted on suspended sentences within the [Sentencing Policy Review 2016-2021](#).

The RaSe [Review of Costs](#) (NIAR 117-2026) outlines the potential financial impact of this part of the Bill, particularly on the Probation Board for Northern Ireland, which MLAs may wish to consider in further detail. MLAs may also wish to consider how the responsible officer will be expected to operate in practice when balancing competing rights and obligations arising under a suspended sentence order which includes community requirements.

MLAs may wish to consider whether the Department intends to provide any guidance to the courts in relation to the requirement to explain to an offender in ordinary language their liability if an activation event occurs.

See [Section 4](#) of this Bill Paper for more analysis.

Life Sentences (clauses 18 – 19)

These clauses would:

- place a duty on the court, when making an order determining the minimum tariff for a life sentence under the Life Sentences (Northern Ireland) Order 2001, to state in open court its reasons for deciding such a sentence and explain the effect of it to the offender.
- introduce in legislation a starting point of 20 years for murder where the court considers that the seriousness is exceptionally high. It includes a starting point of 15 years for all other cases involving a mandatory life sentence for murder. This reflects the recalibration of the starting points

for murder in [R v Whitla \[2024\] NICA 65](#). There is also provision for aggravating and mitigating factors that the court should take into account and may be relevant to the offence of murder.

- provide the Department with a regulation making power to amend the time period for the starting points, case types which fall within the exceptionally serious starting point and the aggravating factors ([draft affirmative procedure](#)).
- commence two months after Royal Assent.

Table 3 outlines tariffs imposed following a conviction for murder for cases disposed at court in Northern Ireland from 2013 to 2025. The Department of Justice consulted on life sentences within the [Sentencing Policy Review 2016-2021](#).

Whilst not specifically included in the consultation, the Bill includes aggravating and mitigating factors which the court may take into account in murder cases. These are currently found in case law. The Department has indicated that these have been added to the Bill in an effort to aid public transparency, understanding and expectations of sentencing in murder cases. MLAs may wish to satisfy themselves that this approach adequately protects judicial discretion in sentencing.

See [Section 5](#) of this Bill Paper for more analysis.

Unduly Lenient Sentences (clauses 20 – 23)

These clauses would:

- allow cases in which an offender is convicted on indictment of an offence and sentenced in the Crown Court to be included within the unduly lenient sentence scheme. Therefore the Director of Public Prosecutions could refer a case to the Court of Appeal for review where it appears that the sentencing of an offender has been unduly lenient.
- allow the Court of Appeal to quash any sentence and pass a more appropriate sentence on the offender. The new sentence must be one which the court below had the power to pass originally when dealing with the offender.

- provide the Department with a regulation making power to include sentences imposed in the Magistrates' Court within the unduly lenient sentence scheme ([negative resolution procedure](#)).
- allow the Director of Public Prosecutions, or the offender to whom a sentence relates, to refer a point of law of general public importance to the Supreme Court, following the conclusion of a sentence review by the Court of Appeal.
- commence two months after Royal Assent.

The Department of Justice consulted on unduly lenient sentences within the [Sentencing Policy Review 2016-2021](#).

MLAs may wish to seek an update on the Department's work in relation to expanding the remit of the Magistrates' Court and the impact this might have on the unduly lenient sentencing scheme. As noted in the RaISe [Review of Costs](#) (NIAR 117-2026), MLAs may also wish to consider any legal aid implications from widening the scope of the unduly lenient sentencing scheme.

See [Section 6](#) of this Bill Paper for more analysis.

Failure to Disclose Information about Victim's Remains (clauses 24 – 32)

These clauses would:

- at the sentencing stage, require a court, in murder or manslaughter cases where the location of the victim's remains is unknown, to pass a sentence that contains an additional custodial period to take account of the non-disclosure unless this would be contrary to the interests of justice. The additional custodial period must not be less than 30 per cent of the custodial sentence or minimum tariff, depending on the type of sentence imposed by the court.
- at the post sentence stage, where an offender makes a relevant disclosure which is not rejected by the Department, provide for a calculation to determine a reduction in the additional custodial period (up to a maximum of 50 per cent). The calculation is $(AP/2) \times (1-(N/T))$.
- provide the Department with a regulation making power in relation to relevant disclosures ([draft affirmative procedure](#)).

- at the parole stage, require the Parole Commissioners to obtain and consider information relating to a prisoner's non-disclosure.
- commence two months after Royal Assent.

The Department of Justice consulted on [Charlotte's Law](#) in 2021.

MLAs may wish to consider whether the statutory calculation which would be used to determine a reduction in the additional custodial period is practical and accessible in terms of wider public understanding of sentencing law. It may be worth querying whether further guidance or information will be provided explaining the operation of this.

For an example of how this formula works and further analysis, see [Section 7](#) of this Bill Paper.

Aggravation by Hostility (clauses 33 – 35)

These clauses would:

- provide for an allegation of aggravation to be specified alongside a charge of an offence covering racial hostility, religious hostility, hostility related to sexual orientation and hostility related to disability.
- provide that, in cases where both the charge and the aggravation are proven, the court would have to state that the offence is aggravated by hostility on conviction and the reasons for this. This would include reference to whether the offence was aggravated by one or more of the four grounds for hostility.
- provide that in determining the sentence, the court would be required to treat the aggravation as a factor that increases the seriousness of the offence. An explanation of how the aggravation affects the sentence would be required.
- provide the Department with a regulation making power to add further kinds of hostility by which an offence may be aggravated ([draft affirmative procedure](#)).
- commence by regulation on a date appointed by the Department.

Separately, schedule 7 would repeal [Article 2](#) of the Criminal Justice (No. 2) (Northern Ireland) Order 2004 which currently allows for an enhanced sentence, if an offence has been aggravated by hostility.

Judge Marrinan's [Independent Review of Hate Crime Legislation](#) in Northern Ireland made recommendations, including calling for a statutory aggravation approach. The Department of Justice [accepted](#) the introduction of a statutory aggravation model in 2021 and conducted a further [consultation](#) in 2022.

MLAs may wish to seek more information on the additional protected characteristics recommended for inclusion by Judge Marrinan which will not initially be included under the Bill's statutory aggravation model. Members may also want to consider the Department's rationale for not including the 'by-reason' of threshold, as recommended by Judge Marrinan.

Members may wish to consider whether there is sufficient recognition of intersectional hate crimes within the Bill. Members may want to ask the Department for clarity on how crimes where multiple aggravations are relevant will be treated e.g. a crime against a disabled person based on both hostility and vulnerability, or a crime against a vulnerable person where the domestic abuse aggravation also applies.

Aggravation by Reason of Vulnerability (clause 36)

This clause would:

- provide for an allegation of aggravation by reason of a victim's vulnerability to be specified alongside a charge of an offence.
- provide that a vulnerable person in this context means a person under the age of 18 or "*a person whose ability to protect himself or herself from violence, abuse, neglect or exploitation is significantly impaired through physical or mental disability or illness, old age or for any other reason*".
- provide for two conditions which must be satisfied for this aggravator to apply: 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.

- provide that, in cases where both the charge and the aggravation are proven, the court would have to state that the offence is aggravated by reason of the victim's vulnerability on conviction and record it as such.
- provide that in determining the sentence, the court would be required to treat the aggravation as a factor that increases the seriousness of the offence. An explanation of how the aggravation affects the sentence would be required.
- commence by regulation on a date appointed by the Department.

The Department of Justice consulted on crimes against older and vulnerable people within the [Sentencing Policy Review 2016-2021](#).

Members may wish to consider whether it is appropriate that the vulnerability aggravator could be added, in cases where the victim's vulnerability is not a motivating factor. MLAs may also want to consider how the broad definition of vulnerability in this context will operate in practice.

Public Workers (clauses 37 – 39)

These clauses would:

- create 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.
- create the offence of assault on a person assisting 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 assisting a public worker.
- define a public worker as "*a person employed or engaged to provide a service to the public, perform a public duty, or deliver a public service*". This work can be paid or unpaid.
- provide that on summary conviction, an offender would be liable to imprisonment of 12 months maximum (or a fine up to the statutory maximum or both). On conviction on indictment, imprisonment can be for a maximum of 2 years (or an unlimited fine or both).
- provide for an allegation of aggravation by reason of being committed against a public worker to be specified alongside a charge of a specified

offence (includes, for example, manslaughter, kidnapping, threats to kill, wounding with intent to cause grievous bodily harm, assault occasioning actual bodily harm, sexual assault).

- provide that, in cases where both the charge and the aggravation are proven, the court would have to state on conviction that the offence is aggravated by reason of being committed against a public worker exercising their functions and record it as such.
- provide that in determining the sentence, the court would be required to treat the aggravation as a factor that increases the seriousness of the offence. An explanation of how the aggravation affects the sentence would be required.
- commence by regulation on a date appointed by the Department.

MLAs may wish to consider the broad definition of a ‘public worker’ in further detail. Given that a number of workers and volunteers will be newly brought within these statutory protections, it may also be worth considering how the Department intends to implement and communicate this across a range of sectors.

Separately, schedule 7 would repeal the existing assault offences against public workers covering police, fire and rescue personnel and ambulance workers. Table 9 outlines prosecutions and convictions at courts in Northern Ireland for the offence of assault on police, ambulance workers and fire and rescue personnel for 2020-2024.

The Department of Justice consulted on attacks on people providing frontline public services within the [Sentencing Policy Review 2016-2021](#).

MLAs may also wish to consider whether the Department of Justice should be required to report on the operation of the new statutory aggravators as this could help to provide information on how they are being identified and applied in relevant cases, included in prosecutions and reflected in convictions and sentence records.

See [Section 8](#) of this Bill Paper for more analysis.

Road Traffic Offences (clauses 40 – 45)

These clauses would:

- increase the maximum penalty for causing death or grievous bodily injury by dangerous driving from 14 years to 20 years.
- increase the maximum penalty for causing death or grievous bodily injury by careless driving when under the influence of drink or drugs from 14 years to 20 years.
- increase the maximum penalty for causing death or grievous bodily injury by driving while disqualified from 6 to 12 months (or the statutory maximum fine or both) when tried summarily. This would increase from 2 to 4 years (or a fine or both) when tried on indictment.
- provide for a maximum sentence for repeat offenders of imprisonment for life in cases where an offender has a previous conviction for an offence of causing death or grievous bodily injury by dangerous driving or careless driving when under the influence of drink or drugs.
- make changes to the minimum disqualification period for road traffic offences with a minimum of 6 years if both offences are:
 - causing death, or grievous bodily injury, by dangerous driving
 - causing death, or grievous bodily injury by careless driving when under the influence of drink or drugs

A minimum of 4 years if the new offence is:

- causing death, or grievous bodily injury, by dangerous driving OR
- by careless driving when under the influence of drink or drugs

And if the earlier offence is:

- driving or attempting to drive while unfit
- driving or attempting to drive with excess alcohol
- failing to provide a specimen
- failing to allow a specimen to be subjected to laboratory test

A minimum of 3 years if both offences are:

- driving or attempting to drive while unfit
 - driving or attempting to drive with excess alcohol
 - failing to provide a specimen
 - failing to allow a specimen to be subjected to laboratory test
-
- commence on Royal Assent. However, the provisions which make 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 will come into operation on the same day as paragraphs 1, 4 and 6 of [schedule 16](#) to the Coroners and Justice Act 2009.

The Department of Justice consulted on road traffic offences within the [Sentencing Policy Review 2016-2021](#).

See [Section 9](#) of this Bill Paper for more analysis.

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1 Introduction

The Criminal Justice (Sentencing etc) Bill was introduced into the Northern Ireland Assembly on 03 March 2026 and passed Second Stage on 16 March 2026. Across 8 parts, 51 clauses and 7 schedules, the Bill would introduce various changes to sentencing law.

This includes a number of measures aimed at addressing the principles and purposes of sentencing, sentencing guidance, suspended sentence orders, life sentence tariffs for murder, unduly lenient sentences, Charlotte's Law, Helen's Law, a hate crime statutory aggravator, a vulnerable victim aggravator and sentences for offences causing death or serious injury by driving. The Bill would also create a new offence of assaulting a person delivering a public service, performing a public duty or providing a service to the public, along with a corresponding statutory aggravator.

The following supporting documents have been prepared by the Department alongside the Bill:

- Explanatory and Financial Memorandum¹
- Delegated Powers Memorandum²
- Equality Screening³
- Overview of European Convention on Human Rights (ECHR) Compatibility⁴

In addition to this paper, the following documents have been published by the Northern Ireland Assembly to support scrutiny of the Bill:

¹ Criminal Justice (Sentencing etc) Bill, [Explanatory and Financial Memorandum](#) (March 2026)

² Department of Justice, [Delegated Powers Memorandum](#) (March 2026)

³ Provided through correspondence between RalSe and Department of Justice (13 April 2026). The Department's equality screening of the Bill did not identify any significant impact on the section 75 groups. Earlier equality screening related to the Sentencing Policy Review 2016-2021 can be found at Department of Justice, [Sentencing Policy Review: Equality Screening and Rural Impact Assessments](#) (October 2019)

⁴ Provided through correspondence between RalSe and Department of Justice (29 April 2026)

- Review of Costs prepared by RaiSe⁵
- Convention Rights Memorandum, which addresses issues arising under the ECHR and Article 2(1) of the Windsor Framework, prepared by the Legal Services Department⁶

This RaiSe briefing provides further background and analysis on the Bill as introduced. It provides background information on the public consultations undertaken for the Department's Sentencing Policy Review 2016-2021,⁷ the Review of Hate Crime Legislation and Charlotte's Law. It also considers the Bill clause-by-clause and includes areas that MLAs may wish to consider further during scrutiny of the Bill.

- MLAs may wish to consider requesting a broader Human Rights Impact Assessment from the Department covering further analysis of international human rights standards potentially engaged by the Bill. This could include those outwith the ECHR, such as treaty obligations of the Council of Europe (CoE) and United Nations (UN) and Recommendations/ Observations/ General Comments made by a number of the human rights bodies of the CoE and UN.⁸

Separately, the Department of Justice launched a further review of sentencing policy in January 2026.⁹ This is intended to cover the existing legislative framework governing good character evidence, serious sexual offences, drug-

⁵ Available at Northern Ireland Assembly, [Research and Information Service Publications 2026](#) (NIAR-117-2026)

⁶ Will be available at Northern Ireland Assembly Committee for Justice, [Criminal Justice \(Sentencing etc\) Bill Committee Stage](#)

⁷ Department of Justice, [Justice Minister announces sentencing review](#) (June 2016)

⁸ This approach was recommended by the Northern Ireland Human Rights Commission in its response to the Sentencing Review 2016-2021. Northern Ireland Human Rights Commission, [Submission to DOJ's Sentencing Review Consultation](#) (February 2020), page 28

⁹ Department of Justice, [Long announces sentencing review](#) and [Written Ministerial Statement – Launch of the Review of Sentencing Policy](#) (January 2026)

related offences, the unlawful killing (i.e. manslaughter) of an emergency worker acting in the exercise of their functions (known as Harper's Law in England and Wales), firework offences, animal welfare offences and environmental crime. These areas are therefore not covered within the Criminal Justice (Sentencing etc) Bill.

The Department indicated that further items could be added to the review. It will also take account of recent developments in sentencing policy in other jurisdictions, including England and Wales, and identify potential options for equivalent reform in Northern Ireland.¹⁰

In addition, the review will examine a proposal to provide the Court of Appeal in Northern Ireland with a power to provide sentencing guidance of its own accord. This was originally intended to be included in the Criminal Justice (Sentencing etc) Bill but the Department has indicated that further development work is required to consider the operational implications of this.

Since the introduction of the Bill, the Committee for Justice has received correspondence from a range of stakeholders highlighting further areas for potential consideration. This includes Jasmin's Law (sentencing for drug dealing),¹¹ Harper's Law¹² and the issue of suicide in cases involving domestic abuse.¹³

¹⁰ For example, the [Sentencing Act 2026](#) implemented a number of the recommendations from the Independent Sentencing Review chaired by David Gauke, including changes to the sentencing of lower-level offences, release provisions for some determinate sentenced prisoners, community order requirements and restrictions available for post-prison supervision. The Independent Sentencing Review was commissioned in the context of growing concern that the prison population was projected to rise beyond the available prison capacity in England and Wales. See Ministry of Justice, [Independent Sentencing Review](#) (May 2025)

¹¹ Committee for Justice, [Correspondence on Jasmin's Law](#) (March 2026) and Northern Ireland Assembly [Official Report 21 April 2026](#) Vol. 192 No 4, page 46

¹² Committee for Justice, [Correspondence from Harper's Law NI](#) (March 2026)

¹³ Women's Aid Federation Northern Ireland, [Criminal Justice \(Sentencing etc\) Bill Potential Amendments](#) (April 2026)

2 Overview of Sentencing

Generally, maximum sentences are set out in legislation. If an offence is a common law offence¹⁴ and no maximum sentence has been set out in legislation, the maximum sentence available will be life imprisonment.

Occasionally legislation also provides a minimum sentence, meaning that courts cannot go below it unless there are exceptional circumstances.

Northern Ireland's legislative framework is largely found in the Criminal Justice (Northern Ireland) Order 2008 as well as in an earlier piece of legislation, the Criminal Justice (Northern Ireland) Order 1996. This provides for a hierarchy of sentencing options, ranging from imprisonment to community orders, fines and discharges. Article 5 of the 2008 Order states that custody should be imposed only when the offence is serious enough to warrant it.

2.1 Lady Chief Justice's Sentencing Group

Sentencing is a complex task which requires judges to balance multiple factors. Judges decide on sentences based on applicable legislation alongside guidance issued through a combination of guideline judgments from the Northern Ireland Court of Appeal and sentencing guidance from the Lady Chief Justice's Sentencing Group. The Sentencing Group membership comprises members of the judiciary, two legal academics, officials from the Lady Chief Justice's Office and the Victim's Commissioner Designate.

Established in 2010, the Group advises the Judicial Studies Board (JSB), which oversees judicial training, on the suitability of Court of Appeal judgments for inclusion in the JSB Sentencing Guideline Compendium.¹⁵ It is worth noting that it does not draft guidance for the Crown Court but instead determines whether Court of Appeal judgments should qualify as guideline judgments. The Group also reviews first instance Crown Court judgments and these can be added to

¹⁴ An offence that derives from case law rather than statute e.g. the offence of perverting the course of justice

¹⁵ The Compendium can be found at Judiciary NI, [Sentencing Guidelines for Northern Ireland](#). These are listed under a specific offence heading or sentencing issue e.g. guilty pleas or mitigating circumstances etc.

the Compendium where they are determined to be of value to sentencing judges generally.

In addition, a judicial sub-committee of the Group has created a compendium of sentencing guidelines for the Magistrates' Courts and continues to advise the Lady Chief Justice on these.¹⁶ The Group's functions also include liaising with the JSB on judicial training and guideline dissemination and assisting the Lady Chief Justice on topics for the 'Programme of Action', identifying areas where there is a potential gap or particular need for review in sentencing guidelines.¹⁷

Following the devolution of justice powers under the Hillsborough Castle Agreement in 2010, it initially appeared that a Sentencing Guidelines Council would be established.¹⁸ This was consulted on by the Department of Justice in 2010 with three options for reform outlined. The first proposed a statutory sentencing council responsible for drafting guidelines, similar to the model in England and Wales. The second outlined a statutory advisory panel which would draft guidelines for Court of Appeal approval. The third involved a judicially led Sentencing Group under the Lord Chief Justice which would enhance procedures for monitoring and developing sentencing guidance. This third option did not require legislation but instead built on proposals from a judicial working group established by the Lord Chief Justice in 2010.¹⁹

The consultation received 24 responses with the majority (9 respondents) favouring the sentencing council option and small numbers choosing the sentencing advisory panel (4 respondents) and the judicially-led option (2 respondents).²⁰ Given the challenging financial climate at the time, the Minister

¹⁶ These can be found at Judiciary NI, [Sentencing Guidelines – Magistrates' Court](#). These guidelines are also applicable where a County Court is sentencing an offender on appeal from a Magistrates' Court or where the Crown Court is sentencing an offender for a summary offence joined on indictment

¹⁷ Judiciary NI, [Report of the Lady Chief Justice's Sentencing Group July 2022 – June 2024](#) (November 2024)

¹⁸ Northern Ireland Office, [Agreement at Hillsborough Castle](#) (February 2010)

¹⁹ Department of Justice, Consultation on a Sentencing Guidelines Mechanism: Summary of Responses (March 2011)

²⁰ Department of Justice, Paper for the Justice Committee Meeting on Thursday 23 June 2010 on responses to the consultation on a Sentencing Guidelines Mechanism

ultimately selected the judicially-led option based on value for money considerations and the ‘Programme of Action’ undertaken by the Lord Chief Justice’s Sentencing Group to improve consistency in this area.²¹ The issue has remained topical since then and was most recently debated in the Assembly Chamber with a Private Members’ Motion calling for the establishment of a sentencing council in June 2025.²²

In a speech in 2025, the Lady Chief Justice highlighted that the “*system of guideline judgments under the steer of the Court of Appeal has served us well*”. The Lady Chief Justice reflected the view observed by the Court of Appeal in a 2014 judgment that Northern Ireland is a unique jurisdiction with a small Crown Court judiciary who have considerable expertise in the criminal law.²³ The Lady Chief Justice stated that “*for a more compact and much less populous jurisdiction such as ours which operates on a different footing my view is that a similar approach to England & Wales would be overly rigid and constricting*”.²⁴

2.2 Approach to Sentencing

In individual cases, judges have to balance a number of factors in determining an appropriate sentence for the offence. These factors may be relevant in determining the type of sentence as well as its length and any additional requirements that may be imposed by the court. They include:

- the seriousness of the offence
- the harm caused to the victim²⁵
- the offender’s level of blame or culpability²⁶

²¹ Northern Ireland Assembly [Official Report 11 June 2012](#) Vol. 75 No 5, page 310

²² Northern Ireland Assembly [Official Report 23 June 2025](#) Vol. 178 No 4, page 34

²³ [R v Thomas McCaughey and Martin Smyth](#) [2014] NICA 61

²⁴ Lady Chief Justice of Northern Ireland, ‘[Sentencing Practice in Northern Ireland: A View](#)’ (May 2025)

²⁵ Harm refers to the effect or intended effect of the offending and will depend on the circumstances of the victim, including the physical, psychological or financial impact of the offending. Generally, the greater the harm the more serious the offence.

²⁶ ‘Culpability’ can denote a person’s responsibility for their criminal conduct e.g. in the offence of manslaughter by diminished responsibility. Culpability can be distinguished from the harm inflicted and refers to the factors of intent, motive and circumstance and can, in turn, affect the assessment of harm.

- the offender's criminal record
- any aggravating or mitigating factors specific to the case²⁷
- the offender's personal circumstances (typically evidenced by a pre-sentence report provided by the Probation Board)
- consideration of any sentence reduction if a guilty plea has been entered or whether the offender contested the charge.

The correct approach to sentencing involves a judge considering culpability and harm and identifying all of the applicable factors which aggravate the offending, or make it worse, as well as those which constitute mitigation, or appear to reduce in some way the seriousness of the offending. This allows the judge to arrive at what is known as the 'starting point' for the ultimate sentence after which the application of a possible reduction to this figure for any guilty plea can be considered.²⁸

The broad principles of sentence reductions for guilty pleas were recently summarised by the Court of Appeal with a maximum credit of one third which is usually reserved for a plea at an early stage or at arraignment.²⁹ The credit for a plea of guilty is also reduced in 'caught red-handed' cases.³⁰ The Department of Justice recently consulted on sentence reductions for guilty pleas which asked respondents to consider whether a scale of sentence reduction rates based in legislation should be considered. It also sought views on whether there are any offences where a special sentence reduction for really early guilty pleas should be considered.³¹

Furthermore, it is also worth noting the approach to sentencing in cases involving multiple offences. The principle of totality means that the overall criminality of the offending behaviour should be reflected in the ultimate

²⁷ Examples of aggravating factors could include hostility against one of the protected characteristics defined in The Criminal Justice (No. 2) (Northern Ireland) Order 2004, the location of the offence, the deliberate targeting of a vulnerable victim, the use of weapons or multiple victims. Examples of mitigating factors could include the offender's age, chronic ill health or showing genuine remorse.

²⁸ Lady Chief Justice of Northern Ireland, '[Sentencing Practice in Northern Ireland: A View](#)' (May 2025)

²⁹ [R v Coyle](#) [2024] NICA 22 at [54]

³⁰ [R v Stewart](#) [2017] NICA 1 at [32]

³¹ Department of Justice, '[Sentence Reductions for Guilty Pleas](#)' (May 2025)

sentence. Judges can typically achieve this by making some or all of the sentences concurrent (served at the same time) or consecutive (served one after the other which may require some downward adjustment).

In England and Wales, the Sentencing Council's guideline on totality reflects the need for judges to ensure that the overall sentence is "*just and proportionate*".³² In Northern Ireland, the Court of Appeal has cautioned against a "*mechanistic approach*" to sentencing involving multiple offence, multiple victim cases. The court has provided guidance aimed at assisting sentencing judges when dealing with multiple offence, multiple victim cases which includes giving consideration to the identification of a 'headline' offence.³³

A number of judgments of the Court of Appeal have reiterated the typical approach to sentencing methodology outlined above. In a recent case, the court also provided guidance in relation to prosecution obligations.³⁴ This highlights that prosecuting counsel are required to assist the sentencing judge in relation to indicating all statutory provisions and authorities which are relevant to the sentencing exercise and any guidelines laid down by the Court of Appeal in comparable cases.³⁵ This notes that while ultimately it is for the sentencing judge to consider the submissions of both prosecution and defence on sentencing range and determine what is appropriate, judges are entitled to assistance from counsel.³⁶

2.3 Types of Sentences

The four main types of sentences available to the courts are:

- discharges
- monetary penalty
- community sentences

³² Sentencing Council, [Totality Guideline](#) (July 2023)

³³ [R v Hutton](#) [2024] NICA 19 at [58]

³⁴ [R v Collins and Mateer](#) [2025] NICA 50 at [51]

³⁵ See also the Bar of Northern Ireland, [Code of Conduct](#) (September 2022), paragraph 20.9 and the Public Prosecution Service, [Code for Prosecutors](#) (May 2023), paragraph 5.22

³⁶ [R v Collins and Mateer](#) [2025] NICA 50 at [52]

- custodial sentences

A brief explanation is provided below of each of the main types of sentences.

2.3.1 Discharges

Discharges are given for the least serious offences, such as minor theft. A discharge means that someone is released from court without any further action but will have a criminal record. Discharges can be absolute, if the court decides not to impose any penalty. They can also be conditional so that if the offender commits another crime within a specified period they would be sentenced for both offences. A discharge can be combined with an order for disqualification, compensation or court costs.

2.3.2 Monetary Penalties

Fines are the most common type of sentence given by courts. They are typically given for lower-level crime such as minor driving offences. Fines are unlimited in value in the Crown Court or subject to a maximum of £5,000 in the Magistrates' Courts under the Fines and Penalties (Northern Ireland) Order 1984. The court should consider the offender's financial circumstances as part of this. These penalties can be imposed alone or alongside other sentences.

2.3.3 Community Sentences

Under the Criminal Justice (Northern Ireland) Order 1996, this includes a Probation Order which will require the offender to be under the supervision of a Probation Officer for a period of between 6 months and 3 years. Other orders include a Community Service Order which requires an offender to perform unpaid work for a specified number of hours between 40 and 240. A Combination Order is a mixture of community service and probation supervision. Developed by the Probation Board in 2015, Enhanced Combination Orders (ECOs) also offer judges in certain court areas an alternative to a prison

sentence of 12 months or less.³⁷ This involves a more intense combination order community sentence which aims to address specific offender needs.

2.3.4 Custodial Sentences

There are different types of custodial sentence, including a standard determinate sentence, an extended sentence, an indeterminate sentence and a life sentence. The most common is a standard determinate sentence, which is a fixed-term sentence where the offender is usually released at a set point during that term.

Release arrangements vary across the different types of custodial sentences. Usually, adult offenders will be released part way through their sentence on licence. While on licence they will be subject to supervision by a Probation Officer and must comply with the conditions of their licence. Adult offenders are liable to be recalled to prison if they breach their licence conditions.

An extended custodial sentence is a public protection sentence which can be imposed where an offender has committed certain violent or sexual offences and the court is of the view that further similar offending is likely. The sentence comprises a custodial term (of at least one year) plus an additional period of release under licence conditions. An indeterminate custodial sentence is also a public protection sentence under which no release date is given but instead there will be a 'tariff' date (at least two years) which is the earliest that an offender may become eligible for consideration for release by the Parole Commissioners.

Life sentences are mandatory for murder and discretionary for a number of offences like manslaughter where they are the maximum sentence available. No release date will be given with offenders receiving a 'tariff' date which is the earliest date that they may become eligible for consideration for release by the Parole Commissioners.

³⁷ The ECO model was rolled out the Ards, Armagh and South Down court areas in 2015. In 2018, this was extended to the North-West. In 2025, the courts in the North Antrim area were added.

Furthermore, a custodial sentence can be suspended for a specified period meaning the offender is not imprisoned, unless another imprisonable offence is committed. Where the court imposes a custodial sentence (or makes an order of detention in a Young Offenders Centre) of up to 2 years for a non-serious offence, this can be suspended for between 1 and 3 years. Where the court imposes a custodial sentence (or makes an order of detention in a Young Offenders Centre) of up to 7 years for a serious offence, this can be suspended for between 1 and 5 years.³⁸ The court cannot impose a probation order in respect of another offence at the same time as passing a suspended sentence.³⁹ Part 2 of the Criminal Justice (Sentencing etc) Bill also relates to suspended sentences.

2.3.5 Disposals across all Courts

In 2024, monetary penalties were the most frequently utilised disposal at all courts, with 54.6 per cent (13,636) of all convictions having this type of disposal as their primary outcome. This was followed by suspended custodial outcomes (17.7 per cent, 4,426), custodial outcomes (13.9 per cent, 3,474), community sentences (10.5 per cent, 2,620) and discharges (2.6 per cent, 645).⁴⁰ Table 1 below outlines the use of these sentence types in Northern Ireland over the last five years (2020-2024) across all courts.

³⁸ Treatment of Offenders Act (Northern Ireland) 1968, [Section 18](#)

³⁹ Ibid

⁴⁰ Department of Justice, [Court Prosecutions Convictions and Out of Court Disposals Statistics for Northern Ireland 2024](#) (June 2025)

Table 1: Main Disposals across all Courts in Northern Ireland, 2020-2024

	Imprisonment	Suspended Custodial	Community Sentence	Monetary Penalty	Discharge	Other	Total
2020	2,561	3,157	2,013	9,725	585	94	18,135
2021	3,058	4,223	2,753	13,723	911	150	24,818
2022	2,586	3,629	2,209	14,076	787	148	23,435
2023	3,756	4,263	2,589	14,608	671	139	26,026
2024	3,474	4,426	2,620	13,636	645	180	24,981

Source: Department of Justice, [Court Prosecution, Convictions and Out of Court Disposals Statistics for Northern Ireland](#)

Note:

1. Trends across the period include years impacted by the covid-19 pandemic and subsequent recovery which influenced court business volumes and case mix.
2. Where more than one disposal/order is given, the data records only the main disposal, not ancillary or additional disposals.

Table 1 shows that monetary penalties have been the most frequently imposed disposal across all courts in Northern Ireland over the period 2020–2024, with suspended custodial and immediate custodial sentences accounting for a smaller, but consistent, proportion of outcomes over that time period.

3 Part 1: Exercise of the Court’s Discretion when Sentencing

Part 1 of the Bill would introduce a clear statement of the purposes and principles of sentencing into statute for the first time in Northern Ireland.⁴¹ The Court must have regard to these in certain circumstances when sentencing adult offenders. It would also create a duty for the court to follow any relevant sentencing guidance.

3.1 Public Consultation

In 2019, the Department of Justice issued a public consultation on the Sentencing Review which sought views on the principles and purposes of sentencing. The Department set out its motivations for this as follows:

- improved awareness, understanding and clarity in how sentencing decisions are reached including improving transparency and public confidence;
- the provision of a definitive benchmark of the qualities that all sentences should incorporate and reflect;
- ensuring compliance with international obligations; and
- facilitating consistency in the sentencing process.⁴²

Consultation respondents (19 out of 25) were broadly in favour of a legislative statement of the principles and purposes of sentencing. The consultation proposed four principles: proportionality, fairness, transparency and the sparing

⁴¹ Whilst there is no overarching statutory framework, it should be noted that the concept of proportionality in the use of custodial sentences already broadly runs through the Criminal Justice (Northern Ireland) Order 2008

⁴² Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 1-2

use of punishment. Consultation respondents were divided on these (15 out of 29 agreeing) with unanimous support for proportionality, fairness and transparency but concerns expressed in relation to the inclusion of punishment being used sparingly.⁴³

The consultation document noted that the inclusion of the principle that punishment should be used sparingly reflected a societal shift towards a more rehabilitative and therapeutic approach rather than a punitive one.⁴⁴ Some respondents felt that this description was unclear with 'punishment' having different meanings to different people. Some noted that the principle equated punishment with incarceration which overlooked other alternatives, such as fines.⁴⁵ The distinction between the principles of proportionality and the sparing use of punishment and how they would interact also appeared to cause some confusion amongst respondents.

A number of alternatives were proposed by respondents, such as 'consistent', 'effective', 'flexible', 'robust' and 'promoting public confidence' but the Department considered that these would already be achieved through the application of the other principles and purposes put forward in the consultation document. The Department also rejected the inclusion of mention of victims in the principles, citing concerns that it could elevate victims' interests above defendants' rights.⁴⁶ The Department ultimately concluded that the principles of sentencing should be: proportionate, fair and transparent.⁴⁷

On the purposes of sentencing, the Department consulted on the following: punishment, protection of the public, deterrence, rehabilitation and reparation.⁴⁸ A separate DOJ survey has indicated some degree of public support for a more

⁴³ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 5

⁴⁴ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 3

⁴⁵ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 5

⁴⁶ Ibid, page 6

⁴⁷ Ibid

⁴⁸ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 4-5 which largely mirror those purposes contained in section 57(2) of the Sentencing Act 2020 in England and Wales

punitive approach with the most endorsed sentencing rationale highlighted as public protection, followed by reparation, deterrence, and rehabilitation.⁴⁹

However, the idea that any of the sentencing purposes should be given more weight than others was rejected as inappropriate by the Department in the consultation document as it considered that this could “*unduly constrain the judiciary, possibly distorting the balance and fairness sought by the principles of sentencing*”.⁵⁰

Consultation respondents (15 out of 26) were broadly in support of the proposed purposes of sentencing with the importance of judicial discretion highlighted and some others questioning the practicality of these aspirational purposes. A common theme was that sentencing should be used to prevent future offending with the need for the impact on victims to be central to any reparation.⁵¹

The consultation document provided some further elaboration on the purposes of sentencing with punishment described as expressing the “*denunciation of the offender’s criminal behaviour*” and making clear “*society’s disapproval*” whilst also reinforcing “*respect for the law*”.⁵² Some restorative justice supporters expressed concerns in relation to the inclusion of the concept of punishment but the DOJ considered that a statement of purposes which did not include this would not be generally accepted.⁵³

The Department ultimately concluded that the purposes of sentencing should be: protection of the public, deterrence, rehabilitation and reparation. It was also agreed that there was a need to recognise victims specifically and so a

⁴⁹ Department of Justice, [Cyber Crime, Modern Slavery and Sentencing: Findings from the 2021/22 NI Safe Community Telephone Survey](#) (November 2023)

⁵⁰ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 5

⁵¹ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 6

⁵² Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 4

⁵³ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 6

reference to victims was subsequently added to the purpose of protecting the public.⁵⁴

The Department's consultation also made proposals in relation to sentencing guidance. As noted above, the guidance is primarily provided through a combination of guideline judgments issuing from the Northern Ireland Court of Appeal and sentencing guidance issued by the Lady Chief Justice's Sentencing Group.

Respondents were asked to consider whether the Court of Appeal should have the power to provide guideline judgments or review guideline judgments, both as the need arises and for specific offences or category of offences. This proposal received strong support.⁵⁵ There was less consensus on the issue of whether the Court of Appeal should be required to take account of 'relevant information on sentencing' as part of a guideline appeal case with the legal profession expressing concerns around how this might operate.⁵⁶

The consultation summary document also included some discussion on setting a power for the Attorney General or Director of Public Prosecutions to apply for a guideline judgment in legislation. It discussed identifying specific persons or bodies in legislation which the court should consider hearing from in regard to the need for a guideline judgment. There was also a suggestion that certain advocacy groups might wish to engage on specific offences with the Department stating that any engagement "*should be conducted at the behest of the Attorney General or the PPS where they conclude that it is appropriate in the interests of justice*". The Department noted an intention to take these matters forward but they were not specifically consulted on as part of this exercise.⁵⁷ In summary, on these issues the Minister agreed to legislate for:

⁵⁴ Criminal Justice (Sentencing etc) Bill, [Explanatory and Financial Memorandum](#), page 6

⁵⁵ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 14

⁵⁶ Ibid

⁵⁷ Ibid, page 15

- the remit of the Northern Ireland Court of Appeal to provide guideline judgments or review guideline judgments, including a power for the Court of Appeal to identify and issue such judgments as the need arises or for specific offences or categories of offence
- power for the Attorney General or Director of Public Prosecutions to apply for a guideline judgment
- the specific persons or bodies the Court should consider hearing from in regard to the need for a guideline judgment or its review
- potential contents of a guideline judgment
- power for the Court of Appeal to take account of relevant information on sentencing where it considers that is warranted⁵⁸

The Department has since acknowledged that a number of queries arose during drafting in relation to the operation of the proposed power for the Court of Appeal to provide guideline judgments.⁵⁹ Therefore the Minister agreed to give further consideration to the remit of the proposed power and has included this in the new review of sentencing launched in January 2026.⁶⁰ The various other matters listed above are linked to this power and therefore are not being progressed within the Bill.⁶¹

The Sentencing Review 2016-2021 consultation also asked respondents to consider whether a statutory duty should be placed on judges requiring them to either 'have regard to' or to 'follow' sentencing guidelines.⁶² A majority were in favour of creating a statutory duty accompanied by a judicial discretion to deviate from the guideline in the 'interests of justice'. A majority also favoured the obligation to 'have regard to' with some respondents also expressing a

⁵⁸ Ibid, page 15

⁵⁹ Department of Justice, Annex C: Matters Approved for Drafting and Details of Those Not Taken Forward (13 April 2026)

⁶⁰ Department of Justice, [Long announces sentencing review](#) and [Written Ministerial Statement – Launch of the Review of Sentencing Policy](#) (January 2026)

⁶¹ Department of Justice, Annex C: Matters Approved for Drafting and Details of Those Not Taken Forward (13 April 2026)

⁶² Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 24

desire for the judiciary being required to provide reasons when deviating from a guideline in the 'interests of justice'.⁶³

The Northern Ireland Human Rights Commission's response highlighted the importance of judicial independence and suggested that a "*statutory duty on the courts should be to have regard to sentencing guidelines, rather than a more onerous duty*".⁶⁴ The summary document outlines the Department's intention to move forward with this option.⁶⁵

The consultation did not explicitly address whether a sentencing council model should be established in Northern Ireland but instead focused on updates to the existing arrangements.⁶⁶ A majority of respondents favoured building on the work of the existing mechanism, the Sentencing Group, to help improve transparency. A desire was also expressed for greater outreach to the public as well as a wider range of non-judicial membership within any sentencing guidance mechanism.⁶⁷ The Department only addressed the council model locally in response to some support from respondents during the consultation, highlighting significant costs and lack of political consensus on the issue.⁶⁸

3.2 Part 1 of the Criminal Justice (Sentencing etc) Bill

Clause 1(1) provides that this section of the Bill would cover individuals aged over 18 convicted of an offence before a court. Clause 1(2) would create the following purposes of sentencing which the court must have regard to:

- the punishment of offenders
- the protection of the public (including victims of crime)

⁶³ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 18

⁶⁴ Northern Ireland Human Rights Commission, [Submission to DOJ's Sentencing Review Consultation](#) (February 2020), page 11

⁶⁵ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 19

⁶⁶ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 30

⁶⁷ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 16

⁶⁸ Ibid. Reference was also made to any new sentencing guideline mechanism being connected to an outstanding 2012 Ministerial commitment to conduct a review of the Sentencing Group. No timeframe was provided for the completion of this at the time of the consultation.

- the reduction of crime by deterrence
- the rehabilitation of offenders
- the making of reparation by offenders to persons affected by their offences

The Bill would also provide that the court must have regard to the following principles under clause 1(3) when determining a sentence, which are that sentencing should be:

- proportionate
- fair
- transparent

Clause 1(4) would provide detail on the interpretation of 'proportionate'. It notes that this relates to the seriousness of the offence, or the combination of the offence and others associated with it. The court would be required to take into account the circumstances of the offence, including any aggravating and mitigating factors, along with the character and circumstances of the offender.

Clause 1(5) covers exceptions where this section of the Bill would not apply. This includes an offence where the sentence is fixed by law (i.e. a mandatory life sentence imposed for murder) and where offences require certain custodial sentences (holding an unauthorised firearm under the Firearms (Northern Ireland) Order 2004, dangerous weapons offences under the Violent Crime Reduction Act 2006, serious offences under the Criminal Justice (Northern Ireland Order) 2008 and slavery and human trafficking offences under the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015).⁶⁹ An exception would also apply for certain provisions under the Mental Health (Northern Ireland) Order 1986, including a hospital order.

Clause 1(7) would provide that the duty to have regard to the sentencing principles in clause 1(3) is subject to any other statutory provision or rule of law

⁶⁹ Clause 1(6) would provide that the specific offences listed which require certain custodial sentences are also to be read in conjunction with Article 4(2) of the Criminal Justice (Northern Ireland) Order 2008

which requires or permits a court to take into account or to exercise its discretion in a particular way when sentencing an offender.

Clause 2(1) would provide that a court must follow any sentencing guidance which is relevant to an offender's case, unless the court is satisfied that it would be contrary to the interests of justice to do so. Clause 2(2) highlights that this duty would be subject to any statutory provision or rule of law that requires a court to impose, or not to impose, a particular sentence or take any matter into account or to exercise its discretion in a particular way.

Clause 2(3) would provide that a court must state its reasons for deciding on a sentence in open court, identifying any sentencing guidance which is relevant to in the case. It must also state why it has departed from any guidance where following it would have been contrary to the interests of justice.

Clause 2(4) would define 'sentencing guidance' as:

- any guidance issued by the Lady Chief Justice's Sentencing Group;
- any judgment of the Crown Court or the Court of Appeal identified by the Group for use as a sentencing guideline judgment;
- any judgment of the Court of Appeal identified by the Court for use as a sentencing guideline judgment;
- any judgment of the Court of Appeal which (although not identified by the Court or the Group as a sentencing guideline judgment) contains guidance which is relevant to the court's sentencing function.

Clause 2(5) would also provide that this section does not restrict any power (including under the Mental Health (Northern Ireland) Order 1986 or the Mental Capacity Act (Northern Ireland) 2016) which enables a court to deal with an offender suffering from a mental disorder in the manner which it considers to be most appropriate in the circumstances.

The Department's assessment of the Bill's compatibility with the European Convention on Human Rights (ECHR) indicates that there are no ECHR issues with this part of the Bill.⁷⁰

- Members may wish to query why the Bill requires the court to 'have regard to' the principles and purposes of sentencing but 'must follow' relevant sentencing guidance. A majority of consultees had favoured placing an obligation on the courts to 'have regard to' sentencing guidance rather than 'follow'.
- It may be worth considering whether this wording makes any practical difference and the extent to which the Bill strikes an appropriate balance between statutory direction and judicial discretion in sentencing.
- The Bill does not include the power for the Court of Appeal to issue guidance of its own accord. Members may wish to ask for more detail around the timeframe for the Department's Sentencing Review announced in January 2026 and how the power for the Court of Appeal to issue guidance (and a number of linked issues) will form part of this. To date, Departmental officials have stated that a public consultation on the review is expected at some stage in 2027.⁷¹

⁷⁰ Provided through correspondence between RaISe and Department of Justice (29 April 2026)

⁷¹ Northern Ireland Assembly Committee for Justice, [Criminal Justice \(Sentencing etc\) Bill: Department of Justice](#) (05 March 2026), page 2

3.3 Other Jurisdictions

In England and Wales, a Sentencing Council was established in 2010. In Scotland, the Scottish Sentencing Council was established in 2015. Meanwhile the Republic of Ireland's Sentencing Guidelines and Information Committee was established in 2020.

3.3.1 England and Wales

In England and Wales, the specific purposes of sentencing were formally introduced and codified in the Criminal Justice Act 2003. This has since been largely superseded by the Sentencing Act 2020 which consolidated the law around sentencing procedure through the Sentencing Code.

The court must have regard to the five purposes of sentencing when determining sentence, which are:

- the punishment of offenders
- the reduction of crime (including its reduction by deterrence)
- the reform and rehabilitation of offenders
- the protection of the public (including victims of crime)
- the making of reparation by offenders to persons affected by their offences⁷²

The Sentencing Act 2026 added to the statutory definition of the purpose of sentencing so that in addition to protecting the public, the definition would include reference to victims of crime. The aimed to ensure that "*the protection of victims is specifically considered when courts determine the appropriate sentence*"⁷³ in line with a recommendation made by the Independent Sentencing Review.⁷⁴ There is no hierarchy in the five purposes of sentencing.

⁷² Sentencing Act 2020, [Section 57](#)

⁷³ Sentencing Bill, [Explanatory Notes](#) (September 2025), paragraph 60

⁷⁴ Ministry of Justice, [Independent Sentencing Review](#) (May 2025), page 19

In England and Wales, a Sentencing Council was established in 2010 under the Coroners and Justice Act 2009.⁷⁵ The legislation provides for 14 members of the Sentencing Council with 8 senior judicial members and 6 non-judicial members.⁷⁶ The President of the Council is the Lady Chief Justice.

The Sentencing Council model has seen a shift away from reliance on Court of Appeal judgments with the council taking responsibility for developing sentencing guidelines and monitoring their use, including undertaking research to assess the impact on different demographic groups.⁷⁷ The Sentencing Code states that the courts in England and Wales ‘must follow’ any relevant sentencing guidelines, unless it is contrary to the interests of justice to do so.⁷⁸

However, it is worth noting that sentencing councils can be faced with navigating tensions between maintaining their independence and external public pressures. In 2025, there was a disagreement between the Justice Secretary and Sentencing Council over a revised guideline on ‘the imposition of community and custodial sentences’. The revised guideline would have included a non-exhaustive list of cohorts where a pre-sentence report would “*normally be considered necessary*” if the offender belonged to one or more of them. The list of cohorts included young adults (18-25 years), female, pregnant or post-natal or if the offender was from an ethnic, cultural and/or faith minority community.⁷⁹

The inclusion of this final cohort attracted political attention with the Shadow Justice Secretary stating that it would amount to “*two-tier justice*”.⁸⁰ The Government also objected to the inclusion of this cohort and the guideline was paused ahead of the introduction of the Sentencing Guidelines (Pre-sentence

⁷⁵ Prior to this a Sentencing Guidelines Council was created in 2003 and this was merged into the Sentencing Council in 2010.

⁷⁶ Membership is governed by [Schedule 15](#) to the Coroners and Justice Act 2009

⁷⁷ The Sentencing Council is required to consult on draft guidelines with a mandatory requirement to include the Lord Chancellor and the Justice Select Committee under the Coroners and Justice Act 2009, [Section 120](#)

⁷⁸ Sentencing Act 2020, [Section 59](#)

⁷⁹ House of Lords Library, [Sentencing Guidelines \(Pre-sentence Reports\) Bill](#) (May 2025)

⁸⁰ Sky News, [Robert Jenrick says new sentencing guidelines have ‘blatant bias against Christians and straight white men’](#) (06 March 2025)

Reports) Act. This legislation prevents the Sentencing Council from publishing guidelines stipulating the use of a pre-sentence report based on an offender's personal characteristics, specifically their race, religion or belief and cultural background.⁸¹ The Sentencing Act 2026 subsequently introduced a statutory requirement for the Sentencing Council to obtain the approval of both the Lord Chancellor and Lady Chief Justice for all sentencing guidelines before the Council can issue them as definitive guidelines.⁸²

3.3.2 Scotland

In Scotland, the Scottish Sentencing Council was established in 2015. The Council's statutory objectives are set out as being to promote consistency in sentencing practice, to assist the development of policy in relation to sentencing and to promote greater awareness and understanding of sentencing policy and practice.⁸³ The Council has 12 members with 6 senior judicial members, 3 legal members and 3 lay members.

It has responsibility for issuing sentencing guidelines which require the approval of the High Court of Justiciary under the Criminal Justice and Licensing (Scotland) Act 2010. It must also consult on guidelines with Scottish Ministers, the Lord Advocate and others.⁸⁴ A court must 'have regard to' any sentencing guidelines applicable in a case and must provide reasons from departing from these if it does not follow them.⁸⁵

The Council issued a guideline relating to the principles and purposes of sentencing in 2018. The core principle is described as "*sentences in Scotland must be fair and proportionate*", requiring that all relevant factors of a case must be considered including the seriousness of the offence, the impact on the victim

⁸¹ [Sentencing Guidelines \(Pre-sentence Reports\) Act 2025](#). The Sentencing Council issued a revised final guideline reflecting the provisions of the 2025 Act which took effect on 01 September 2025. Sentencing Council, [Amendments to be made to sentencing guidelines as a result of the incoming Sentencing Guidelines \(Pre-Sentence Reports\) Act 2025](#) (June 2025)

⁸² Sentencing Act 2026, [Section 20](#) and Ministry of Justice, [Justice Secretary introduces democratic lock over Sentencing Council](#) (September 2025)

⁸³ Criminal Justice and Licensing (Scotland) Act 2010, [Section 2](#)

⁸⁴ Criminal Justice and Licensing (Scotland) Act 2010, [Section 4](#) and [Section 5](#)

⁸⁵ Criminal Justice and Licensing (Scotland) Act 2010, [Section 6](#)

and others affected by the case and the circumstances of the offender. It also requires that sentences should be no more severe than is necessary to achieve the appropriate purposes of sentencing in each case and that reasons for sentencing decisions must be stated as clearly and openly as circumstances permit. The purposes of sentencing, in no particular order, are listed as:

- protection of the public
- punishment
- rehabilitation of offenders
- giving the offender the opportunity to make amends
- expressing disapproval of offending behaviour⁸⁶

In 2022, the Council also developed a sentencing young people guideline.⁸⁷ In 2024, a guideline on the statutory offences of causing death by driving came into effect.⁸⁸ Most recently, the Council's new sentencing guidelines on rape offences came into effect in March 2026.⁸⁹

3.3.3 Republic of Ireland

Established in 2020, the Sentencing Guidelines and Information Committee (SGIC) drafts guidelines for approval or amendment by the Judicial Council's Board. Its membership is composed of 8 judicial members and 5 lay members appointed by Government. In addition to sentences that are imposed by the courts, the SGIC is required by statute to take into account a number of factors when developing guidelines:

- the need to promote consistency in sentencing imposed by the courts
- the impact of judicial sentencing decisions on victims of the offences concerned
- the need to promote public confidence in the criminal justice system

⁸⁶ Scottish Sentencing Council, [Sentencing Guideline: Principles and Purposes of Sentencing](#) (November 2018)

⁸⁷ Scottish Sentencing Council, [Sentencing Young People](#) (January 2022)

⁸⁸ Scottish Sentencing Council, [Statutory Offences of Causing Death by Driving](#) (January 2024)

⁸⁹ Scottish Sentencing Council, [Rape Sentencing Guideline and Rape of a Young Child Sentencing Guideline](#) (March 2026)

- the financial costs involved in the execution of different types of sentences, and the relative effectiveness of them in the prevention of re-offending⁹⁰

The Judicial Council Act 2019 provides for the courts to ‘have regard’ to the sentencing guidelines unless satisfied that it would be contrary to the interests of justice to do so. In such a case, the court will be required to give its reasons.⁹¹ In 2022, the SGIC published a summary of existing case law in respect of particular offences.⁹² In 2022, the SGIC also published a research report which found that limited sentencing data in the Republic of Ireland may hinder the development of useful guidelines.⁹³ It has also published research on sentencing in the District Court and on community based sanctions available to judges.⁹⁴

A question as to the legal standing of sentencing guidelines arose in 2024 following the decision of the Supreme Court in *Delaney v Personal Injuries Assessment Board* [2024] IESC 10. This was in the context of the constitutionality of personal injury guidelines which had also been developed by another committee of the Judicial Council. Following a delay, the SGIC published a guideline on sentencing in relation to offences captured by section 40 of the Domestic Violence Act 2018.⁹⁵ The Guideline relates to offences committed in a context where the victim and the offender are or were married, in a civil partnership or an intimate relationship.

⁹⁰ Judicial Council Act 2019, [Section 91](#) and K. McLaughlin, [Research Matters Key Insights for the 34th Dáil and 27th Seanad: Sentencing Guidelines](#) (April 2025)

⁹¹ Judicial Council Act 2019, [Section 92](#)

⁹² The Judicial Council, [Sentencing Guidelines and Information Committee – Sentencing Judgments](#) (December 2022)

⁹³ The Judicial Council, [Assessing Approaches to Sentencing Data Collection and Analysis](#) (May 2022)

⁹⁴ The Judicial Council, [Community Sanctions in Ireland](#) (November 2024) and N. Maguire, [A Study of District Court Judges Views on Sentencing and the Sentencing of Relationship Violence](#) (December 2024)

⁹⁵ The Judicial Council, [Sentencing Guideline on the Application of Section 40 of the Domestic Violence Act 2018](#) (March 2026). In May 2025, this was first published as a ‘report’ by way of information and assistance for sentencing judges.

4 Part 2: Suspended Sentences

Part 2 of the Bill would create a new suspended sentence order for adult offenders. An explanation of the existing legislation relating to suspended sentences and community sentences is included in [section 2](#) of this paper. This part of the Bill would provide for a suspended sentence order which may specify one or more community requirements, such as requiring an offender to work unpaid or to be subject to a curfew. This would be undertaken under the supervision of a Probation Officer. This part of the Bill would also provide for situations 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.

4.1 Background

Research indicates that whilst short custodial sentences may serve as punishment, they can fall short in providing meaningful rehabilitation to offenders, have a limited deterrent effect and incur significant financial cost.⁹⁶ In Northern Ireland, a significant number of sentences include a period of custody of one year or less. In 2024-25, prison population statistics showed that custodial sentences of less than one year accounted for the largest proportion of prison receptions (567, 71.8 per cent).⁹⁷

Research also shows that short prison sentences can fail to fully address the factors which influence re-offending risks, such as addiction and mental health issues.⁹⁸ In Northern Ireland, the Department of Justice publishes information on 'proven reoffending'.⁹⁹ The latest statistics show that those released from sentences of 12 months or more reoffended at a substantially lower rate (19.3

⁹⁶ Ministry of Justice, [Transforming Rehabilitation: A Summary of Evidence on Reducing Reoffending](#) (2013) and J. Gormley et al. '[The Effectiveness of Sentencing Options on Reoffending](#)' Sentencing Council (2022) and Howard League for Penal Reform, [Sentence Inflation: a Judicial Critique](#) (September 2024)

⁹⁷ Department of Justice, [The Northern Ireland Prison Population 2024-25](#) (October 2025), page 19

⁹⁸ Northern Ireland Audit Office, [Reducing Adult Offending in Northern Ireland](#) (June 2023)

⁹⁹ The Department defines a 'reoffence' as any offence committed in Northern Ireland that leads to a conviction or diversionary disposal. It must also be 'proven' meaning this must have been imposed within the one-year observation period or by the end of the six-month follow up period.

per cent) than those serving sentences of less than 12 months (52.4 per cent).¹⁰⁰

The Northern Ireland Executive’s Programme for Government 2024-2027 includes a commitment to “*work collectively to develop a cross-governmental strategy to reduce offending and reoffending*”.¹⁰¹ Work is ongoing on developing a Strategic Framework for 2026-27 with a long-term cross-Executive Strategy envisaged to be ready to go out to public consultation by the end of the mandate.¹⁰²

Research indicates that community sentences can be an effective alternative to custody in addressing the underlying causes of crime.¹⁰³ In Northern Ireland, recent statistics show that the ‘proven reoffending’ rate for a community order involving supervision was 26.8 per cent for adults.¹⁰⁴ Table 2 below shows the percentage of community sentences compared to other sentences imposed by both the Crown Court and the Magistrates’ Court in 2024. This shows that community sentences represent a notable proportion (10.5 per cent) of sentences imposed by both the Magistrates’ Court and the Crown Court. A similar pattern is also evident across previous years.

Table 2: Percentage of Convictions by Main Disposal Type in Northern Ireland, 2024

Court Type	Imprisonment	Suspended Custodial	Community Sentence	Monetary Penalty
Crown Court	50.3%	27.9%	18.3%	2.6%

¹⁰⁰ Department of Justice, [Adult and Youth Reoffending in Northern Ireland \(2022/23 Cohort\)](#) (October 2025), page 15

¹⁰¹ NI Executive, [Programme for Government 2024-2027 ‘Our Plan: Doing What Matters Most’](#) (March 2025), page 49

¹⁰² [AQW 34850/22-27](#) (November 2025) and [AQW 40823/22-27](#) (February 2026)

¹⁰³ House of Lords Justice and Home Affairs Committee, [Cutting Crime: Better Community Sentences](#) (December 2023) and E. Guilfoyle ‘[Community Orders: A review of the sanction, its use and operation and research evidence](#)’ Sentencing Academy (2021)

¹⁰⁴ Department of Justice, [Adult and Youth Reoffending in Northern Ireland \(2022/23 Cohort\)](#) (October 2025), page 14

Court Type	Imprisonment	Suspended Custodial	Community Sentence	Monetary Penalty
Magistrates' Court	11.5%	17.1%	10%	58%
All Courts	13.9%	17.7%	10.5%	54.6%

Source: Department of Justice, [Court Prosecutions Convictions and Out of Court Disposals Statistics for Northern Ireland 2024](#) (June 2025)

Note:

1. Percentages reflect the main disposal recorded for convictions in each court type. Differences between courts reflect offence mix and sentencing powers.

In the Crown Court, community sentences accounted for varying proportions of disposals within each offence category, and were most common for criminal damage and arson (32.8 per cent, 19 cases), followed by miscellaneous crimes against society (29.6 per cent, 56 cases) and drugs offences (20.7 per cent, 67 cases). These percentages reflect the share of cases within each offence type that resulted in a community sentence.

In the Magistrates' Court, community sentences represented a smaller share overall. The highest proportions were observed for sexual offences (32.5 per cent, 38 cases) and criminal damage and arson (26.3 per cent, 334 cases), followed by violence against the person (20.7 per cent, 672 cases). While some categories (such as theft offences, 16.8 per cent (349 cases)) account for a relatively large number of community sentences in the Magistrates Court, this reflects higher case volumes rather than a higher proportion receiving this outcome.

4.2 Public Consultation

As part of the Sentencing Review 2016-2021, the Department consulted on the increased use of community sanctions, including the use of restorative justice and problem-solving justice. It also proposed further roll-out of the Enhanced

Combination Order and increased judicial involvement during community sentencing.¹⁰⁵ There was a strong level of support across consultation respondents for these suggestions.¹⁰⁶

The Department also consulted on a number of new options to use community elements in sentencing:

- Enhanced Conditional Discharge
- Structured Deferred Sentences
- Supervised Suspended Sentence Orders
- Adult Diversionary Sentences¹⁰⁷

The Enhanced Conditional Discharge was described in the consultation document as imposing no punishment. This could potentially be given on condition that the offender does not commit another crime within a certain timeframe (not exceeding 3 years).¹⁰⁸ A structured deferred sentence was described as potentially appropriate for less serious offences under which a final sentence can be postponed on the basis that the offender undertakes a structured intervention programme supervised by a Probation Officer. In Northern Ireland, a sentence can already be deferred for up to 12 months where the court considers that an offender can change their behaviour.¹⁰⁹ However, issues have arisen in relation to the amount of time required to bring about change in an offender's behaviour with some requiring more than 12 months.¹¹⁰

A Supervised Suspended Sentence Order was also highlighted as a potential sentencing option for Northern Ireland. Reference was made to the use of similar orders in England and Wales which can help to bring about longer term

¹⁰⁵ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 59

¹⁰⁶ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 30-33

¹⁰⁷ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 69

¹⁰⁸ Ibid, page 70

¹⁰⁹ Criminal Justice (Northern Ireland) Order 1996, [Article 3](#)

¹¹⁰ Department of Justice, [Evaluation of the Substance Misuse Court Pilot](#) (February 2022)

change in offending behaviour.¹¹¹ Further context around the use of suspended sentence orders in England and Wales can be found in section 4.4.

Adult diversionary sentences were also explored in the consultation document. This proposed the development of a “*community-based intervention for those offences which merit more than a formal caution administered by the police but are not serious enough to warrant the consequences of a full prosecution*”.¹¹² It suggested that this might be appropriate for minor first time offences.

The consultation summary highlighted that more respondents were in support of the proposed new community sentencing options than not but that the level of support was not as strong as it was for the other propositions around the Enhanced Combination Order and increased judicial involvement.¹¹³ In response, the Northern Ireland Human Rights Commission welcomed “*the development of sentencing measures to ensure the wider use of non-custodial measures and community sentencing as an alternative to imprisonment, particularly short term custodial sentences*”.¹¹⁴

Whilst a focus on addressing offending behaviour was welcomed, concerns were identified in relation to the potential for confusion around the introduction of further sentencing options. At this time the Department indicated its intention to undertake further modelling work, alongside key stakeholders, before giving a commitment to introduce any of these new sentencing options.

4.3 Part 2 of the Criminal Justice (Sentencing etc) Bill

Clause 3 of the Bill provides that suspended sentence orders would be available where a court passes a sentence of imprisonment or detention in a young offenders centre. This would apply where an offence is not serious, and

¹¹¹ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 71

¹¹² Ibid, page 72

¹¹³ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 34

¹¹⁴ Northern Ireland Human Rights Commission, [Submission to DOJ's Sentencing Review Consultation](#) (February 2020), page 17

the term of the sentence is less than 2 years, or where the offence is serious and the term of the sentence is less than 7 years.¹¹⁵

Clause 4(1) would mean that a suspended sentence order is not to take effect unless an activation event occurs and a court orders that the sentence is to take effect. Clause 4(2) would allow for a suspended sentence order to specify one or more community requirements. Under clause 4(3), a suspended sentence order would also have to state that the offender is to be under the supervision of a responsible officer where community requirements are imposed.

4.3.1 Community Requirements

Community requirements would be further defined in clause 8.¹¹⁶ Schedule 1 of the Bill would set out the requirements for unpaid work to be undertaken by an offender in accordance with instructions provided by a responsible officer.

Under Schedule 1, paragraph 1(1) this would include the work to be performed and the times at which the offender is to perform it. This work would also be required to be performed during the period of 1 year beginning with the date of the order. Paragraph 1(2) states that this would be subject to an extension contained in schedule 2, paragraph 19. Under paragraph 1(3), the instructions from the responsible officer would have to avoid, as far as possible, any conflict with an offender's religious beliefs, any other court order and interference with the times an offender works or attends an educational establishment.

Under paragraph 2(1), the number of hours of unpaid work must be between 40 and 240 hours and specified in the order. Provision would also be made for situations where a court makes suspended sentence orders in respect of 2 or more offences of which the offender is convicted on the same occasion and

¹¹⁵ Clause 3(4) would define "serious offence" as meaning an offence for which a person aged 21 years and over may, on conviction in the Crown Court, be sentenced to imprisonment for a term of five years or more.

¹¹⁶ Requirements authorised under [Schedule 1](#) of the Criminal Justice (Northern Ireland) Order 1996 relating to probation orders would also apply to suspended sentence orders. This includes requirements around residence, activities, treatment for mental conditions, drug and alcohol dependency. Curfews and electronic monitoring under [Part 2, Chapter 5](#) of the Criminal Justice (Northern Ireland) Order 2008 could also be authorised by a court for suspended sentence orders under clause 8.

includes unpaid work requirements in each of them. Paragraph 3(1) outlines that a court would need to be satisfied that an offender is a suitable person to perform the work and provision can be made by the Probation Board to support this. Under paragraph 3(2), the court would be able to hear from a Probation Officer in making a decision on this.

Clauses 9 and 10 also relate to community requirements. Clause 9 would provide further detail around the exercise of the court's power to impose community requirements. Clause 9(3) would provide that where 2 or more community requirements are imposed, the court must consider if they are compatible with each other before making the suspended sentence order. Clause 9(4) would mean that the court must ensure, as far as possible, to avoid any conflict with an offender's religious beliefs, any other court order and interference with the times an offender works or attends an educational establishment. This mirrors the provision in clause 12(4) and schedule 1, paragraph 1(3) in relation to the matters which a responsible officer must avoid when giving an offender instructions for unpaid work.

Clause 10 would state that a court must obtain and consider a pre-sentence report before deciding whether to impose a community requirement, unless it is of the opinion this is unnecessary. Under clause 10(3), if a court considers this unnecessary then it must state this in open court. Clause 10(4) would provide that an order is not invalidated if the court does not obtain a pre-sentence report. Clauses 10(5) and 10(6) cover the duties on any appeal court in relation to pre-sentence reports. Clause 10(7) would provide further definition of a pre-sentence report as one made in writing which assists the court in determining the most suitable method of dealing with an offender and is prepared by a probation officer or a social worker of an HSC Trust.

This clause would also provide the Department with a regulation making power to prescribe the information contained in pre-sentence reports in further detail. These regulations would be subject to the negative resolution procedure (laid before the Assembly by the Department and would take effect when its 'comes into force' date is reached).

- MLAs may wish to ask the Department for more information on situations where a court declines to obtain a pre-sentence report.

4.3.2 Responsible Officer

Clauses 11 to 13 would set out the duties of the responsible officer where community requirements are imposed. Clause 11(2) would define the responsible officer as being responsible for supervising the offender under the order and carrying out their functions in accordance with arrangements made by the Probation Board for Northern Ireland. Clause 11(3) would provide that the responsible officer must be a probation officer selected by the Probation Board or a person appointed by the Probation Board.

Clause 12 would cover the obligations of the responsible officer. This would provide that the 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.¹¹⁷ Clause 12(4) would mean that an officer must ensure, as far as possible, to avoid any conflict with an offender's religious beliefs, any other court order and interference with the times an offender works or attends an educational establishment. This mirrors similar provision in clause 9(4) for the court when imposing community requirements and schedule 1, paragraph 1(3) in relation to the matters which a responsible officer must avoid when giving an offender instructions for unpaid work.

Clause 13 would cover the duty of the offender to keep in touch with a responsible officer in line with any instructions. The offender would also have to notify the responsible officer of any change of address. Clause 13(4) states that these obligations are enforceable as if they were community requirements imposed by the suspended sentence order.

¹¹⁷ This is subject to [Schedule 1](#), paragraphs 4(5) and 5(5) of the Criminal Justice (Northern Ireland) Order 1996 relating to in-patient treatment for a mental health or drug or alcohol dependency.

- MLAs may wish to query how the Department considers that the responsible officer will be expected to balance the rights of the offender in relation to education, work and religious observance in carrying out their duties under this part of the Bill.

4.3.3 Activation Events

The Bill would define an activation event as referring to situations where an 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 (clause 4(4)).

Under clauses 5(1) and 5(2), the suspended sentence order would have to specify the operational period, lasting between 1 and 3 years for a non-serious offence or 1 and 5 years for a serious offence. Where the order imposes a community requirement, it would have to specify the supervision period which can last for between 6 months and 3 years under clauses 5(3) and 5(4). Under clause 6(2), the court would be required to explain to the offender in ordinary language their liability if an activation event occurs.¹¹⁸

- MLAs may wish to consider whether the Department intends to provide any guidance to the courts in relation to the operation of clause 6.

Clause 14 and schedule 2, part 2 would set out the process to be followed in the Magistrates' Court and Crown Court where an offender commits a further imprisonable offence or breaches any requirement specified in the suspended

¹¹⁸ Under clause 6(4), the court would also have to 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 on the application of the offender or the responsible officer.

sentence order. Part 2, paragraph 8 would provide further detail in relation to these activation events and allow a court to deal with them in a number of ways:

- the suspended sentence would take effect with the original term unaltered
- the suspended sentence would take effect with the substitution of a lesser term for the original term
- the offender would pay a fine up to a maximum of £1,000
- the cancellation or amendment of any community requirement within the suspended sentence order
- the extension of any supervision or operational period relating to the order

In this scenario, the court would also be able to insert community requirements into a suspended sentence order which did not originally impose any community requirements (paragraph 12(4) limits an unpaid work requirement inserted by the court at this point to a maximum of 60 hours). If a court considers an activation event but makes no order with respect to the suspended sentence, then Schedule 2, paragraph 8(3) would provide that this must be recorded.

Schedule 2, paragraph 9(1) would provide that where a court deals with an activation event, then it must make an order that the suspended sentence is to take effect with the original term unaltered unless it is of the opinion that it would be “*unjust to do so in view of all the circumstances*”. These circumstances can include the extent to which the offender has complied with any requirements of the suspended sentence order or the facts of a subsequent offence. Under schedule 2, paragraph 9(3) the court must state its reasons if it is of the view that it would be unjust to make an order that the suspended sentence is to take effect with the original term unaltered.

Clause 14 and Schedule 2, part 3 would also cover the cancellation or amendment of a suspended sentence order that imposes one or more community requirements in further detail. In a scenario where an offender or responsible officer applies to the court for the requirements to be cancelled, paragraph 16(2) would permit the court to do this, if it is in the interests of justice to do so, taking into consideration the circumstances since the order was

made. Paragraph 16(3) would set out the circumstances where this might be appropriate, such as an offender making good progress or responding satisfactorily to supervision. An application cannot be made whilst an appeal against the suspended sentence is pending.

Paragraph 17 would cover the amendment of community requirements on application by the offender or the responsible officer. Paragraph 17(3) would provide 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 not exceed a maximum of 60 hours. Paragraph 17(4) would prevent 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. An application cannot be made whilst an appeal against the suspended sentence is pending.

Provision would also be made in paragraph 18 on amendments to an order relating to treatment requirements for drug/alcohol dependency or a mental condition where this is necessary in the view of a medical practitioner.

4.3.4 Statutory Regulations

As noted above, clause 10(7) would allow the Department to prescribe the content of pre-sentence reports within regulations. These regulations would be subject to the negative resolution procedure (laid before the Assembly by the Department and would take effect when its 'comes into force' date is reached).

Clause 15 on the regulation of suspended sentence orders would provide a power for the Department to make regulations by way of the negative resolution procedure in three areas:

- the supervision of offenders subject to suspended sentence orders
- the arrangements for offenders subject to suspended sentence orders to perform work.¹¹⁹ This may include provision limiting the hours an

¹¹⁹ The Probation Board (Northern Ireland) Order 1982, [Article 4\(1\)\(b\)](#)

offender can work in one day, the keeping of work records and payment of travelling and other expenses relating to the performance of work.

- the functions of the responsible officers of such offenders.

Clause 16 would restrict the court when making a suspended sentence order from making a community order in the offender's case in respect of another offence for which they are convicted at the same time. As noted in section 2.3, a suspended sentence is a non-immediate custodial sentence whereas a community order is considered an alternative to prison.¹²⁰

The Department's assessment of the Bill's compatibility with the European Convention on Human Rights (ECHR) indicates that this part of the Bill potentially engages Article 5 (right to liberty), Article 7 (no punishment without law) and Article 8 (right to respect of private and family life). The assessment indicates that the provisions are not retrospective and that the requirements of a suspended sentence order must not conflict with an offender's religious beliefs or interfere with the times an offender works or attends an educational establishment. The Department considers there are no ECHR issues with this part of the Bill.¹²¹

- The RaISe Review of Costs (NIAR 117-2026) outlines the potential financial impact of this part of the Bill, particularly on the Probation Board for Northern Ireland, which MLAs may wish to consider in further detail.¹²²

4.4 Other Jurisdictions

In England and Wales, judges can impose Community Orders or Suspended Sentence Orders. The Criminal Justice Act 2003 replaced various kinds of

¹²⁰ Clause 7 of the Bill would provide that a suspended sentence which has not taken effect should be treated as a sentence of imprisonment

¹²¹ Provided through correspondence between RaISe and Department of Justice (29 April 2026)

¹²² Available at Northern Ireland Assembly, [Research and Information Service Publications 2026 \(NIAR-117-2026\)](#)

community order for adults with a single community order. Much of the legislation on community orders has since been superseded by the Sentencing Act 2020 which provides for community orders that impose strict requirements on offenders such as through undertaking unpaid work, adhering to curfews, electronic monitoring and committing to drug and mental health treatment.¹²³

The Sentencing Act 2020 consolidated the community requirements that can be specified within a suspended sentencing order.¹²⁴ The Sentencing Act 2026 contains further powers for courts to forbid people on community orders or suspended sentencing orders from entering drinking establishments, attending sports/public events and driving.¹²⁵ The 2026 Act also provides for a reduction in unpaid work hours for offenders complying with their suspended sentence order or community order.¹²⁶

In addition, the Sentencing Act 2026 introduced a presumption for courts to suspend short custodial sentences of 12 months or less unless there are “exceptional circumstances” relating to the offence or the offender, or which would otherwise justify not making a suspended sentence order.¹²⁷ The 2026 Act extended the availability of suspended sentences to cover custodial sentences of up to 3 years, rather than the previous limit of 2 years.¹²⁸

In Scotland, the courts can defer a sentence after conviction for a period and on such conditions as the court may determine.¹²⁹ When such a deferment involves a structured intervention managed by justice social work services then it is known as a structured deferred sentence. Such an intervention is likely to

¹²³ See the Sentencing Act 2020, [Section 201](#) and [Schedule 9](#). Despite evidence pointing to the effectiveness of community sentences to punish offenders, protect victims and reduce reoffending, there has been a marked decline in their use. The number imposed each year has dropped 61 per cent between 2010 and 2024. See Ministry of Justice, [Independent Sentencing Review](#) (July 2025), page 22

¹²⁴ Sentencing Act 2020, [Section 287](#) and [Schedule 9](#)

¹²⁵ Sentencing Act 2026, [Sections 14-18](#)

¹²⁶ Sentencing Act 2026, [Section 36](#)

¹²⁷ Sentencing Act 2026, [Section 1](#)

¹²⁸ These changes came into effect in March 2026. BBC News, [Plan to scrap most short jail terms comes into effect](#) (23 March 2026)

¹²⁹ Criminal Procedure (Scotland) Act 1995, [Section 202](#). Scottish Government, [Structured Deferred Sentences in Scotland: Guidance](#) (February 2021)

cover substance use, mental health, education, training and employment and relationships. Community Payback Orders were also introduced in 2011 to allow offenders convicted of lower level crimes to undertake work in the community.¹³⁰ There are 10 different requirements that can be given by a judge as part of the an order, including unpaid work, compensation, a residence requirement, mental health treatment programme and a drug and alcohol treatment programme.¹³¹ A statutory presumption against short custodial sentences of under 12 months exists in Scotland.¹³²

In the Republic of Ireland, sentences can be part-suspended which involves two phases, one of immediate custody followed by a period where an offender will have to adhere to suspension terms. Sentences can also be fully suspended which involves a prison sentence being imposed but immediately suspended subject to certain conditions. The court retains discretion as to the length of the operational period and the conditions attached to the suspended sentence. Suspension can be applied to sentences of any length except mandatory sentences. In terms of alternatives to prison, the courts can also use community service orders with certain conditions, including a limit of 240 hours on the unpaid work requirement that may be imposed.¹³³

5 Part 3: Life Sentences

Part 3 would make provision in relation to mandatory life sentences for adults. It would place a duty on the court, when passing a life sentence under the Life Sentences (Northern Ireland) Order 2001, to state in open court its reasons for deciding such a sentence and explain the effect of it to the offender.

Schedule 3 of the Bill would insert new Schedule A1 into the Life Sentences (Northern Ireland) Order 2001. This would provide a number of general principles which the court must have regard to when considering the

¹³⁰ The Community Payback Order replaced community service orders, supervised attendance orders and probation orders. See the Criminal Procedure (Scotland) Act 1995, [Sections 227A](#)

¹³¹ Scottish Government, [Community Payback Order Practice Guidance](#) (May 2022)

¹³² Scottish Government, [Presumption against short sentences extended](#) (June 2019)

¹³³ Law Reform Commission, [Report Series: Suspended Sentences](#) (August 2020), page 34

seriousness of an offence. Schedule 3 would also set out the starting points when determining the tariff part of a life sentence with a regulation making power for the Department.

5.1 Background

As highlighted in section 2.3, life sentences are mandatory for murder which means that no release date will be given by a judge with offenders receiving a ‘tariff’ date which is the earliest date that they may become eligible for consideration for release by the Parole Commissioners on life-long licence. A range of licence conditions can be imposed, including residence requirements, geographical bans and restrictions of association with named persons or groups.¹³⁴

Article 5(2) of the Life Sentences (Northern Ireland) Order 2001 requires a judge to set a tariff “*to satisfy the requirements of retribution and deterrence*”. Article 5(3) also provides that a judge can direct that the release provisions contained in Article 5(1) shall not apply to an offender because of the seriousness of the offence and so a minimum term will not apply. These are known as whole life tariffs (there are no offenders in Northern Ireland serving a whole life tariff).¹³⁵ Article 5(4) to 5(6) contains a discretionary power for the Department to direct release.

The application of a Practice Statement on life sentences, which offers ‘guidance’ to judges who still retain discretion to depart from this if necessary, was approved by the Court of Appeal in *R v McCandless* [2004] NICA 1.¹³⁶ The approach to the determination of the tariff was given by the Court of Appeal in this case, including factors which feed into each starting point and aggravating and mitigating factors. The two starting points set out in the case were a lower

¹³⁴ Parole Commissioners, [Licence Conditions for Life Sentence Prisoners](#)

¹³⁵ A whole life tariff was imposed in the case of Trevor Hamilton but this was reduced on appeal to a minimum term of 35 years. *R v Trevor Hamilton* [2008] NICA 27. The court stated at [38] that the imposition of a whole life tariff should be confined to those instances where “*the facts of the case, considered as a whole, will leave the judge in no doubt that the offender must be kept in prison for the rest of his or her life*”.

¹³⁶ Practice Statement (Crime – Life Sentences) [2002] 3 All ER 412 and *R v McCandless* [2004] NICA 1 at [9]

point of 12 years and a higher starting point of 15/16 years in custody for cases involving exceptionally high culpability.¹³⁷

However, the Court of Appeal subsequently recalibrated these in the recent case of *R v Whitla* [2024] NICA 65. The court stated that *McCandless* should be read with the following revision:

- the normal starting point is 15/16 years. This is based on high culpability
- in exceptional cases of low culpability, the starting point may reduce to 12 years
- in cases of exceptionally high culpability the starting point is 20 years.¹³⁸

Tariff setting in murder cases is a complex process and will be considered by a judge in various stages. The appropriate starting point will be identified before consideration is given to whether it can be varied up or down to take account of aggravating and mitigating factors, which relate to either the offence or the offender, in the particular case.¹³⁹ A judge should then “*stand back and look at the circumstances as a whole and impose the sentence which is appropriate having regard to all the circumstances*”.¹⁴⁰

Aggravating factors relating to the offence can include: “(a) *the fact that the killing was planned; (b) the use of a firearm; (c) arming with a weapon in advance; (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body; (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time*”.¹⁴¹ Mitigating factors relating to the offence will

¹³⁷ Such cases will be characterised by a feature which makes the crime especially serious, for example, the killing involved a ‘professional’ or a contract killing, was politically motivated, was done for gain (in the course of a burglary, robbery etc.), was intended to defeat the ends of justice (the killing of a witness or potential witness), the victim was providing a public service, the victim was a child or was otherwise vulnerable, the killing was racially aggravated, the victim was deliberately targeted because of his or her religion or sexual orientation, there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing, extensive and/or multiple injuries were inflicted on the victim before death or the offender committed multiple murders.

¹³⁸ [R v Whitla](#) [2024] NICA 65 at [43]

¹³⁹ Practice Statement (Crime – Life Sentences) [2002] 3 All ER 412 at [13]

¹⁴⁰ [R v Morrin](#) [2011] NICA 24 at [15]. Double counting must also be avoided.

¹⁴¹ Practice Statement (Crime – Life Sentences) [2002] 3 All ER 412 at [14]

include: “(a) an intention to cause grievous bodily harm, rather than to kill; (b) spontaneity and lack of pre-meditation. Mitigating factors relating to the offender may include: (a) the offender’s age; (b) clear evidence of remorse or contrition; (c) a timely plea of guilty”.¹⁴²

In very serious cases, the Practice Statement notes that a substantial upward adjustment may be appropriate. For example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might be a minimum term of 30 years which would offer limited prospect of the offender’s eventual release. In cases of exceptional gravity, the judge can state that there is no minimum period which could properly be set in that particular case, rather than setting a whole life minimum term.¹⁴³

As noted in *McCandless*, a significant aggravating factor can be where a victim is a public servant which would move a case into the higher starting point.¹⁴⁴ The Court of Appeal has highlighted that this applies to both the position of prison officers who manage dangerous offenders and police officers who investigate serious crime and bring offenders to justice.¹⁴⁵ In addition, the reduction given for a guilty plea in a murder case will be less than other cases given the subject matter. One sixth would be the greatest reduction given in such a case.¹⁴⁶

Separately, the Court of Appeal has also considered the Whole Life Tariff in conjunction with the calculation of the discount for assisting police under the statutory framework contained within the Serious Organised Crime and Police Act 2005. The Court held that “*where a whole life term is moderated by*

¹⁴² Ibid at [16] and [17]

¹⁴³ Ibid at [18]

¹⁴⁴ [R v Wootton & McConville](#) [2014] NICA 69 at [23]: “*the reason for that approach is not because the lives of public servants are more valuable than other lives but because public servants should be protected by way of deterrence having regard to the obligations and risks which they take on for the benefit of the community*”.

¹⁴⁵ Ibid at [24]

¹⁴⁶ [R v Turner](#) [2017] NIC10A 52 at [40] and [R v Maksymowicz](#) [2025] NICA 42 at [24]

*mitigating factors the appropriate minimum term before taking into account mitigation will normally be 40 years”.*¹⁴⁷

Table 3 below outlines the tariffs imposed following a conviction for murder in cases disposed at courts in Northern Ireland between 2013 and 2025. This includes the number of cases, average tariff and range of tariff in years across this period.

¹⁴⁷ [R v Haggarty](#) [2020] NIC14A 22

Table 3: Tariffs imposed following a Conviction for Murder for cases disposed at Court in Northern Ireland, 2013-2025

Year	Cases	Average Tariff (Years)	Range of Tariff (Years)
2013	13	15	8 – 21
2014	7	10.6	4 – 16
2015	5	13.2	10 – 18
2016	8	14.4	9 – 17
2017	6	13.6	9 – 16
2018	9	12.125	3 – 20
2019	11	13.86	8 – 21
2020	5	17	11 – 22
2021	4	20.25	18 – 22
2022	10	17.7	10 – 22
2023	14	17.14	12 – 22
2024	7	20.14	14 – 29
2025	12	21.08	12 – 26

Source: Correspondence between RaISe and Department of Justice (28 April 2026)

Note:

1. Figures are based on initial disposal at court. Appeals are not included.

2. Tariff length relates to main offence in a case where there was a conviction for a substantive murder offence.
3. Figures for 2025 are provisional.
4. Figures for number of cases for 2014, 2017 and 2018 include cases where the main outcome was a hospital order.
5. This period includes years impacted by the covid-19 pandemic and subsequent recovery which influenced court business volumes.

5.2 Public Consultation

The Sentencing Review 2016-2021 considered tariff setting for murder. It considered whether the existing process should remain unchanged or whether there should be legislation to provide for a more regulated approach to tariff setting. The review also looked at the current starting points but discounted at the outset any proposal to introduce statutory set tariffs as these were deemed to unduly fetter judicial discretion.¹⁴⁸ The retention of the Whole Life Tariff was also considered as part of the review.

There were fewer than 15 respondents to the consultation questions on tariff setting for murder. It noted that there was a minimal difference of view on the adequacy of the current starting points used by the courts but support was expressed for legislating for statutory starting points with the approach in England and Wales referred to a number of times.¹⁴⁹

The Department concluded that overall the consultation responses suggested that the desire amongst respondents to see legislation on this aspect of sentencing was higher than those who preferred to remain solely reliant on the common law.¹⁵⁰ There were some comments around a lack of transparency with a majority view that at least 15 years should be the basic starting point in legislation. Some respondents wanted to see aggravating and mitigating factors placed in statute but, at that point, the Department concluded that this would

¹⁴⁸ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 35

¹⁴⁹ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 20

¹⁵⁰ Ibid, page 22

risk producing an undesirable rigidity of approach.¹⁵¹ There was some discussion in the summary document on the age of an offender which can be taken into account as a mitigating factor. At that time, the Department noted that placing starting points on a statutory footing would allow for the 12 years starting point to be restricted solely to adults under the age of 21.¹⁵²

The consultation sought views on whether, if legislating for statutory tariff starting points, whole life tariffs should be retained or replaced with either a tariff of 30 years or a tariff in excess of 30 years. The responses were equally balanced between retaining or replacing the whole life tariff.¹⁵³ Some respondents believed that it should be replaced by a tariff in excess of 30 years and higher whilst others noted that the whole life tariff undermines the rehabilitative role that is supposed to exist alongside imprisonment.

The Northern Ireland Human Rights Commission recommended that if the Department is to retain whole life tariffs, it should include a “*provision that ensures that prisoners know at the outset of their sentence, what they must do to be considered for release and under what conditions, including when review of his/her sentence will take place or may be sought, in compliance with ECHR, Article 3 (prohibition of torture)*”.¹⁵⁴ Relevant case law at the European Court of Human Rights has indicated that the existence of whole life tariffs is not incompatible with human rights standards but there must be mechanisms for reviewing sentences in such cases.¹⁵⁵

The Department concluded that the whole life tariff should be retained even if it is only to be used in “rare” cases. It suggested that there should be legislation on some matters relating to whole life tariffs, including that a guilty plea will not

¹⁵¹ Ibid, page 24

¹⁵² Ibid

¹⁵³ Ibid, page 21

¹⁵⁴ Northern Ireland Human Rights Commission, [Submission to DOJ's Sentencing Review Consultation](#) (February 2020), page 12

¹⁵⁵ [Vinter and Others v UK](#) (2013) (Applications nos. 66069/09, 130/10 and 3896/10) at [122]

lead to a reduction if the case is otherwise sufficiently serious to warrant a whole life tariff.¹⁵⁶

Following the consultation, the Department agreed that the following should be in legislation:

- 12 years becomes 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 becomes the starting point for adults aged 21 and older where there are no aggravating factors
- 20 years becomes the starting point for murders with identified exceptional culpability
- exceptional culpability will reflect factors already identified in Northern Ireland case law
- the whole life tariff will be available for “rare and exceptionally serious murders”
- where a whole life tariff is imposed, the judge is 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 will not lead to a reduction if the case is otherwise sufficiently serious to warrant a whole life tariff
- an obligation to publish guidance on the power vested in a Minister to “direct release as being appropriate”¹⁵⁷

As noted above, since the consultation the Court of Appeal judgment in *R v Whittle* [2024] NICA 65 recalibrated the guidance to courts around the appropriate starting points for murder tariff calculations. Therefore the Criminal Justice (Sentencing etc) Bill includes two starting points for adults, 15 years and 20 years. This recognises that the courts consider the age of an offender as a mitigating circumstance for offending conduct. As a consequence, the Bill does

¹⁵⁶ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 25

¹⁵⁷ Ibid, page 26

not include 12 years as the starting point for adults under the age of 21. The Department also highlighted that not including this starting point allows more flexibility to reflect the age of the offender, particularly those who are very close to the age 21 threshold.¹⁵⁸

On whole life tariffs, the Department has since indicated that further legislation on these being available for “rare and exceptionally serious murders” is not required as this is already the status quo. In relation to guilty pleas not leading to a reduction in sentence if the case is otherwise sufficiently serious to warrant a whole life tariff, the Department has also since confirmed that this is the existing legal position and legislation is therefore not required.¹⁵⁹

The Explanatory and Financial Memorandum also highlights that the Bill does not include an obligation to publish guidance on the power vested in a Minister to “direct release as being appropriate” in whole life tariff cases.¹⁶⁰ This relates to the discretionary power contained in the Life Sentences (Northern Ireland) Order 2001 for the Department to direct release.¹⁶¹

The EFM notes 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*”. No direction for release would be considered until a substantial period of any tariff had been served and therefore “*an administrative solution could address the issue in a timely fashion taking account of experience in neighbouring jurisdictions within the UK*”.

In correspondence with RaISe, the Department indicated that “*detailed guidance will be prepared and published if and when an offender receives this sentence. This will not be immediately needed as an offender could not reasonably expect to be considered for a ministerial direction until over 20 years*

¹⁵⁸ Department of Justice, Annex C: Matters Approved for Drafting and Details of Those Not Taken Forward (13 April 2026)

¹⁵⁹ Ibid

¹⁶⁰ Criminal Justice (Sentencing etc) Bill, [Explanatory and Financial Memorandum](#) (March 2026), page 9

¹⁶¹ Life Sentences (Northern Ireland) Order 2001, Article 5(4) to 5(6)

*or more is served. After some review of relevant policies it was decided that it was preferable that relevant offending conduct would feed into the guidance”.*¹⁶²

- Whilst a sentence of a whole life tariff is likely to be extremely rare, MLAs may wish to consider querying whether this guidance should be in place at the imposition of such a sentence rather than at a later stage of imprisonment.
- MLAs may wish to seek further information on the timeframe and practical operation of the guidance referred to by the Department.

5.3 Part 3 of the Criminal Justice (Sentencing etc) Bill

Clause 18 would insert new paragraph 3A into Article 5 of the Life Sentences (Northern Ireland) Order 2001 to provide for situations where the court makes an order determining the minimum tariff for a life sentence (Article 5(1)) or an order for a whole life tariff (Article 5(3)). This would require the court to state its reasons for these orders in ordinary language and explain the effect of the order to the offender.

Clause 19 would make further provision around mandatory life sentences for offenders aged over 18. It would insert Article 5B into the Life Sentences (Northern Ireland) Order 2001 so that the court must have regard to the general principles set out in Schedule A1 which is inserted into the 2001 Order. Schedule 3 of the Bill would insert new Schedule A1 into the Life Sentences (Northern Ireland) Order 2001.

In complying with the duty outlined in new paragraph 3A, the court must state which of the starting points in Schedule A1 it has chosen and give reasons. The court must also state its reasons for any departure from the starting point. Table

¹⁶² Department of Justice, Annex C: Matters Approved for Drafting and Details of Those Not Taken Forward (13 April 2026)

4 below outlines the starting points contained in Schedule A1 alongside the cases which would normally fall within this (relevant case types).

Table 4: Starting Points for the Determination of Tariffs in Mandatory Life Sentence Cases in Schedule A1

Starting Point	Relevant Case Types
Exceptionally High 20 years (paragraph 1(1))	<ul style="list-style-type: none"> • a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death) • a murder intended to obstruct or interfere with the course of justice • a murder involving sadistic conduct, gratuitous or excessive violence, sexual maltreatment, humiliation or degradation • the murder of two or more persons • a murder done for the purpose of advancing a political, religious, racial or ideological cause • the murder of a police officer, a prison officer or a fire and rescue officer • the murder of a person who was serving or had ceased to serve as a police officer or a prison officer where the offence was motivated wholly or partly by something done by the victim in the course of their duty as a police officer or a prison officer • the murder of a vulnerable person¹⁶³ • a murder aggravated by racial hostility, religious hostility, hostility related to sexual orientation, or hostility related to disability¹⁶⁴

¹⁶³ This is defined having the meaning given in clause 36(7) of the Criminal Justice (Sentencing etc) Bill

¹⁶⁴ Clause 33(2) of the Criminal Justice (Sentencing etc) Bill on aggravation by hostility would apply to this

Starting Point	Relevant Case Types
	<ul style="list-style-type: none"> • a murder where the victim and the offender were personally connected within the meaning of section 5 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 • a murder where the offender had repeatedly or continuously engaged in behaviour towards the victim that was controlling or coercive.
15 years (paragraph 2)	<ul style="list-style-type: none"> • all other cases involving a mandatory life sentence for murder

Source: Criminal Justice (Sentencing etc) Bill, [Schedule A1](#) (March 2026)

Paragraph 3 would provide the aggravating and mitigating factors that the court should take into account “*to the extent it has not allowed for them*” in choosing the appropriate starting point. Paragraph 4 would provide that consideration of these factors may result “*in a term of any length being specified*” where the court makes an order determining the minimum tariff for a life sentence (Article 5(1)) or an order for a whole life tariff (Article 5(3)) under the Life Sentences (Northern Ireland) Order 2001.

The aggravating factors that may be relevant to the offence of murder are listed at paragraph 5:

- the fact that the murder was planned
- the use of a weapon
- arming with a weapon in advance
- the concealment, destruction or dismemberment of the body
- the concealment or destruction of evidence
- the fact that the murder was the culmination of cruel or violent behaviour by the offender towards the victim over a period of time
- the abuse of a position of trust
- a failure to obtain medical assistance for the victim
- the fact that the offender had engaged in behaviour that was abusive
- of a person other than the victim and with whom the offender was personally connected, at the time.¹⁶⁵

The mitigating factors that may be relevant to the offence of murder are listed at paragraph 6:

- an intention to cause grievous bodily harm, rather than to kill;
- a lack of pre-meditation;
- the fact that the offender intended to act in self-defence;
- a belief by the offender that the murder was an act of mercy;
- the age of the offender;

¹⁶⁵ This applies sections 2, 4 and 5 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) Act 2021

- clear evidence of remorse;
- the fact that the offender suffered from any mental disorder which lowered the degree of culpability for the killing, although not affording a defence of diminished responsibility.¹⁶⁶

As noted in section 5.2, the consultation summary document indicated that the inclusion of multiple aggravating and mitigating factors in statute would not be desirable as it could risk producing an “*undesirable rigidity of approach*”.¹⁶⁷

In correspondence with RalSe, the Department has since outlined its rationale for including aggravating and mitigating factors that the court may take into account within Schedule A1. The Department noted that the approach taken had evolved since the consultation as it became increasingly apparent that identifying these factors within caselaw can be “*onerous for anyone not familiar with the legal system*”.¹⁶⁸

Therefore it was considered that “*inclusion of a range of factors regularly identified by the courts, taking a similar approach to that seen in the Sentencing Act 2020, would help considerably with transparency, understanding and people’s expectations of sentencing in murder cases. Making it clear that the lists are non-exhaustive and that these are factors that ‘may’ be relevant ensures no fettering of judicial discretion and addresses concerns that the court might be challenged for considering factors not identified in the lists*”.

Paragraph 7 of the Bill would provide that Schedule A1 does not restrict the court in reducing a sentence where an offender pleads guilty or taking into account any previous convictions or offences committed while an offender was on bail.¹⁶⁹

Paragraph 8(1) of Schedule A1 would provide the Department with a power to amend the starting point time periods of 20 years contained in paragraph 1(1)

¹⁶⁶ “Mental disorder” has the meaning given by [Article 3\(1\)](#) of the Mental Health (Northern Ireland) Order 1986 covering “mental illness, mental handicap and any other disorder or disability of mind”.

¹⁶⁷ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 24

¹⁶⁸ Correspondence between RalSe and Department of Justice (24 April 2026)

¹⁶⁹ Criminal Justice (Northern Ireland) Order 1996, [Article 33](#) and [Article 37](#)

and 15 years contained in paragraph 2. Paragraph 8(2) would allow the Department the power to add to the list in paragraph 1(2) covering cases which would normally fall within the exceptionally high starting point of 20 years. It would also give the Department the power to amend the aggravating factors listed in paragraph 5. 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 (draft affirmative procedure).

The Department's assessment of the Bill's compatibility with the European Convention on Human Rights (ECHR) indicates that this part of the Bill potentially engages Article 7 (no punishment without law). The assessment indicates that these clauses do not alter the mandatory life sentence for murder or the need for the court to set a tariff. In addition, the provision in these clauses is not retrospective. Therefore the Department considers that there are no ECHR issues.¹⁷⁰

5.4 Other Jurisdictions

In England and Wales, anyone who is found guilty of murder will receive a mandatory life sentence. Alongside this, the sentencing judge is required to consider whether to impose a minimum term order or a whole life order. Whole life orders are the most severe punishment available to a judge and offenders are only eligible for release on exceptional compassionate grounds (an offender was aged 21 or over when the offence was committed).¹⁷¹ Minimum term orders must specify a minimum term of the life sentence which the offender must remain in prison before the Parole Board considers whether they can be released to serve the rest of their life sentence on licence in the community.

Schedule 21 to the Sentencing Act 2020 (previously Schedule 21 to the Criminal Justice Act 2003) sets out the principles which the court must have regard to when assessing the seriousness of all cases of murder, to determine whether to make a whole life order or, if making a minimum term order, the

¹⁷⁰ Provided through correspondence between RaiSe and Department of Justice (29 April 2026)

¹⁷¹ Crime (Sentences) Act 1997, [Section 30](#) and HM Prison and Probation Service, [Early Release on Compassionate Grounds](#) (August 2023)

appropriate minimum term to be imposed.¹⁷² Schedule 21 contains a range of starting points for determination of the minimum term. A baseline starting point of 15 years applies to all murder cases committed by offenders aged 18 or over. There is a 25 year starting point for murders involving the use of a weapon which has been taken to the scene with intent.

The highest starting points are 30 years and a whole life order which recognise the exceptionally high seriousness of some murders, for example, those involving the murder of two or more persons or the use of a firearm or explosive. The minimum term imposed can vary upwards or downwards from the baseline starting point, depending on the aggravating and mitigating factors which will be determined by the judge based on the circumstances of the case.¹⁷³ The Sentencing Act 2026 introduced a new starting point of a whole life order for murders connected to the police, prison or probation officer's current or former duties.¹⁷⁴

In England and Wales, the Sentencing Council has not produced an offence-specific guideline for murder. However, a number of its other guidelines will be relevant and the courts 'must follow' any relevant sentencing guidelines unless it is contrary to the interests of justice to do so. The Law Commission is currently conducting a review on homicide and the sentencing framework for murder.¹⁷⁵

Recent statistics show that there were 7,358 unreleased life sentence prisoners in England and Wales. Of these, 46 per cent (3,413) had a tariff of 10-20 years, 40 per cent (2,942) had over 20 years and 13 per cent (929) had 10 years or less. 74 prisoners had a whole life sentence.¹⁷⁶

¹⁷² Sentencing Act 2020, [Schedule 21](#)

¹⁷³ Aggravating and mitigating factors in murder that the court should take into account can be found in Sentencing Act 2020, [Schedule 21](#)

¹⁷⁴ Sentencing Act 2026, [Section 11](#) amended [Schedule 21](#) and Ministry of Justice, [Life behind bars for police, prison and probation killers](#) (December 2025)

¹⁷⁵ Law Commission, [Law Commission to review law and sentencing in homicide](#) (December 2024)

¹⁷⁶ Ministry of Justice, [Offender management statistics quarterly: July to September 2025](#) (January 2026), Table 1.Q.16

In Scotland, murder carries a mandatory life sentence under the Criminal Procedure (Scotland) Act 1995. If an offender is sentenced to life imprisonment, the judge must set a punishment part of the sentence which is provided for under the Prisoners and Criminal Proceedings (Scotland) Act 1993. This relates to the minimum time the offender must spend in prison before they can be considered for release into the community on life licence by the Parole Board for Scotland. To date, the longest punishment part given in Scotland is 37 years.¹⁷⁷ There is no provision in Scotland for a whole life order, similar to the kind that can be imposed in England and Wales.

There are no statutory starting points in Scotland but the Scottish Sentencing Council has published a guideline judgment from the High Court of Justiciary on sentencing in murder cases.¹⁷⁸ This held that there was no minimum or maximum period for a punishment part in murder cases, and in some cases the punishment part may be longer than the person's expected life.¹⁷⁹ There may be certain types of case, for example a terrorist attack, where a punishment part of more than 30 years may be appropriate. In some cases, for example, where a child or a police officer acting in the course of duty was murdered, a punishment part in the region of 20 years may be appropriate. In cases where offenders have deliberately armed themselves with a knife, then the punishment part should be at least 16 years, unless there are exceptional circumstances.

In 2025, the Scottish Government published data showing that the average punishment part for life sentences imposed in 2022-23 was 19.3 years (this involved 27 offenders sentenced for murder).¹⁸⁰ Figures showing the average punishment part for life sentences for murder from 2004/05 to 2022/23 indicate a gradual increase over time, from 14.3 years in 2004-05 to 19.3 years in 2022-23. However, only a small number of life sentences are given each year,

¹⁷⁷ Scottish Sentencing Council, [Life sentences explained](#) (June 2023)

¹⁷⁸ *HM Advocate v Boyle* [2009] HCJAC 89

¹⁷⁹ Prisoners and Criminal Proceedings (Scotland) Act 1993, [Section 2](#)

¹⁸⁰ Scottish Government, [Experimental Statistics on the Length of the Punishment Part of Life Sentences and OLRs, 2022-23](#) (June 2025), Table A

ranging between 14 and 46 over the most recent 10 years (across murder and other serious crimes).¹⁸¹

In the Republic of Ireland, murder is subject to a mandatory life sentence under section 2 of the Criminal Justice Act 1990. The Parole Act 2019 established the Parole Board which determines the date of release for life sentence prisoners. However, life sentence prisoners are required to serve at least 12 years before being considered for parole under this legislation.¹⁸²

In 2024, the Irish Government announced new legislative proposals which would allow judges to recommend minimum periods in prison when a life sentence is imposed.¹⁸³ Under this, the Parole Board would be required to take into consideration the court's view in relation to the recommended minimum term that should be served in prison when deciding whether to grant parole. The Government approved the drafting of this Bill in July 2025.¹⁸⁴ There are already certain limited categories where the court can specify a minimum period of imprisonment of 40 years. This includes the murder of a member of An Garda Síochána or a prison officer acting in the course of duty.¹⁸⁵

6 Part 4: Unduly Lenient Sentences

Part 4 would allow any case in which an offender is sentenced by the Crown Court to be referred to the Court of Appeal by the Director of Public Prosecutions where it appears to the Director that the sentencing has been unduly lenient. It would provide for the arrangements to apply to sentences imposed in the Magistrates' Court for offences specified by the Department in regulations. This part of the Bill would also allow the Director of Public Prosecutions, or the offender to whom a sentence relates, to refer a point of law

¹⁸¹ Scottish Government, [Criminal Proceedings in Scotland, 2022-23](#) (December 2024), Table 10(d)

¹⁸² Parole Act 2019, [Section 24](#)

¹⁸³ Department of the Taoiseach, [Taoiseach & Minister McEntee announce Cabinet approval for Bill allowing judges recommend minimum prison terms for life sentences](#) (August 2024)

¹⁸⁴ Dáil Éireann Debate, [Domestic, Sexual and Gender-based Violence](#) (20 February 2026)

¹⁸⁵ Criminal Justice Act 1990, [Section 3](#)

to the Supreme Court, following the conclusion of a sentence review by the Court of Appeal.

6.1 Background

At present, the Director of Public Prosecutions can apply for leave to make a reference to the Court of Appeal under section 36 of the Criminal Justice Act 1988 where it appears that the sentencing of an offender has been unduly lenient.¹⁸⁶

The Director of Public Prosecution's power to refer a case to the Court of Appeal for undue leniency applies to sentences imposed in the Crown Court for:

- offences triable only on indictment (punishable on conviction in the Crown Court)
- certain hybrid offences (punishable on indictment in the Crown Court or on summary conviction in the Magistrates' Court) which have been specified in a statutory rule made by the Department of Justice.¹⁸⁷

Victims, their families and members of the public who are concerned about a sentence can request that the Director of Public Prosecutions review it for being unduly lenient. Notice of an application for leave to refer a case to the Court of Appeal must be given within 28 days from the day on which the sentence was imposed. There is no power to extend the time limit or to apply for leave to refer out-of-time.

The Court of Appeal in Northern Ireland has highlighted that this procedure does not provide the prosecution with a general right of appeal against sentence. Instead, it is a measure intended to permit the increase of an unduly lenient sentence where public confidence in the administration of justice may be adversely affected. For example, "*where a judge has fallen into gross error resulting in an unduly lenient sentence or where the sentence imposed is*

¹⁸⁶ Criminal Justice Act 1988, [Section 36](#)

¹⁸⁷ The either way offences are brought within the scope of Part 4 of the 1988 Act by statutory rules made under [section 35\(4\)](#)

*outside the range of sentences the judge, applying his mind to all the relevant factors, could reasonably consider appropriate”.*¹⁸⁸

The Court has stated that there is a high threshold for a reference to succeed. Leave should only be granted in exceptional circumstances and, if the court grants leave, it must then decide whether a sentence is unduly lenient, not simply lenient. In situations where a court decides that a sentence is unduly lenient, it retains a discretion whether to interfere with a sentence in the circumstances of a particular case.¹⁸⁹

The Court of Appeal has a discretion as to whether to quash the sentence imposed and substitute a more severe penalty.¹⁹⁰ It has also made allowance for a double jeopardy discount in unduly lenient sentencing referrals so that a reduction can be applied in situations where an offender is close to release or a custodial sentence is substituted for a non-custodial sentence.¹⁹¹ However, the court has been clear that double jeopardy does not operate to reduce the appropriate sentence where an offender is serving a substantial custodial sentence and the only issue is whether it should be increased.¹⁹²

Since the introduction of the unduly lenient sentence scheme, it has been extended several times to include a range of hybrid offences. In 2016, following a consultation by the Department, a number of offences were added, including bodily injury with or without a weapon, indecent images of children, slavery, servitude and forced or compulsory labour, unauthorised or harmful disposal of

¹⁸⁸ [R v Ruddy](#) [2025] NICA 13 at [2]

¹⁸⁹ [R v Kenneth Clarke and Jamie McConnell](#) [2024] NICA 52 at [5] and [6]

¹⁹⁰ [Attorney General's Reference \(No: 1/2006\) Gary McDonald and others](#) [2006] NICA 4 at [37]

¹⁹¹ [R v Ahamad](#) [2023] NICA 52 at [19]. The Criminal Justice Act 1988, [Schedule 3](#), paragraph 10 makes provision for the retrospective running of sentences which should mean that if an immediate custodial sentence is imposed on a reference of a suspended or non-custodial sentence, the offender will in effect be credited as part of the custody with the period of time between the Crown Court sentence and the order made by the Court of Appeal.

¹⁹² [R v Michael Loughlin: DPP'S Reference \(No.5 of 2018\)](#) [2019] NICA 10 at [35]. The earlier case of [AG's Ref No 6 of 2004 \(Doyle\)](#) [2004] NICA 33 at [40] also highlighted that in the case of an unduly lenient minimum tariff for murder, the effect of double jeopardy should be taken into account to a lesser extent than it would be in the case of a determinate sentence given that the total sentence of the court (life imprisonment) remains unaltered.

waste and animal welfare offences of unnecessary suffering and fighting.¹⁹³ Offences related to terrorism and organised crime groups were added in 2019.¹⁹⁴

Following this, the Department stated that sentences for 66 per cent of cases heard in the Crown Court would be capable of referral.¹⁹⁵ In general, a very small numbers of referrals are approved by the DPP and on average there are around 5 per year (out of around 750 immediate Crown Court custodial sentences) of which just over half are granted by the Court of Appeal.¹⁹⁶ The PPS were unable to provide recorded numbers of referrals for consideration by the DPP.¹⁹⁷

6.2 Public Consultation

The Sentencing Review 2016-2021 proposed three potential options for reform in this area:

- Option 1: All Crown Court and Magistrates' Courts sentences are made referable
- Option 2: All Crown Court sentences are made referable
- Option 3: 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.

For option 1, the consultation paper noted that this approach would treat all criminal convictions in the same way, regardless of the level of seriousness. The consultation highlighted that sentences of imprisonment are generally

¹⁹³ Department of Justice, [Consultation on the law on unduly lenient sentences](#) (February 2015) and [The Criminal Justice Act 1988 \(Reviews of Sentencing\) Order \(Northern Ireland\) 2016](#)

¹⁹⁴ Northern Ireland Executive, [The Fresh Start Panel report on the Disbandment of Paramilitary Groups in Northern Ireland](#) (June 2016) and [Department of Justice, Consultation on unduly lenient sentences](#) (August 2018) and [The Criminal Justice Act 1988 \(Reviews of Sentencing\) Order \(Northern Ireland\) 2019](#)

¹⁹⁵ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 51

¹⁹⁶ Correspondence between RaiSe and Department of Justice, Anticipated Costs related to the Criminal Justice (Sentencing etc) Bill (09 April 2026)

¹⁹⁷ Ibid

restricted to 6 months in the Magistrates' Court meaning limited scope for a sentence to be unduly lenient. Concerns were highlighted in relation to the significant additional costs that could be incurred under this option. It was discounted as a viable option as the Department said it would represent a disproportionate response to concerns about unduly lenient sentencing.¹⁹⁸

Option 2 covered making all Crown Court sentences referable. The Crown Court can hear offences that are tried on indictment only, hybrid offences¹⁹⁹ and certain summary only offences with a maximum penalty of imprisonment of over 6 months in which a defendant can elect for a jury trial in the Crown Court.²⁰⁰ The Department described option 2 as being "*the minimum change that should be made to the scope of the unduly lenient sentencing scheme provisions*".²⁰¹ It also noted that this would help to remove inconsistencies around hybrid offences and eliminate the need for future categories of offence being added to the scheme by way of statutory rule under section 35(4) of the Criminal Justice Act 1988.

Option 3 related to all Crown Court sentences and sentences for offences with a maximum penalty of 12 months or more when tried in a Magistrates' Court being made referable.²⁰² This noted that certain indictable offences of a less serious nature can be tried in the Magistrates' Courts by consent of the defendant with a potential sentence of imprisonment of up to 12 months.²⁰³ There are also some summary offences with a maximum penalty of imprisonment of between 6 months and 2 years.²⁰⁴ However, the consultation

¹⁹⁸ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 52

¹⁹⁹ These offences can be tried in the Crown Court or Magistrates' Court with the Public Prosecution Service deciding this based on the seriousness of the offence.

²⁰⁰ The Magistrates' Courts (Northern Ireland) Order 1981, [Article 29](#)

²⁰¹ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 54

²⁰² The review discounted including any sentence with a potential maximum of less than 12 months' imprisonment within the scheme as disproportionate

²⁰³ The Magistrates' Courts (Northern Ireland) Order 1981, [Article 45](#) and [Article 46](#). This includes, for example, Assault Occasioning Actual Bodily Harm and Threats to Kill under the Offices Against the Person Act 1861.

²⁰⁴ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 55

document outlined the potential that this option would have wider unintended consequences for both the Magistrates' Courts and the County Courts which would require further consideration.

There were 18 respondents to this section of the consultation with no clear preference emerging. Some of those who favoured option 2 felt that making all Crown Court sentences referable would simplify the existing arrangements and make it easier for the public to understand.²⁰⁵ The Department concluded that option 2 would be preferable, noting at the time that extending the arrangements to some Magistrates' Courts sentences would risk diminishing their purpose and adding to confusion over which offences were included.²⁰⁶

As noted in section 6.1, around two thirds of Crown Court's sentences can be referred under existing provisions. The Department envisages that the changes under Part 4 will increase the potential number of referrals by approximately 50 per cent.²⁰⁷

6.3 Part 4 of the Criminal Justice (Sentencing etc) Bill

Clause 20 would provide that a case falls within the arrangements detailed in this part of the Bill where an offender is convicted on indictment of an offence and sentenced in the Crown Court. Clause 20(3) would provide that the unduly lenient sentence scheme can apply to an offender convicted on summary trial and sentenced for an offence which is specified in regulations made by the Department.

These regulations would be subject to the negative resolution procedure (laid before the Assembly by the Department and would take effect when its 'comes into force' date is reached). The meaning of "sentence" in this part of the Bill means any order made by a court when dealing with an offender, including any recommendation as to the making of a deportation order. However, it does not

²⁰⁵ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 28

²⁰⁶ Ibid

²⁰⁷ Correspondence between RalSe and Department of Justice, Anticipated Costs related to the Criminal Justice (Sentencing etc) Bill (09 April 2026)

include an interim hospital order or an order requiring an offender to fund some or all of the cost of their representation.²⁰⁸

Clause 21 on reviews of sentencing would contain similar provisions to the existing ones in Part IV of the Criminal Justice Act 1988. Clause 21(1) would provide for the Director of Public Prosecutions to refer a case to the Court of Appeal for review where it appears that the sentencing of an offender has been unduly lenient. Clause 21(2) would set out the circumstances in which a sentence may be unduly lenient:

- the judge erred in law as to the sentencing powers available or
- the judge failed to impose a sentence required under certain statutory provisions²⁰⁹

Clause 21(4) would provide that the Director of Public Prosecutions must obtain leave from the Court of Appeal before referring a case. Schedule 4, paragraph 1 would replicate the existing 28 day time limit for notice of an application for leave to refer a case beginning with the day on which the sentence is passed.²¹⁰ Under clause 21(5), the Court of Appeal would be able to quash any sentence and pass a more appropriate sentence on the offender.²¹¹ This new sentence must be one which the court below had the power to pass originally when dealing with the offender.

²⁰⁸ Mental Health (Northern Ireland) Order 1986, [Part III](#) and Access to Justice (Northern Ireland) Order 2003, [Article 31](#)

²⁰⁹ These are listed at clause 21(2)(b) as being: holding an unauthorised firearm under the Firearms (Northern Ireland) Order 2004, dangerous weapons offences under the Violent Crime Reduction Act 2006, serious offences under the Criminal Justice (Northern Ireland Order) 2008 and slavery and human trafficking offences under the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. These offences requiring certain custodial sentences are also to be read in conjunction with Article 4(2) of the Criminal Justice (Northern Ireland) Order 2008.

²¹⁰ Criminal Justice Act 1988, [Schedule 3](#)

²¹¹ Any 2 or more sentences are to be treated as passed in the same proceedings, if they would also be treated in the same way for an appeal against sentence under the Criminal Appeal (Northern Ireland) Act 1980, [Section 10\(2\)](#). Section 10(2) also states that 2 or more sentences shall be treated as passed in the same proceedings if they are passed on the same day or are passed on different days, but the court in passing any one of them states that it is treating that one together with the other as substantially one sentence.

Clause 21(7) would provide that where a referral relates to a court order specifying a tariff date for a life sentence,²¹² the Court of Appeal must not make any allowance for the fact that the offender is being sentenced for a second time.²¹³ In addition, clause 21(8) would mean 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 was originally passed by the judge.

Clause 22 would cover situations where the Court of Appeal has concluded its review of a sentence referred by the Director of Public Prosecutions. Clause 22(2) would allow the Director of Public Prosecutions, or the offender to whom the sentence relates, to refer a point of law to the Supreme Court. Schedule 4, paragraph 4(1) would provide a time limit of 14 days for an application under clause 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 or refuses leave.²¹⁴

Under clause 22(3), the Supreme Court must consider the point of law, provide its opinion and deal with the case or remit it to the Court of Appeal to be dealt with. Clause 22(4) would provide that a reference to the Supreme Court can only be made with the leave of the Court of Appeal or the Supreme Court. Leave can only be granted if the Court of Appeal certifies that the point of law is of general public importance and it appears that it is a point that ought to be considered by Supreme Court. Clause 21(6) would provide that the Supreme Court may exercise any of the Court of Appeal's powers in dealing with any case under this part of the Bill.

Clause 23 would introduce schedule 4 which contains supplementary provision relating to reviews of sentencing and references to the Supreme Court. Schedule 4 would largely replicate existing provision contained in Schedule 3 of the Criminal Justice Act 1988. Schedule 4, paragraph 2 would set out the

²¹² The Life Sentences (Northern Ireland) Order 2001, [Article 5\(1\)](#)

²¹³ See section 6.1 for discussion on the Court of Appeal's approach to the double jeopardy discount

²¹⁴ This would replicate existing provision contained in the Criminal Justice Act 1988, [Schedule 3](#)

process where the Master (King's Bench and Appeals) is given notice of a reference or application to the Court of Appeal under clause 21.²¹⁵ The Master would be required to take all necessary steps for obtaining a hearing of the reference and provide the court with all the information required to determine the matter.

Schedule 4, paragraph 3 would relate to the making of rules of court. These may enable the offender who has been sentenced to obtain information from the Master in relation to the reference with the Master being able to make charges for them in accordance with rates fixed by the Department.

Schedule 4, paragraph 6 would provide that an offender 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. However, this would be subject to the provision contained in paragraphs 7 and 8. Paragraph 7 provides for the conditions which must be satisfied so that an offender in custody can be present at the hearing. A person in custody would not be entitled to be present unless the Court of Appeal gives the person leave, either on application by the Director of Public Prosecutions or under any preliminary or incidental proceedings. Paragraph 8 would make provision for the Court of Appeal to exercise its power to pass sentence even if the offender is not present.

In relation to a reference to the Supreme Court, schedule 4, paragraph 9 would provide that an offender who is in custody pending the hearing is not entitled to be present at the hearing of the reference or any preliminary or incidental proceedings. However, this would be subject to paragraph 10 under which an offender in custody may attend the hearing where an order of the Supreme Court or the Court of Appeal allows for this.

Schedule 4, paragraph 11 would provide that the term of any sentence passed by the Court of Appeal or Supreme Court would begin to run from the time when it would have started if passed in the original proceedings (unless the court

²¹⁵ The existing rules of court on this can be found in [Criminal Appeal \(Reviews of Sentencing \(Northern Ireland\) Rules 1989](#)

directs otherwise). This would reproduce existing provision in Schedule 3, paragraph 10 of the Criminal Justice Act 1988.²¹⁶

Provision would also be made in schedule 4, paragraph 12 in relation to an offender who is represented by counsel for the purpose of presenting an argument on the reference to the Court of Appeal or Supreme Court. This person would be entitled to be compensated by the Department for expenses incurred due to being represented by counsel. Any amount recoverable in relation to this would be determined by the Taxing Master or under Supreme Court Rules.

- MLAs may wish to consider whether there will be any legal aid implications from widening the scope of the unduly lenient sentencing scheme which is also referenced in the RaISe Review of Costs (NIAR 117-2026).
- MLAs may also wish to seek an update on the Department's work in relation to expanding the remit of the Magistrates' Court and any impact this might have on the unduly lenient sentencing scheme.²¹⁷

The Department's assessment of the Bill's compatibility with the European Convention on Human Rights (ECHR) indicates that this part of the Bill potentially engages Article 6 (right to a fair trial). The assessment indicates that referrals under the unduly lenient sentence scheme will be dealt with by a fair and impartial court. Therefore the Department considers that there are no ECHR issues.²¹⁸

²¹⁶ Criminal Justice Act 1988, [Schedule 3](#), paragraph 10

²¹⁷ In 2024-2025, research has been conducted to estimate the potential impact of raising the sentencing powers of the Magistrates' Court to 24 months' imprisonment. Public Prosecution Service, [Annual Report and Accounts 2024-25](#) (November 2025), page 30

²¹⁸ Provided through correspondence between RaISe and Department of Justice (29 April 2026)

6.4 Other Jurisdictions

6.4.1 England and Wales

The Criminal Justice Act 1988 also applies to the law on unduly lenient sentences in England and Wales. The Attorney General has the power to refer to the Court of Appeal sentences for certain offences which appear to be unduly lenient. As in Northern Ireland, the power to refer is limited to offences triable only on indictment and certain other offences specified by order.²¹⁹

The Secretary of State for Justice has the power to specify that an either way offence is one that the power to refer applies to, that is to add an offence to the scheme. This power has been exercised a number of times over the years with offences related to stalking and harassment added in 2019.²²⁰

Members of the public can ask the Attorney General's Office to examine sentences handed down by Crown Courts in England and Wales.²²¹ In 2024, the Attorney General's Office received 1,223 requests to review sentences with 831 falling within the scope of the scheme. Of those, 146 were referred to the Court of Appeal (outcome data not yet available). Similar numbers of requests were received in 2023 with 139 referred to the Court of Appeal. The Court of Appeal agreed that the sentence was unduly lenient in 81 per cent of these cases, with a sentence increased in 93 cases (67 per cent).²²²

The Law Commission's ongoing review of the law on criminal appeals includes consideration of whether the Attorney General's powers to refer to the Court of Appeal are adequate and appropriate.²²³

²¹⁹ House of Commons Library, [Review of Unduly Lenient Sentences](#) (November 2022)

²²⁰ Ministry of Justice, [Public given power to question 'lenient' prison sentences](#) (October 2019)

²²¹ House of Commons Library, [Unduly Lenient Sentence Scheme](#) (June 2023)

²²² Attorney General's Office, [Report and Business Plan 2024 – 2026](#) (May 2025), page 20 and [Unduly lenient sentence annual case outcomes data](#) (November 2024)

²²³ Law Commission, [Criminal Appeals Consultation Paper](#) (February 2025), page 171

6.4.2 Scotland

In Scotland, the Criminal Procedure (Scotland) Act 1995 provides for the Lord Advocate to appeal against the sentence of an offender convicted on indictment where it appears that this was unduly lenient.²²⁴ To be unduly lenient, a sentence must fall outside the range of sentences which the judge at first instance, applying their mind to all the relevant factors, could reasonably have considered appropriate.²²⁵

The 1995 Act also establishes the statutory framework for rights of appeal in summary criminal proceedings.²²⁶ The prosecutor may, in summary proceedings, in any class of case specified by order made by the Secretary of State, appeal to the Sheriff Appeal Court.²²⁷ Such appeals may be brought on a number of grounds, including where the Lord Advocate considers the disposal unduly lenient.

In principle, the Lord Advocate can appeal against any sentence imposed by a court in Scotland where it is considered unduly lenient. The number of cases in which the Lord Advocate has exercised the power to appeal an unduly lenient sentence has increased in recent years, particularly in relation to sex offence cases.²²⁸ However, the number of appeals still remains relatively low with 8 appeals in 2022, 9 in 2023 and 18 in 2024.

6.4.3 Republic of Ireland

In the Republic of Ireland, the law on unduly lenient sentencing is found in the Criminal Justice Act 1993.²²⁹ This provides a power for the Director of Public Prosecutions to apply to the Court of Criminal Appeal where it appears that a sentence imposed in any case tried on indictment is unduly lenient. An

²²⁴ Criminal Procedure (Scotland) Act 1995, [Section 108](#)

²²⁵ [HM Advocate v LB](#) [2022] HCJAC 48 at [23] outlines the test in *Bell v HM Advocate* 1995 SCCR 244

²²⁶ Criminal Procedure (Scotland) Act 1995, [Section 175](#)

²²⁷ [The Prosecutor's Right of Appeal in Summary Proceedings \(Scotland\) Order 1996](#)

²²⁸ Scottish Legal News, [Lord advocate aggressively appeals judges' 'lenient' sentences](#) (August 2025)

²²⁹ Criminal Justice Act 1993, [Section 2](#)

application must be made within 28 days from the day on which the sentence was imposed. There is an onus on the Director to show that the sentence is not just lenient but unduly so. It requires a substantial departure from the accepted range of appropriate sentences for the offence committed in the circumstances of the case, including the specific elements relating to the offender, or an error of principle in the way in which the trial judge approached sentencing.²³⁰

The 1993 Act also provides for the Director of Public Prosecutions or a convicted person to appeal the determination of the Court of Criminal Appeal to the Supreme Court where it involves a point of law of exceptional public importance.²³¹

Figures produced by the Office of the Director of Public Prosecutions show that there were 48 applications to the Court of Appeal for a review of sentence on the grounds of undue leniency heard in 2024. Of these, the Director of Public Prosecutions was successful in 36 cases (75 per cent). Table 5 below shows the results of applications for review on the grounds of undue leniency by the year in which they were heard by the court.

Table 5: Results of Applications for Review of Sentence on Grounds of Undue Leniency by Year Heard, Republic of Ireland, 2022-2024

Year Application Heard	Successful	Refused	Applications Struck out or Withdrawn	Total
2022	31	5	2	38
2023	32	5	1	38
2024	36	9	3	48

²³⁰ Office of the Director of Public Prosecutions, [“The Prosecutor’s Role at Sentencing Hearings” – Speech given by the Director of Public Prosecutions at the 3rd Annual Thompson Round Hall Criminal Law Conference](#) (April 2008)

²³¹ Criminal Justice Act 1993, [Section 3](#)

Source: Office of the Director of Public Prosecutions, [Annual Report 2024](#) (October 2025), page 44

7 Part 5: Failure to Disclose Information about Victim's Remains

Part 5 of the Bill would relate to cases where an offender has been convicted of murder or manslaughter but the court does not know where the victim's remains were disposed of. If the court believes that the offender has information in relation to this, it would be required to pass a sentence that contains an additional custodial period to take account of the non-disclosure unless this would be contrary to the interests of justice.

Part 5 would also make provision for situations where an offender subsequently makes a statement containing information relating to where or how the victim's remains were disposed of (whether or not that information leads to recovery of the body). In situations where such a statement is not rejected by the Department, the calculation set out in clause 29 provides for a reduction in the additional custodial period. Part 5 would also place a duty on the Parole Commissioners to consider a failure to disclose.

7.1 Public Consultation

In 2021, the Department published a consultation relating to murder cases where the offender refuses to provide information about the location of their victim's remains. In England and Wales, the Prisoners (Disclosure of Information about Victims) Act 2020 had recently been enacted following the campaign for 'Helen's Law'. Helen McCourt was murdered in 1988 and her body has never been found. This legislation placed a statutory obligation on the Parole Board to take into account a prisoner's non-disclosure of information about a victim's remains when making a decision about their release.²³²

²³² Prisoners (Disclosure of Information About Victims) Act 2020, [Section 1](#) and [Section 2](#). More recently, the Victims, Witnesses, and Justice Reform (Scotland) Act 2025, [Section 55](#) introduced similar provision requiring the Parole Board for Scotland, when making a decision on the release of a

Locally the public consultation followed a campaign by the family of Charlotte Murray and a debate in the Assembly Chamber.²³³ A life sentence (minimum tariff 16 years) was imposed on John Miller for the murder of Charlotte in 2020 but her body has never been located.²³⁴ Charlotte's family have been supported in their campaign by the family of Lisa Dorrian, who disappeared in Ballyhalbert in 2005. Lisa's body has never been found and, to date, no one has been prosecuted in connection with her disappearance.

The Department's consultation focused on three options aimed at facilitating disclosure at:

- the sentencing stage
- early post sentence
- the parole stage.²³⁵

At the sentencing stage, the Department proposed that continued concealment of the victim's remains, including failure to disclose how they were disposed of, could be treated as an aggravating factor by the court. In the Criminal Justice (Sentencing etc) Bill, concealment of a body is listed as an aggravating factor that may be relevant to the offence of murder in Schedule 3 which would provide for new Schedule A1 to be inserted into the Life Sentences (Northern Ireland) Order 2001 (see paragraph 5(1)(d)).²³⁶

The consultation document also included some discussion around whether 'concealment' of a body should involve the application of the higher starting

prisoner sentenced for murder or culpable homicide, to take into account whether there are reasonable grounds to believe that a prisoner has information about the disposal of a victim's remains which has not been disclosed. This provision was commenced in March 2026 under [The Parole Board \(Scotland\) Amendment Rules 2026](#).

²³³ Northern Ireland Assembly [Official Report 28 September 2020](#), Vol. 131 page 56

²³⁴ Public Prosecution Service, [Man jailed for 16 years after complex prosecution case](#) (February 2020)

²³⁵ The Department's equality screening determined that no specific issues would arise in relation to the section 75 categories of religious belief, political opinion, racial group, age, marital status, sexual orientation, men and women generally, or those with or without a disability or dependents. Department of Justice, [Charlotte's Law: Equality Screening](#) and [Rural Needs Impact Assessment](#) (November 2021)

²³⁶ It is already listed as an aggravating factor in Practice Statement (Crime – Life Sentences) [2002] 3 All ER 412 at [14]

point in sentencing by the courts. However, this was discounted as an option given that this would be a significant departure from established case law and could risk calling into question the status of other matters identified as aggravating factors.²³⁷ The document also considered the power of the court to impose a whole life tariff in this type of case. As noted in the EFM, this option was also discounted given the significant legal and human rights impediments associated with such an approach.²³⁸

At the early post sentence stage, the consultation document proposed a provision allowing for a tariff reduction by the court where a significant disclosure is made post sentence. It was noted that this would raise some complex issues, particularly as it could require the court to specify the portion of the tariff attributed to the aggravation or seriousness of failing to disclose the information relating to the location of the victim's remains.²³⁹

At the parole stage, the Department outlined potential options to help facilitate disclosure. Similar legislation to the Prisoners (Disclosure of Information about Victims) Act 2020 or Helen's Law was considered which would require Parole Commissioners to take non-disclosure into consideration as part of their review deliberations. This also suggested that legislation for Northern Ireland could go further and include a requirement to specifically address the issue of risk associated with the non-disclosure, rather than simply taking the non-disclosure and the reasons for it into account.²⁴⁰ Reference was also made in the document to release being conditional on disclosure but this was discounted as it could effectively prevent a prisoner from ever being released. Treating such offenders differently from other life sentence prisoners would raise human rights issues.

²³⁷ Department of Justice, [Charlotte's Law: A Public Consultation](#) (November 2021), page 13. Also note the subsequent recalibration of the starting points in *R v Whittle* [2024] NICA 65 discussed in section 5.

²³⁸ Criminal Justice (Sentencing etc) Bill, [Explanatory and Financial Memorandum](#) (March 2026), page 10

²³⁹ Department of Justice, [Charlotte's Law: A Public Consultation](#) (November 2021), page 14

²⁴⁰ *Ibid*, page 15

The Parole Commissioners for Northern Ireland (PCNI) operate under a number of legislative frameworks.²⁴¹ The PCNI are responsible for considering whether a prisoner subject to a life sentence is suitable for release on licence once the minimum tariff period has been reached.²⁴² Decisions on this are subject to risk assessment and the PCNI can only direct that a prisoner is suitable for release where custody is no longer necessary for the protection of the public from serious harm.²⁴³ On release, life sentence prisoners are placed under supervision and can be recalled for breach of licence conditions.

In determining whether a prisoner is suitable for release, the PCNI can receive information from a range of parties. This includes any pre-trial and pre-sentence reports examined by the sentencing court and any police report on the circumstances of the offence. The PCNI will also receive reports relating to the prisoner's performance and behaviour in prison. The failure to disclose the location of a victim's remains could potentially be taken into consideration in assessing the level of risk and whether a prisoner can be safely released into the community.

In 2024, the Department published a summary of the 75 consultation responses received.²⁴⁴ 63 per cent (45 out of 71 respondents) indicated that concealment of a victim's body should continue to be treated as an aggravating factor whilst 77 per cent (55 respondents) felt that this should result in the court's application of the higher starting point when sentencing for murder. Those in support of the application of the higher starting point believed that it would send a clear message to the public and perpetrators about the seriousness with which the courts will treat 'no body' murders.²⁴⁵

²⁴¹ The Criminal Justice (Northern Ireland) Order 2008, [Article 46](#) and [Schedule 4](#) and [The Parole Commissioners' Rules \(Northern Ireland\) 2009](#) and [The Life Sentences \(Northern Ireland\) Order 2001](#)

²⁴² The PCNI are also responsible for taking decisions related to the release and recall of prisoners subject to Indeterminate Custodial Sentences and Extended Custodial Sentences.

²⁴³ The Life Sentences (Northern Ireland) Order 2001, [Article 6](#)

²⁴⁴ Department of Justice, [Charlotte's Law: Summary of Consultation Responses and Way Forward](#) (September 2024)

²⁴⁵ Ibid, page 4-5

The Department outlined difficulties in changing the manner in which the law treats this established aggravating factor by legislating for the higher starting point to automatically apply in a way that would be compliant with Article 6 European Convention on Human Rights (right to a fair trial).²⁴⁶ In addition, it noted that a ‘no body’ murder case could result in a manslaughter conviction which would involve a range of different considerations and potential sentencing options for the court.²⁴⁷

Some comments were also made in relation to the Independent Commission for the Location of Victims’ Remains (ICLVR) arrangements.²⁴⁸ Under the legislation which provides for the ICLVR, disclosures made in relation to the location of remains cannot be used in any criminal proceedings.²⁴⁹ The Department highlighted that it expects Charlotte’s Law will co-exist with the ICLVR arrangements without any adverse impact.²⁵⁰

Following further engagement with the families and key stakeholders, the Department proposed that 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 per cent 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.²⁵¹

On post sentence disclosures, 77 per cent (54 out of 70 respondents) agreed that a review of tariff should be introduced. Some respondents noted the importance of legal advice being provided to a prisoner around how this mechanism would practically operate. However, there was a significant diversity of views in relation to the time period for post sentence disclosures with 14

²⁴⁶ Ibid, page 7

²⁴⁷ Ibid

²⁴⁸ The purpose of the Commission is to obtain information which may lead to the location of the remains of victims of paramilitary violence (“The Disappeared”) who were murdered and buried in secret arising from the conflict in Northern Ireland up to the signing of the Belfast/Good Friday Agreement.

²⁴⁹ [Northern Ireland \(Location of Victims’ Remains\) Act 1999](#)

²⁵⁰ Department of Justice, Charlotte’s Law: Summary of Consultation Responses and Way Forward (September 2024), page 8

²⁵¹ Ibid, page 8

respondents indicating 2 months, 12 respondents selecting 6 months and 29 respondents providing alternative suggestions.²⁵²

The Department concluded that it would pursue the introduction of sentence or tariff reductions where post sentence disclosures about the location of victims' remains are made. In addition, the amount of any reduction in sentence or tariff available for a post sentence disclosure will never exceed the aggravation (30 per cent minimum) applied at the point of sentence to ensure there is no incentive to wait until after sentencing to make a disclosure.²⁵³ The Department also proposed that an ongoing option for a prisoner to obtain a sentence or tariff reduction which constantly reduces over time, on a sliding scale, provides the best opportunity to secure a disclosure at the earliest moment.²⁵⁴ Under the new arrangements, prisoners sentenced in 'no body' cases before Charlotte's Law comes into effect would also be able to avail of them.²⁵⁵

On the parole stage, 88 per cent (61 out of 69 respondents) indicated that provision equivalent to Helen's Law should be introduced in Northern Ireland.²⁵⁶ 96 per cent (65 out of 68 respondents) took the view that the PCNI should be required to address a prisoner's ongoing failure to disclose information about the location of the victim's remains or how they were disposed of in their decisions.²⁵⁷

The Department also indicated its intention to require the PCNI to provide a report setting out their reasons and detailing any co-operation the prisoner has provided, which would be accessible to victims' families.²⁵⁸ At that time, the Department said that this would help to strengthen the existing requirement to provide a summary of decisions.²⁵⁹ The Department has since concluded that it

²⁵² Ibid, page 9

²⁵³ Ibid, page 11

²⁵⁴ Ibid, page 12

²⁵⁵ Ibid, page 12

²⁵⁶ Ibid, page 13

²⁵⁷ Ibid, page 14

²⁵⁸ Ibid, page 15

²⁵⁹ The Parole Commissioners' Rules (Northern Ireland) 2009, [Rule 22A](#)

would not be appropriate to include this requirement in primary legislation as the Parole Commissioners' Rules can make provision to this effect.²⁶⁰

7.2 Part 5 of the Criminal Justice (Sentencing etc) Bill

7.2.1 The Sentencing Stage

Clause 24(1) would provide for the application of this part of the Bill to cases where:

- an offender has been convicted of murder or manslaughter
- the court does not know where the victim's remains were disposed of
- the court believes that the offender has information about where, or how, the victim's remains were disposed of and has not disclosed this
- the court is imposing a sentence of imprisonment and determining the length of the custodial period

However, this would not apply in situations where it appears to the court that it would be "*contrary to the interests of justice*" (clause 24(2)). Clause 24(3) would set out the steps for the court to take when determining the length of the custodial period for an offender:

- **step one:** determine the sentence of imprisonment that the court would impose in respect of the offence without taking the non-disclosure into account (the notional custodial sentence)²⁶¹
- **step two:** identify the custodial period that the court would determine if it were imposing the notional custodial sentence in step one (the notional custodial period)²⁶²
- **step three:** determine the additional custodial period for non-disclosure

²⁶⁰ Department of Justice, Annex C: Matters Approved for Drafting and Details of Those Not Taken Forward (13 April 2026)

²⁶¹ See clause 27 for full definition of a custodial sentence. This includes a life sentence, indeterminate custodial sentence, serious terrorism sentence, extended custodial sentence etc.

²⁶² See clause 27 for more information on the meaning of custodial period in relation to each custodial sentence

- **step four:** add the notional custodial period and the additional custodial period

Clause 24(4) would provide more information on how the court should determine the additional custodial period. The court can consider the time that has elapsed since the offence and any other relevant matter in deciding on this.

However, this would be subject to the provision about the length of the additional custodial period in clause 24(5). This must not be less than 30 per cent of the notional custodial period in certain cases (these are a life sentence or an indeterminate custodial sentence)²⁶³. In the case of any other custodial sentence, the additional period must not be less than 30 per cent of the term of the notional custodial sentence. Clause 24(6) would place a duty on the court to specify the additional custodial period when it is passing a sentence under this part of the Bill.

Clause 25 would make further provision in relation to the calculation under clause 24 for particular sentences within existing legislation. Clause 25(2) would include within this a determinate sentence or a sentence of detention in a young offenders centre,²⁶⁴ a sentence of detention for a child convicted on indictment of certain grave crimes,²⁶⁵ and a youth custody and supervision order.²⁶⁶ Clause 25(3) would provide that the term of the sentence must be the aggregate of the notional custodial sentence and the additional custodial period.

²⁶³ No release date is given for either of these custodial sentences but there will be a minimum tariff for a life sentence or a tariff date (minimum 2 years) for an ICS at which stage an offender may be eligible for consideration for release by the PCNI.

²⁶⁴ The Criminal Justice (Northern Ireland) Order 2008, [Article 8](#) provides that the court shall specify a custodial period at the end of which the offender is to be released on license. The custodial period shall not exceed one half of the term of the sentence.

²⁶⁵ The Criminal Justice (Children) (Northern Ireland) Order 1998, [Article 45\(2\)](#) provides that the court may sentence the child to be detained for such period as may be specified in the sentence. The offence must be punishable in the case of an adult with imprisonment for 14 years or more and the court must be of the opinion that no other possible disposal is suitable. Article 4 requires the welfare of any child brought before a court to be considered.

²⁶⁶ The [Justice Bill](#) (as introduced) would provide for youth custody and supervision orders with Article 38A being inserted into the Criminal Justice (Children) (Northern Ireland) Order 1998. This is an order that the child aged over 14 is to be subject to a period of detention followed by a period of supervision.

Clause 26 would make provision in relation to existing legislation covering particular sentences and the way in which these operate alongside clauses 24 and 25. Clause 26(1) would mean that where a court passes a custodial sentence in accordance with any statutory provision, it is subject to clause 24 and 25. Clause 26(2) would result in certain statutory provisions not applying to the extent specified in those provisions where the court is determining the custodial period in accordance with clause 24 or the term of a particular custodial sentence set out in accordance with clause 25. These statutory provisions would be:

- section 5(1) or 5(5) of the Treatment of Offenders Act (Northern Ireland) 1968, to the extent that those provisions impose limits on the term of sentences of detention in a young offenders centre
- article 38B(2) or 38B(5)(b) of the Criminal Justice (Children) (Northern Ireland) Order 1998 relating to the term of, and period of detention specified in, youth custody and supervision orders
- article 8(3) to (5) of the Criminal Justice (Northern Ireland) Order 2008 relating to the term of the custodial period and the licence period for determinate sentences and sentences of detention in a young offenders centre.

Schedule 5 would make further provision in relation to the effect of clauses 24 and 25 on other sentencing provisions. It contains a modification to how the definition of “relevant part of the sentence” should be read when the court is determining the custodial period of an extended custodial sentence.²⁶⁷ A further modification is also made for certain terrorism sentences.²⁶⁸

Clause 27 would set out the meaning of custodial sentence and custodial period for the purposes of part 5 of the Bill. In broad terms, the custodial period relates to the part of the sentence which the court determines an offender must spend in custody. Table 6 outlines each type of sentence and the corresponding custodial period contained in clause 27 in further detail.

²⁶⁷ The Criminal Justice (Northern Ireland) Order 2008, [Article 18\(2\)\(b\)](#)

²⁶⁸ The Criminal Justice (Northern Ireland) Order 2008, [Article 20A](#)

Table 6: Meaning of Custodial Sentence and Custodial Period in Part 5

Custodial Sentence	Custodial Period
Life Sentence	The part of the sentence to be spent in custody as specified in the order made by the court under Article 5(1) of the Life Sentences (Northern Ireland) Order 2001.
Indeterminate Custodial Sentence (ICS)	The period specified by the court under Article 13(3) of The Criminal Justice (Northern Ireland) Order 2008 which will be a minimum of 2 years.
Serious Terrorism Sentence	The term to be determined by the court as the appropriate custodial term under Article 13A of the Criminal Justice (Northern Ireland) Order 2008. This can be 14 years or longer.
Extended Custodial Sentence	The term to be determined by the court as the appropriate custodial term under Article 14 of the Criminal Justice (Northern Ireland) Order 2008. This cannot be less than 1 year.
Terrorism Sentence with a Fixed Licence Period	The term to be determined by the court as the appropriate custodial term under Article 15A of the Criminal Justice (Northern Ireland) Order 2008.
Other Sentences of Imprisonment	In cases where Article 20 of the Criminal Justice (Northern Ireland) Order 1996 applies, the term of the sentence passed by the court. This includes the custodial term of a custody probation order under Article 24(2).

Custodial Sentence	Custodial Period
	In cases involving determinate sentences, the custodial period specified under Article 8(2) of the Criminal Justice (Northern Ireland) Order 2008.
Sentence of Detention under Article 45(2) of the Criminal Justice (Children) Northern Ireland Order 1998 relating to Certain Grave Crimes	The part of the sentence specified by the court as the relevant part under Article 45(2A) of the Criminal Justice (Children) Northern Ireland Order 1998
Youth Custody and Supervision Order	The period of detention specified in the order under Article 38A of the Criminal Justice (Children) Northern Ireland Order 1998
Sentence of Detention in a Young Offenders Centre	<p>In cases where Article 20 of the Criminal Justice (Northern Ireland) Order 1996 applies, the term of the sentence passed by the court. This includes the custodial term of a custody probation order under Article 24(2).</p> <p>In cases involving determinate sentences, the custodial period specified under Article 8(2) of the Criminal Justice (Northern Ireland) Order 2008.</p>

Source: Criminal Justice (Sentencing etc) Bill, [Clause 27](#) (March 2026)

7.2.2 Post Sentence

Clause 28 would provide for situations where an offender makes a relevant disclosure after a custodial sentence has been passed in accordance with clause 24. This must be:

- made before the end of the custodial period of the sentence
- made on oath to a person nominated by the Department
- 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).

Under clause 28(2) the Department would be required to take reasonable steps to verify the accuracy of the information provided by the offender. Clause 28(3) would also provide 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 have not been disclosed. In any other case, the Department would have to accept the relevant disclosure with further provision made for this scenario in clause 29.

Clause 28(5) would provide the Department with a regulation making power in relation to relevant disclosures. This would allow the Department to make regulations which may include:

- the form of relevant disclosures
- permitting or requiring relevant disclosures to be made in a prescribed manner
- provision for a relevant disclosure to be rejected if it is not made in accordance with the regulations
- the manner in which the Department deals with relevant disclosures
- the obtaining of evidence relating to relevant disclosures, including the taking of evidence on oath
- the circumstances in which the Department may or must determine a matter relating to a relevant disclosure being false in a material way or where an offender withholds further information about where, or how, the victim's remains were disposed of
- provision conferring functions on the Department in respect of relevant disclosures (which may include functions that follow the acceptance of a disclosure).

Regulations under clause 28(5) may not be made unless a draft has been laid before and approved by a resolution of the Assembly (draft affirmative procedure).

Clause 29 would provide for a reduction to the additional custodial period where an offender makes a relevant disclosure which is accepted by the Department. However, this would not apply if the relevant disclosure is made during the period of 1 month before the custodial period is due to end.

Under the formula provided in clause 29(5), a relevant disclosure could result in a maximum possible reduction of 50 per cent of the additional custodial period. However, the actual reduction can be scaled down depending on how much of the custodial period has already been served by an offender before the relevant disclosure is made. The later the disclosure is made, the smaller the reduction in the additional custodial period. The formula in clause 29(5) would provide for $(AP/2) \times (1-(N/T))$.

$AP/2$ represents the maximum possible reduction available which is half of the additional custodial period. The reduction cannot exceed 50 per cent of this period regardless of how early it is made after a custodial sentence has been passed by a court.

N/T relates to how far through the custodial period the offender is at the time of the relevant disclosure. N represents the number of days already spent in custody before the disclosure and T represents the total length of the custodial period in days (after deductions).²⁶⁹ If the relevant disclosure is made early, N/T will be a value close to 0 on a sliding scale towards 1 where a disclosure is made later. $(1-(N/T))$ converts the time already served into the proportion of the sentence still remaining at the point of the relevant disclosure. In addition, any fraction of a day would be rounded up to the nearest whole day.

Below is a basic example of how this formula would work in practice:

²⁶⁹ A deduction could refer to an offender being remanded in custody in connection with the offence before sentencing under the Treatment of Offenders Act (Northern Ireland) 1968, [Section 26\(2\)](#)

- an offender receives a life sentence with a minimum tariff of 16 years for murder.
- The court imposes an additional custodial period for non-disclosure of 6 years (for a life sentence this must not be less than 30 per cent of the notional custodial period under clause 24(5)).
- Exactly two years after being sentenced, the offender makes a relevant disclosure which is accepted. Under clause 29(5), the maximum reduction of the additional custodial period is limited to half so $AP/2 = 2,190 \text{ days} / 2 = 1,095 \text{ days}$.
- $N/T = 730 \text{ days} / 5,840 \text{ days} = 0.125$. To calculate the remaining proportion of the sentence, $1 - 0.125 = 0.875$.
- Applying the statutory formula is $1,095 \text{ days} \times 0.875 = 958 \text{ days}$. Therefore the additional custodial period would be reduced by 958 days given that the relevant disclosure was made early in the custodial period.

Clause 30 would mean that the provisions relating to a reduction in sentence following a relevant disclosure could be applied in cases where an offender is already serving a custodial sentence for murder or manslaughter before the commencement date at which this part of the Bill would come into operation. This would apply under clause 30(1)(b) where the court, at the point of sentencing, did not know where the victim's remains were disposed of but believed that the offender had information about this and treated the non-disclosure as an aggravating factor.

Under clauses 30(2) and 30(3), provision would be made for a scenario where an offender makes a disclosure but their sentence was not passed in accordance with clause 24. The provisions relating to a reduction in sentence would apply with some modifications. It would result in the additional custodial period identified in clause 29 being substituted for a notional additional period meaning 25 per cent of the custodial period.

Under clauses 30(5) and 30(6), provision would be made for a scenario where an offender made a disclosure before the commencement of this part of the Bill. This would also result in some modification to the formula contained in clause 29(5) which is $(AP/2) \times (1 - (N/T))$. The description of N reads as "the number of

days that the offender has spent in detention pursuant to the sentence during the period beginning with the day on which the sentence takes effect and ending on the day on which the offender makes the relevant disclosure”.

Under clause 30(6), the reference to the day on which the offender makes the relevant disclosure would become a reference to the day on the offender made the pre-commencement disclosure. Under clause 30(7), if the period given by the formula in clause 29(5) is greater than the portion of the custodial period that the offender is liable to serve, then the offender would be treated as having served the custodial period of their sentence.

- MLAs may wish to consider whether the statutory calculation which would be used to determine a reduction in the additional custodial period is practical and accessible in terms of wider public understanding of sentencing law. It may be worth querying whether further guidance or information will be provided explaining the operation of this.

7.2.3 Parole Stage

Clause 31(1) and 31(2) would provide that the Parole Commissioners must obtain and consider information relating to the prisoner’s non-disclosure in cases involving:

- a public protection decision in respect of a prisoner²⁷⁰
- the sentence was passed for murder or manslaughter
- the Commissioners do not know where the victim’s remains were disposed of and believe that the prisoner has information about where or how the remains were disposed of which the prisoner has not disclosed.

²⁷⁰ A decision as to whether the Parole Commissioners are satisfied that it is no longer necessary for the protection of the public to confine a prisoner under the Criminal Justice (Children) (Northern Ireland) Order 1998, [Article 46\(3\)\(b\)](#), the Life Sentences (Northern Ireland) Order 2001, [Article 6\(4\)\(b\)](#) and the Criminal Justice (Northern Ireland) Order 2008, [Article 18\(4\)\(b\)](#) or [20A\(4\)\(b\)](#)

Clause 31(3) would set out what the Commissioners must take into account when making the public protection decision. That is, the prisoner's non-disclosure and the reasons, in the Commissioners' view, for this. However, this would not limit the matters which the Commissioners must, or may, take into account when making a public protection decision.

The Department's assessment of the Bill's compatibility with the European Convention on Human Rights (ECHR) indicates that this part of the Bill potentially engages Article 7 (no punishment without law). The assessment acknowledges that these provisions do have retrospective effect. However, the Department states that this will be to an offender's advantage by allowing for a reduction in the custodial period of a sentence which is not currently available where information about where, or how, a victim's remains were disposed of is provided. Therefore the Department considers that there are no ECHR issues with this part of the Bill.²⁷¹

8 Part 6: Particular Persons or Groups

Part 6 of the Bill would make provision for 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 would also create a new offence of assault on a public worker or a person assisting a public worker who is acting in exercise of their functions.

8.1 Background to Aggravation by Hostility

8.1.1 Criminal Justice (No. 2) (Northern Ireland) Order 2004

Currently, Article 2 of the Criminal Justice (No. 2) (Northern Ireland) Order 2004 allows for an enhanced sentence, if an offence has been aggravated by hostility.²⁷² An offender must be convicted of an existing crime, such as assault; there are no standalone 'hate crimes'. There is a requirement at sentencing to

²⁷¹ Provided through correspondence between RalSe and Department of Justice (29 April 2026)

²⁷² The Criminal Justice (No. 2) (Northern Ireland) Order 2004, [Article 2](#)

state in open court that the base offence was aggravated by hostility and to treat this as an aggravating factor i.e. a more serious offence. If hostility is proven, it does not increase the maximum penalty for the base offence.

An offence is aggravated by hostility if:

- at the time of committing the offence, or immediately before or after doing so, the offender demonstrates hostility towards the victim based on the victim's membership or presumed membership of a particular group, or the victim's disability or presumed disability or
- the offence is motivated (wholly or partly) by hostility towards members of a particular group or the victim's disability or presumed disability

The 2004 Order covers crimes against people based on their race, religion or sexual orientation, or if they are disabled. In relation to racial, religious and sexual orientation groups, it includes people associated with members of that group e.g. friends or family. However, crimes targeting those associated with disabled people are not covered.

Significant concerns have been raised in relation to this enhanced sentencing model, including in relation to how often it is being used. The Northern Ireland Human Rights Commission (NIHRC) held an investigation into Racist Hate Crime in 2013. It found confusion amongst criminal justice agencies in relation to the above 'two limbs' (demonstration and motivation) and judges not consistently stating in open court whether the offence was aggravated.²⁷³ In 2017, Criminal Justice Inspection Northern Ireland also noted a lack of clarity in how often enhanced sentences were being given.²⁷⁴

The most recent figures show that in 2024/25, 169 defendants were convicted, in cases where the PPS considered a crime was 'Aggravated by Hostility', across the Crown, Magistrates' and Youth Courts. Only 43 were recorded as

²⁷³ Northern Ireland Human Rights Commission, [Racist Hate Crime: Human Rights and the Criminal Justice System in Northern Ireland](#) (September 2013)

²⁷⁴ Criminal Justice Inspection Northern Ireland, [Hate Crime: An Inspection of the Criminal Justice System's Response to Hate Crime In Northern Ireland](#) (December 2017)

having received an enhanced sentence due to the aggravating feature of their offence(s), equivalent to 25.4 per cent.²⁷⁵

8.1.2 Independent Review of Hate Crime Legislation

In 2019, Judge Desmond Marrinan was appointed by the Department to conduct an Independent Review of Hate Crime Legislation in Northern Ireland.²⁷⁶ This review was informed by a public consultation, which received 247 responses, an online questionnaire, which received 799 responses, and input from a reference group of key stakeholders.²⁷⁷ Judge Marrinan reported in December 2020, making 34 recommendations, grouped by strategic theme.²⁷⁸ The recommendations of most relevance to this Bill are discussed in more detail below.

The Department of Justice's Sentencing Review 2016-2021 also considered hate crime sentencing arrangements.²⁷⁹ However, Judge Marrinan's review received considerably more responses than the 19-24 responses to the hate crime questions contained in the Sentencing Review.²⁸⁰ Therefore the Sentencing Review Team engaged with the recommendations arising from Judge Marrinan's Review in respect of hate crime.

The Department published an initial response to the Independent Review in July 2021.²⁸¹ At this stage, it accepted or partly accepted many recommendations, and indicated where further consideration may be necessary. No recommendations were rejected at this stage. Where a recommendation was

²⁷⁵ Northern Ireland Statistics and Research Agency and Public Prosecution Service, [Statistical Bulletin: Cases Involving Hate Crime 01 April 2024 To 31 March 2025](#) (September 2025)

²⁷⁶ Department of Justice, [Review of Hate Crime Legislation launched](#) (June 2019)

²⁷⁷ Judge Marrinan, [Hate Crime Legislation Independent Review](#) (December 2020), page 7-8, 62-64

²⁷⁸ Ibid. The Strategic Themes included: the model of hate crime, protected characteristics, sectarianism, stirring up offences/ freedom of expression, duty to remove hate expression, restorative justice, victims of hate crime, online hate speech, and legislation and scrutiny.

²⁷⁹ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 74

²⁸⁰ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 38

²⁸¹ Department of Justice, [Review of Hate Crime Legislation NI: Departmental Response](#) (July 2021)

accepted, the Department indicated that they would not duplicate the consultation undertaken by Judge Marrinan.

The Department then held a 'Phase 1' consultation in 2022 on issues such as the hate crime model, sectarian offending, some aspects of stirring up offences, special measures and cross-examination, and misogyny/ transmisogyny.²⁸² The issues of relevance to the Criminal Justice (Sentencing etc) Bill are outlined below.

The Department plans to hold a further consultation on other outstanding issues in the next mandate.²⁸³ Some of the wider recommendations from Judge Marrinan's Review are expected to be addressed in a Victims and Witnesses of Crime Bill due in the current mandate.²⁸⁴ In June 2024, the Northern Ireland Assembly unanimously supported an amended motion calling for reform of hate crime legislation.²⁸⁵

8.1.3 Statutory Aggravation Model

Judge Marrinan recommended the introduction of a statutory aggravation model, allowing any criminal offence to be charged in its aggravated form, if the hate element is proven in court e.g. a racially-aggravated assault. If the hate element is not proven, the defendant could still be convicted of the 'base offence', such as assault. The fact that an offence is aggravated would be reflected in the sentence. There would be no increase in the maximum sentence for any criminal offence.

Judge Marrinan argued that such an approach would encourage the police to collect evidence of hate at an early stage and ensure the aggravation is on the

²⁸² Department of Justice, [Consultation on Hate Crime Legislation in Northern Ireland](#) (January 2022)

²⁸³ Northern Ireland Assembly Committee for Justice, [Official Report: Ministerial Briefing: Mrs Naomi Long MLA, Minister of Justice](#) (05 February 2026), page 11

²⁸⁴ Northern Ireland Assembly Committee for Justice, [Official Report: Victims and Witnesses of Crime Bill – Pre-legislative Scrutiny: Department of Justice](#) (02 October 2025)

²⁸⁵ Northern Ireland Assembly, [Official Report 04 June 2024](#) Vol. 160 No 1, page 20-31, 41-47. Within this debate, several themes emerged, including recognition and condemnation of the impact of hate crime on communities across Northern Ireland.

defendant's record. It would also give better protection to defendants as it requires the prosecution to prove the aggravation at the offence stage.²⁸⁶

In response to the Independent Review's consultation, a statutory aggravation model was supported by organisations including the PSNI, Victim Support, the Probation Board for Northern Ireland, the Public Prosecution Service (PPS) and the Bar of Northern Ireland.²⁸⁷

The Department agreed that the recommended statutory aggravation model for all offences should replace the current enhanced sentencing approach. It highlighted that this would address concerns that the enhanced sentencing power is under-used by judges, and would ensure the aggravated offence is recorded on the offender's criminal record, which would inform rehabilitative work.²⁸⁸ In its Equality Screening, it concluded that it did not consider there is evidence to indicate that there would be any adverse or impact on any of the Section 75 groups, due to the introduction of the statutory aggravation model.²⁸⁹

8.1.4 Hate Crime Definition

Judge Marrinan suggested a working definition of hate crime as "*a criminal act perpetrated against individuals or communities with protected characteristics based on the perpetrator's hostility, bias, prejudice, bigotry or contempt against the actual or perceived status of the victim or victims*".²⁹⁰ The Department agreed that a shared working definition of hate crime would enable a more effective response from the criminal justice system.²⁹¹ It considered that a

²⁸⁶ Judge Marrinan, [Hate Crime Legislation Independent Review](#) (December 2020), page 8

²⁸⁷ Ibid, page 116-121

²⁸⁸ Department of Justice, [Review of Hate Crime Legislation in Northern Ireland: Departmental Response](#) (July 2021) page 4

²⁸⁹ Department of Justice, [Equality Screening Form: Hate Crime Legislation - New Statutory Aggravation Model and Sectarian Aggravator](#) (July 2021), page 23

²⁹⁰ Judge Marrinan, [Hate Crime Legislation Independent Review](#) (December 2020), page 84

²⁹¹ Department of Justice, [Review of Hate Crime Legislation in Northern Ireland: Departmental Response](#) (July 2021), page 4

statutory definition could be too prescriptive and have unintended consequences.²⁹²

The Department also consulted on the inclusion of proposed additional attitudes as indicators of hate in guidance, as suggested by Judge Marrinan.²⁹³ 93 per cent of individual respondents (198) and 41 per cent of organisations (12) disagreed with their inclusion. The PPS noted that it was not aware of any difficulties in the current interpretation of ‘hostility’. Concerns were also raised by respondents in relation to freedom of speech and religion, especially if such attitudes were included in legislation. Most of the organisations supportive of including proposed attitudes in guidance represented or worked with victims of hate crime and offenders, the criminal justice sector, some women’s groups and on human rights/ equality issues.²⁹⁴ The Department confirmed that additional attitudes were not being proposed for inclusion in the legislation and therefore would not be thresholds of criminality.

In response to the consultation, the Department outlined that it would work with criminal justice organisations to discuss including attitudes of bias, prejudice, bigotry and contempt as indicators of what may constitute hostility/ hate resulting in a hate crime, to any available guidance, with consideration given to human rights standards.²⁹⁵

8.1.5 ‘By Reason Of’ Threshold

Judge Marrinan recommended the addition of a third threshold for hate crimes, in addition to demonstration or motivation, to include where an offence is committed “by reason of hostility, bias, prejudice, bigotry or contempt based on” the victim’s protected characteristics (emphasis added). He pointed to the

²⁹² Department of Justice, [Improving the effectiveness of Hate Crime Legislation in Northern Ireland Summary of Phase One Consultation and Call for Views Responses and Way Forward](#) (March 2023), page 12

²⁹³ Ibid, page 12-14

²⁹⁴ Ibid, page 13

²⁹⁵ Ibid, page 14

difficulty in proving motivation by hostility, particularly in relation to hate crimes against disabled people.²⁹⁶

In response to Judge Marrinan's consultation, a majority of respondents (both individuals and organisations) were supportive of an additional threshold, including the Equality Commission for Northern Ireland (ECNI), and the Church of Ireland Church and Society Commission.²⁹⁷ Likewise, NIHRC was supportive, although highlighted that any test should not be so broad that it becomes ineffective, particularly in relation to gender.²⁹⁸

However, both during and after Judge Marrinan's Review, the Committee for the Administration of Justice (CAJ) and the Women's Policy Group (WPG) have raised concerns that the introduction of a 'by reason of' threshold would move away from the purpose of hate crime legislation.²⁹⁹ They have highlighted that if a victim was targeted for a crime because they were a man by another man, this could constitute a hate crime under this threshold.³⁰⁰

Judge Marrinan, with some hesitation, recommended that the 'by reason of' threshold should be introduced, as in his view the current thresholds are failing disabled victims of hate crime.³⁰¹ He recognised that there may be a need to avoid unintended consequences in relation to gender and the inclusion of crimes relating to domestic and sexual abuse.³⁰²

Following consultation, the Department of Justice rejected the introduction of a 'by reason of' threshold.³⁰³ It pointed to the lack of such a threshold in

²⁹⁶ Judge Marrinan, [Hate Crime Legislation Independent Review](#) (December 2020), page 149, 154-155

²⁹⁷ Ibid, page 161-163

²⁹⁸ Northern Ireland Human Rights Commission, [Submission to Hate Crime Review Consultation](#) (December 2020), page 19-20

²⁹⁹ Committee on the Administration of Justice, [Submission to the Independent Review of Hate Crime Legislation in Northern Ireland](#) (December 2020), page 30

³⁰⁰ Women's Policy Group, [Response to Department of Justice Response to Hate Crime Review](#) (December 2021), page 4

³⁰¹ Judge Marrinan, [Hate Crime Legislation Independent Review](#) (December 2020), page 165

³⁰² Ibid, page 167

³⁰³ Department of Justice, [Improving the effectiveness of Hate Crime Legislation in Northern Ireland Summary of Phase One Consultation and Call for Views Responses and Way Forward](#) (March 2023), page 14-18

neighbouring jurisdictions and suggested that there would be difficulties evidencing that a crime was committed ‘by reason of’ hostility.³⁰⁴ The majority of responses to the consultation agreed not to include this threshold.

The Department indicated that it would address such crimes through provisions relating to crimes against vulnerable people. It is now proposing doing so through clause 36 of this Bill. It also pointed to the Adult Protection Bill, highlighting that some hate crime victims may be considered as an adult in need of protection.³⁰⁵

8.1.6 Protected Characteristics

The PSNI currently collects data in relation to hate motivated incidents and crimes under the categories of race, sexual orientation, sectarian, disability, faith/religion and transgender identity. Statistics covering 2024 to 2025 can be found below in table 7.

Table 7: PSNI Hate Motivated Crimes, Northern Ireland, 2024-2025

Group	January 2024 - December 2024	January 2025 – December 2025
Race	1,159	1,430
Sexual Orientation	221	213
Sectarian	590	633
Disability	40	44
Faith/Religion	63	57
Transgender Identity	39	29

³⁰⁴ Department of Justice, [Improving the effectiveness of Hate Crime Legislation in Northern Ireland: A Public Consultation and Call for Views](#) (January 2022), page 30-33

³⁰⁵ [Adult Protection Bill](#) (as introduced June 2025)

Source: PSNI, [Crimes with a Hate Motivation Recorded by the Police in Northern Ireland](#) (February 2026)

By way of context, when an incident or crime has been reported to the PSNI by the victim or by any other person and they perceive it as being motivated by prejudice or hate, it will be recorded and investigated as a hate incident or crime. Not all hate motivated incidents will result in the recording of a crime, as what has occurred in the incident may not meet the criminal threshold.³⁰⁶ In March 2026, the College of Policing and National Police Chiefs' Council proposed reforms to the recording of non-crime hate incidents in England and Wales.³⁰⁷

Judge Marrinan recommended that the current protected characteristics in Northern Ireland should continue to receive protection. Under article 2(5) of the Criminal Justice (No. 2) (Northern Ireland) Order 2004, these are:

- race³⁰⁸
- religion³⁰⁹
- disability³¹⁰
- sexual orientation³¹¹

He also recommended protections should be expanded to include age, sex/gender (including gender identity) and variations in sex characteristics. He

³⁰⁶ PSNI, [Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland](#) (February 2026), page 2-3

³⁰⁷ College of Policing, [Major reforms for police hate incident recording](#) (March 2026)

³⁰⁸ Defined as having the same meaning as [Article 5](#) of the Race Relations (Northern Ireland) Order 1997 which includes 'colour, race, nationality or ethnic or national origins' and the Irish Traveller community. This excludes the grounds of religious belief or political opinion.

³⁰⁹ Includes religious belief or lack of religious belief

³¹⁰ This is defined this as 'any physical or mental impairment'. This is a different definition of disability than under the [Disability Discrimination Act 1995](#) which defines disability as 'a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities', along with some specific inclusions and exclusions.

³¹¹ Sexual orientation group means a group of persons defined by reference to sexual orientation. The [Employment Equality \(Sexual Orientation\) Regulations \(Northern Ireland\) 2003](#) defines sexual orientation as 'as sexual orientation towards - persons of the same sex, persons of the opposite sex or persons of the same sex and of the opposite sex'.

considered, but did not recommend, the inclusion of statutory aggravations relating to socio-economic status, homelessness, sex workers and philosophical belief.

In making these recommendations, Judge Marrinan highlighted that there is significant academic debate in relation to which groups should be included and a lack of international consistency, outside the core groups of race, national origin, ethnicity and religion.³¹²

8.1.6.1 Age

In recommending the inclusion of age, Judge Marrinan considered there was sufficient evidence of hostility-based offences against the elderly. He recognised that this would likely primarily relate to older people and outlined that he saw very little evidence of hate crimes against younger people. He pointed out that limiting the protected characteristic only to older people would likely involve agreeing a threshold age.³¹³

There is a lack of clear consensus on this issue. A majority of respondents to Judge Marrinan's review opposed the inclusion of age, whilst a majority of respondents to his online survey were supportive.³¹⁴ Some organisations, including Hourglass NI and Victim Support NI, outlined that crimes against older people are often driven by a perception of vulnerability rather than hate or hostility.³¹⁵

However, other organisations including the Commissioner for Older People in Northern Ireland (COPNI), ECNI and Age NI were supportive of including age, primarily referring to the impact of crime on older people.³¹⁶ In January 2026, COPNI wrote to the Committee for Justice expressing concern that age would

³¹² Judge Marrinan, [Hate Crime Legislation in Northern Ireland: Independent Review](#) (December 2020), page 176-182

³¹³ Ibid, page 228-229

³¹⁴ Ibid, page 220

³¹⁵ Ibid, page 220-222

³¹⁶ Ibid, page 222-227

not be included as one of the protected characteristics under the Criminal Justice (Sentencing etc) Bill.³¹⁷

The Department has indicated that it plans to consult further in relation to the inclusion of age within the hate crime framework.³¹⁸ The Criminal Justice (Sentencing etc) Bill includes a separate vulnerability aggravator in clause 36, which refers to age, and is discussed further in [section 8.5](#).

8.1.6.2 Sex/Gender

Ending Violence Against Women and Girls is a Programme for Government priority.³¹⁹ A variety of views are evident in relation to the inclusion of sex/ gender and misogyny within hate crime law. Judge Marrinan recommended the inclusion of sex/ gender as a protected characteristic.³²⁰ He considered there to be very strong evidence that women are victimised and disproportionately targeted for certain crimes because of prejudice and/or hostility towards their sex or gender.

He considered that both sex and gender could be referred to in the legislation as an inclusive approach, with the definition specifying that gender includes gender identity and gender expression.

Whilst recognising the particular impact on women, he recommended gender-neutral legislation, referencing concerns about stereotyping, and the need for a human rights-based approach.³²¹ Likewise, ECNI recommended that protections should apply to both women and men, although gender-specific policy approaches should be taken.³²²

³¹⁷ Commissioner for Older People, [Criminal Justice \(Sentencing etc\) Bill](#) (January 2026)

³¹⁸ [AQW 42799/22-27](#) (March 2026) and Department of Justice, [Sentencing Bill – Hate Crime Protected Characteristics](#) (February 2026)

³¹⁹ Northern Ireland Executive, [Our Plan: Doing What Matters Most: Programme for Government 2024-2027](#) (March 2025), page 32-35

³²⁰ Judge Marrinan, [Hate Crime Legislation in Northern Ireland: Independent Review](#) (December 2020) page 203-206

³²¹ Ibid, page 203-206

³²² Equality Commission for Northern Ireland, [Hate Crime in Northern Ireland Policy Recommendations and Supporting Rationales](#) (December 2020), page 64-68

Judge Marrinan did reflect that there was likely merit in considering a standalone offence in relation to misogyny.³²³ However, he felt there was likely to be delay and possible disagreement, and that the opportunity should be taken to include sex/ gender in hate crime provisions.

The Department held an initial ‘Call for Views’ on various options for proposals for addressing violence against women and girls, as part of its Phase 1 consultation.³²⁴ Two majority views were recorded with 36 per cent of respondents supporting the inclusion of sex/ gender as a protected characteristic and 29 per cent feeling that there should be no recognition of sex/ gender (mainly individuals and two religious/ faith organisations). The remainder supported another approach, including 7 per cent of total respondents supporting misogyny (and transmisogyny) as a statutory aggravating factor.

The NIHRC has recommended that gender is included as a protected characteristic, with misogyny and transmisogyny as aggravating factors. It has called for a gender-sensitive, rather than gender-neutral approach, as aligning with international human rights standards.³²⁵

The UK Law Commission published its review of hate crime in England and Wales in 2021.³²⁶ It recommended that “sex or gender” should not be added to the protected characteristics in relation to hate crime.³²⁷ It highlighted that, in the context of rape and domestic abuse, it could make it more difficult to secure prosecutions and create hierarchies of victims. However, it also noted that it would be problematic to carve-out those offences which have a disproportionate effect on women. The PSNI and PBNI have both indicated that if misogyny is

³²³ Judge Marrinan, [Hate Crime Legislation in Northern Ireland: Independent Review](#) (December 2020), page 205

³²⁴ Department of Justice, [Improving the effectiveness of Hate Crime Legislation in Northern Ireland Summary of Phase One Consultation and Call for Views Responses and Way Forward](#) (March 2023), page 57

³²⁵ Northern Ireland Human Rights Commission, [Response to Public Consultation on Improving the Effectiveness of Hate Crime Legislation in NI](#) (March 2022), page 37

³²⁶ Law Commission, [Hate Crime Laws: Final Report](#) (December 2021)

³²⁷ It did recommend extending the offence of stirring up hatred to cover stirring up hatred on the grounds of sex or gender, and a Government review of the need for a specific offence to tackle public sexual harassment.

included as a hate crime statutory aggravator in Northern Ireland, domestic abuse and sexual offences should be excluded.³²⁸

In Scotland, the Working Group on Misogyny and Criminal Justice, chaired by Baroness Helena Kennedy KC, reported in 2022. It made a range of recommendations, including the introduction of a statutory misogyny aggravation, operating outside of hate crime legislation.³²⁹ The group argued that gender-neutrality disguises the particular kinds of behaviour which target women. They suggested that hate is not a useful concept in these circumstances, pointing instead to prejudice, malice and contempt towards women.

The WPG has likewise cautioned against a ‘gender-neutral’ approach, arguing there is no evidence of gender-based hate crime towards men.³³⁰ It had called from the inclusion of women and girls within the hate crime legislation, with a misogyny aggravator.³³¹ It subsequently called on the Department to consider the recommendations from the Scottish Working Group on Misogyny and Criminal Justice’s independent report.³³²

In response to the Department’s consultation, some responses opposed the conflation of sex and gender, and the concept of ‘gender ideology’.³³³ Judge Marrinan’s Review received views, particularly from faith sector organisations and individual respondents, that the inclusion of gender and gender identity would pose a serious threat to freedom of speech and religious expression.³³⁴

³²⁸ Department of Justice, [Improving the effectiveness of Hate Crime Legislation in Northern Ireland Summary of Phase One Consultation and Call for Views Responses and Way Forward](#) (2023), page 63

³²⁹ Scottish Working Group on Misogyny and Criminal Justice, [Misogyny: A Human Rights Issue](#) (March 2022)

³³⁰ Women’s Policy Group, [Response to Department of Justice Response to Hate Crime Review](#) (December 2021), page 3-4

³³¹ Ibid, page 1

³³² Women’s Policy Group, [Response to Hate Crime Legislation Review Consultation](#) (2022), page 21

³³³ Department of Justice, [Improving the effectiveness of Hate Crime Legislation in Northern Ireland Summary of Phase One Consultation and Call for Views Responses and Way Forward](#) (March 2023), page 61

³³⁴ Judge Marrinan, [Hate Crime Legislation in Northern Ireland: Independent Review](#) (December 2020), page 193-195

He highlighted that the statutory aggravation model would mean that a basic offence would have to be committed, and did not consider there would be a threat to freedom of expression.

In evidence to the Justice Committee, Departmental officials suggested that the Minister's view was that misogyny be looked at, not as a hate crime, but separately as a particular offence.³³⁵ However, policy development work and further consultation would be required.

The approach in neighbouring jurisdictions varies. In Scotland, following significant public debate, a statutory instrument will come into effect in April 2027, adding sex as a protected characteristic to hate crime legislation there.³³⁶ In England and Wales, sex/ gender is not currently included in the legislation. However, the Crime and Policing Act 2026 would add sex to a limited number of aggravated offences.³³⁷

In the Republic of Ireland, the protected characteristics include gender, defined as the gender of a person or the gender which a person expresses as the person's preferred gender or with which the person identifies. Gender also includes transgender and a gender other than those of male and female.³³⁸ The legislation also includes sex characteristics as a protected characteristic, defined as the physical and biological features of a person relating to sex.³³⁹

8.1.6.3 Transgender Identity

The PSNI has gathered data relating to transgender hate motivated incidents and crimes since 2009. In 2024/25, there were 63 incidents and 35 crimes

³³⁵ Northern Ireland Assembly Committee for Justice, [Official Report: Sentencing Bill: Department of Justice](#) (November 2026), page 8

³³⁶ [The Hate Crime and Public Order \(Scotland\) Act 2021 \(Characteristic of Sex\) \(Amendment and Transitional Provisions\) Regulations 2026](#)

³³⁷ England and Wales operates a hybrid system of aggravations and enhanced sentences in relation to hate crime. See Crime and Policing Act 2026, [Section 145](#) which would extend the aggravated offences in the Crime and Disorder Act 1998 (which currently only cover hostility relating to race or religion) to cover hostility relating to disability, sexual orientation, transgender identity and sex.

³³⁸ Criminal Justice (Hate Offences) Act 2024, [Section 3](#)

³³⁹ Ibid

recorded with a transgender identity motivation.³⁴⁰ However, the current legislation does not allow for enhanced sentences where offences have been aggravated by hostility against transgender people.

As noted above, Judge Marrinan recommended that the legislation should include sex/ gender, rather than including a separate category for transgender people.³⁴¹ He advised that gender should be defined as including gender identity and gender expression. This would seemingly be a broad protection, that may go beyond the more limited definition of gender reassignment in anti-discrimination legislation, and may include those who would not consider themselves to be transgender.³⁴²

A variety of views were given in response to the Review's consultation. Organisations including the PPS, the Law Society, Transgender NI, the Rainbow Project, the WPG³⁴³, the ECNI, and the NIHRC³⁴⁴ were supportive of protections for transgender people in some form, with reference to the evidence of hate crimes being committed against transgender people.³⁴⁵ However, there were differing views on whether this should be expressed as gender, gender identity, or transgender identity.

Most individuals responding to the consultation, along with some faith-based organisations, opposed the inclusion of transgender identity. Respondents cited freedom of speech and religious expression, equal protection under the law, and, in a few cases, "*repudiation of 'transgenderism'*", citing religious beliefs.³⁴⁶

³⁴⁰ PSNI, [Hate Motivation Annual Trends 2004/05 to 2024/25](#) (November 2025)

³⁴¹ Judge Marrinan, [Hate Crime Legislation in Northern Ireland: Independent Review](#) (December 2020), page 205-207

³⁴² Sex Discrimination (Northern Ireland) Order 1976, [Article 2](#) defines gender reassignment as "a process which is undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex, and includes any part of such a process".

³⁴³ Women's Policy Group, [Hate Crime Legislation in Northern Ireland Independent Review: Consultation Response](#) (December 2020), page 28

³⁴⁴ Northern Ireland Human Rights Commission, [Submission to Hate Crime Review Consultation](#) (December 2020) page 33-34

³⁴⁵ Judge Marrinan, [Hate Crime Legislation in Northern Ireland: Independent Review](#) (December 2020), page 189-197

³⁴⁶ *Ibid*, page 200

As above, in relation to issues of freedom of expression, the Review underlined that under the statutory aggravation model, a base offence would have to be committed for the aggravation to apply.

In the Department's initial response, it partially agreed with Judge Marrinan, supporting the inclusion of transgender identity.³⁴⁷ In doing so, it referred to the fact that the PSNI already records hate motivated incidents and crimes against transgender people. However, the Executive does not have a consensus on this issue.³⁴⁸

Northern Ireland is currently an outlier in this area, with some form of protection for transgender people in the hate crime legislation in England and Wales,³⁴⁹ Scotland³⁵⁰ and the Republic of Ireland.³⁵¹

8.1.6.4 Variations in Sex Characteristics

Judge Marrinan also recommended that variations in sex characteristics (also known as intersexuality) are protected within the legislation.³⁵² Organisations including Transgender NI, Victim Support, the ECNI and the NIHRC³⁵³ were

³⁴⁷ Department of Justice, [Review of Hate Crime Legislation in Northern Ireland: Departmental Response](#) (2021), page 5

³⁴⁸ Northern Ireland Assembly Committee for Justice, [Official Report: Criminal Justice \(Sentencing etc\) Bill: Department of Justice](#) (March 2026), page 2

³⁴⁹ Sentencing Act 2020, [Section 66](#). Defines transgender identity as including references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.

³⁵⁰ Hate Crime and Public Order (Scotland) Act 2021, [Section 11](#). This outlines that a person is a member of a group defined by reference to transgender identity if the person is: a female-to-male transgender person, a male-to-female transgender person, a non-binary person, a person who cross-dresses.

³⁵¹ Criminal Justice (Hate Offences) Act 2024, [Section 3](#). This defines gender as the gender of a person or the gender which a person expresses as the person's preferred gender or with which the person identifies and includes transgender and a gender other than those of male and female.

³⁵² United Nations Office of the High Commissioner for Human Rights, [Intersex People](#) cited in Judge Marrinan, [Hate Crime Legislation in Northern Ireland: Independent Review](#) (December 2020) page 201

³⁵³ Northern Ireland Human Rights Commission, [Submission to Hate Crime Review Consultation](#) (December 2020), page 34-35

supportive of the inclusion of intersex people, with reference to not conflating this group with transgender people.³⁵⁴

Judge Marrinan noted that the majority of those who opposed the inclusion of intersex status as a protected characteristic were individual respondents.³⁵⁵ He did not cite any rationale given for opposing the inclusion of variations in sex characteristics specifically.

There has been less public discussion in relation to the potential impact of including this protected characteristic, and it is unclear what consideration the Department has given to it. The Scottish hate crime legislation includes variations in sex characteristics. The equivalent legislation in the Republic of Ireland refers to sex characteristics.

8.1.6.5 Future Groups

Judge Marrinan recommended that provision be included to allow other groups to be added in the future by statutory instrument, if sufficient evidence emerges to show such a group or groups are victims of hate crime or hate speech.³⁵⁶ The Department accepted this proposal.³⁵⁷

8.1.7 Sectarianism

Although both race and religion are included in the current hate crime model in Northern Ireland, there is concern that some forms of sectarianism may not be adequately addressed in the current model. Sectarianism would not be a protected characteristic, as 'sectarian' is not a group of people.

The only reference to sectarianism in Northern Ireland's criminal law is section 37 of the Justice Act (Northern Ireland) 2011 which creates an offence of

³⁵⁴ Judge Marrinan, [Hate Crime Legislation in Northern Ireland: Independent Review](#) (December 2020) page 192-193, 201-202

³⁵⁵ Ibid, page 202

³⁵⁶ Judge Marrinan, [Hate Crime Legislation in Northern Ireland: Independent Review](#) (December 2020) page 241

³⁵⁷ Department of Justice, [Review of Hate Crime Legislation NI: Departmental Response: Annex A](#) (July 2021)

chanting at a regulated football match, where the chanting is of a sectarian or indecent nature. However, this does not define ‘sectarian’.

Under New Decade, New Approach, the parties outlined a “*wish to see sectarianism given legal expression as a hate crime*”.³⁵⁸ The Executive’s ‘Together Building a United Community’ Strategy defines sectarianism as “*threatening, abusive or insulting behaviour or attitudes towards a person by reason of that person’s religious belief or political opinion; or to an individual as a member of such a group*”.³⁵⁹

As noted above, the PSNI currently collects data on hate motivated incidents and crimes with a sectarian motivation. However, the PSNI acknowledges that the term ‘sectarian’ is not clearly defined but is “*almost exclusively used in Northern Ireland to describe incidents of bigoted dislike or hatred of members of a different religious or political group*”.³⁶⁰ It also refers to an individual or group being perceived to be Catholic or Protestant, Nationalist or Unionist, or Loyalist or Republican within the Northern Ireland context.

Under the current legislation, most sectarian hate crimes would likely have to fall under religious belief. The definition of racial group included in the Race Relations (Northern Ireland) Order 1997 covers colour, race, nationality or ethnic or national origins but excludes religious belief or political opinion.³⁶¹

Therefore, there is the potential that some sectarian hate crimes may not be properly reflected in the legislation. Judge Marrinan indicated that religious belief is too limited to function as a sole indicator for sectarianism. He pointed to potential examples which may fall through the gaps, including abuse linked to wearing GAA or Northern Ireland football tops, or the wearing of a shamrock or poppy.³⁶²

³⁵⁸ UK and Irish Governments, [New Decade New Approach](#) (January 2020), page 43

³⁵⁹ NI Executive, [Together: Building a United Community Strategy](#) (May 2013), page 19

³⁶⁰ PSNI, [Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland](#) (February 2026), page 3

³⁶¹ The Race Relations (Northern Ireland) Order 1997, [Article 5](#)

³⁶² Judge Marrinan, [Hate Crime Legislation in Northern Ireland: Independent Review](#) (December 2020) page 275

Responses to the Independent Review's consultation broadly supported the inclusion of a specific reference to sectarianism within new hate crime legislation, with a definition. Respondents pointed to the problems with recording and dealing with 'sectarian' crime, and that the current 'religious group' indicator does not adequately capture the meaning and impact of sectarianism, which includes aspects of nationality and political identity.³⁶³

Whilst recognising the potential complexities and controversies, Judge Marrinan recommended that there should be a new statutory aggravation for sectarian prejudice. He recommended that the findings of the report of the Working Group on defining sectarianism in Scots law in November 2018 should be applied in Northern Ireland.³⁶⁴ He felt that this would allow fair labelling, so that "*criminal acts of prejudice can be named for what they are*".³⁶⁵

He recommended that the new aggravation should be carefully monitored by his proposed Hate Crime Commissioner, with an annual report for the Assembly. The Department intends to put the Victims of Crime Commissioner on a statutory footing in this mandate, with a remit including hate crime.³⁶⁶

The Scottish Working Group recommended a new, intersectional aggravator for sectarian prejudice based on the accused's demonstration of hostility towards the victim's perceived (a) Roman Catholic or Protestant denominational affiliation, (b) British or Irish citizenship, nationality or national origins or (c) a combination of (a) and (b).³⁶⁷ However, Lord Bracadale's 2018 Review of the Hate Crime legislation in Scotland did not recommend the introduction of a

³⁶³ Ibid, page 269-275

³⁶⁴ Scottish Government, [Final Report of the Working Group on Defining Sectarianism in Scots Law](#) (November 2018)

³⁶⁵ Ibid, page 276

³⁶⁶ Department of Justice, [Consultation on proposals for a Victims and Witnesses of Crime Bill](#) (November 2024), page 15

³⁶⁷ Scottish Government, [Final Report of the Working Group on Defining Sectarianism in Scots Law](#) (November 2018), page 28-31

sectarian aggravator.³⁶⁸ The Hate Crime and Public Order (Scotland) Act 2021 does not refer to sectarianism.³⁶⁹

The Department's consultation recorded broad support for defining 'sectarian' in law. In its equality screening, it concluded that it did not consider there is evidence to indicate that there will be any adverse or impact on any of the Section 75 groups, due to the introduction of a sectarian aggravator.³⁷⁰ The Minister agreed in 2023 that a definition of sectarian offending would be included in hate crime legislation, to support the creation of a sectarian aggravator.³⁷¹

The sectarian aggravator does not feature in the Criminal Justice (Sentencing etc) Bill. The Minister recently indicated that the Department is continuing to progress policy development on provisions for a sectarian aggravator in advance of the 'Phase 2' consultation. This consultation is expected to cover outstanding recommendations from Judge Marrinan's Review and will be progressed in the next mandate.³⁷²

8.1.8 Intersectionality

Judge Marrinan recommended that there should be appropriate legislative recognition of the importance of intersectionality in relation to hate crime, for those with multiple protected characteristics. He highlighted that it is an important lens to understand the nature, dynamics and experiences of some

³⁶⁸ Lord Bracadale, [Independent Review of Hate Crime Legislation in Scotland: Final Report](#) (May 2018)

³⁶⁹ Hate Crime and Public Order (Scotland) Act 2021, [Section 1](#) does include race, colour, nationality (including citizenship), or ethnic or national origins, and religion or, in the case of a social or cultural group, perceived religious affiliation.

³⁷⁰ Department of Justice, [Equality Screening Form: Hate Crime Legislation – New Statutory Aggravation Model and Sectarian Aggravator](#) (July 2021), page 23

³⁷¹ Department of Justice, [Improving the effectiveness of Hate Crime Legislation in Northern Ireland Summary of Phase One Consultation and Call for Views Responses and Way Forward](#) (March 2023), page 19-20

³⁷² [AQW 43489/22-27](#) (April 2026)

victims of hate crime, enabling identification of those who may be particularly vulnerable to abuse.³⁷³

However, he highlighted the need to avoid duplicity and to ensure that only one offence can be charged on each count. The Department agreed that intersectionality should be recognised in the legislation.³⁷⁴ The Department has since confirmed that the Bill enables recording of hostility towards more than one protected group in a single offence which will recognise intersectionality.³⁷⁵

8.1.9 Legislation and Scrutiny

Judge Marrinan recommend that all devolved hate crime and hate speech law, including public order legislation, should be consolidated into a new Hate Crime and Public Order (Northern Ireland) Bill. He highlighted the views of the PPS that this would aid public understanding, reinforce operational effectiveness and training within the criminal justice agencies and assist in communicating how seriously hate crime is taken.³⁷⁶

Judge Marrinan recommended that there should be post-legislative scrutiny by the Assembly to monitor the effectiveness of any new legislation on hate crime and hate speech.³⁷⁷ He called for such scrutiny to occur regularly at three-year intervals and, if possible, include an element of public consultation. He suggested that Criminal Justice Inspection Northern Ireland would appear to be very well placed to carry out such a review, reporting to the Justice Committee.

The Department initially planned to take forward a standalone Bill. However, due to the shortened mandate, the Department now plans to take forward this

³⁷³ Judge Marrinan, [Hate Crime Legislation in Northern Ireland: Independent Review](#) (December 2020), page 245

³⁷⁴ Department of Justice, [Review of Hate Crime Legislation in Northern Ireland: Departmental Response](#) (July 2021), page 5

³⁷⁵ Department of Justice, Annex C: Matters Approved for Drafting and Details of Those Not Taken Forward (13 April 2026)

³⁷⁶ Judge Marrinan, [Hate Crime Legislation in Northern Ireland: Independent Review](#) (December 2020) page 589-590

³⁷⁷ Ibid, page 597

Bill, a further Bill on Victims and Witnesses of Crime, and to consult further on wider matters relating to Judge Marrinan's Review.

8.2 Clauses 33-35 of the Criminal Justice (Sentencing etc) Bill

Clause 33 would provide that an allegation of aggravation can be specified alongside a charge of an offence. This would cover:

- racial hostility
- religious hostility
- hostility related to sexual orientation or
- hostility related to disability

This clause would also set out the conditions for an offence to be aggravated by hostility. Such hostility may be demonstrated towards a victim based on the victim's membership (or presumed membership) of a particular group (racial, religious, sexual orientation or disability).³⁷⁸ Alternatively, it could be motivated by hostility towards members of a group. Membership of a group would include those who associate themselves with members of a group. This clause would also provide that it is irrelevant if the alleged perpetrator's hostility is based to any extent on any other factors.

Clause 34 would cover situations where there is a specified allegation of aggravation and both the charge and the aggravation of hostility are proven. Under clause 34(2), the court would have to state that the offence is aggravated by hostility on conviction and the reasons for this. This would include reference to whether it was aggravated by one or more of racial hostility, religious hostility, hostility related to sexual orientation or hostility related to disability.

Under clause 34(2), the court would also be required to record the offence to show it is aggravated by hostility and the reasons for this. In determining the

³⁷⁸ Clause 33(4) would define "disability group" as meaning a group of persons defined by reference to any physical or mental impairment. "Racial group" would refer to the Race Relations (Northern Ireland) Order 1997, [Article 5](#) which is "a group of persons defined by reference to colour, race, nationality or ethnic or national origins, and references to a person's racial group refer to any racial group into which he falls". "Religious group" would refer to a group of persons defined by reference to religious belief or lack of religious belief and "sexual orientation group" would mean a group of persons defined by reference to sexual orientation.

sentence, the court would also be required to treat the aggravation as a factor that increases the seriousness of the offence. In addition, an explanation of how the aggravation affects the sentence would be required.

Clause 34(3) would cover a scenario where an offence is proven but the aggravator is not. It would provide that an offender's conviction should continue as if there was no reference to the aggravator alongside the charge.

Clause 35 would provide the Department with a power to make regulations to add further kinds of hostility by which an offence may be aggravated. This would also allow the Department to specify circumstances where an offence is aggravated by hostility. Furthermore, this would allow the Department to specify one or more offences in respect of which an allegation that the offence is aggravated by hostility may not be made. Clause 35(2) limits the regulations to the kinds of hostility which relate to a group or characteristic.

Clause 35(3) would allow the regulations to include supplementary, incidental or consequential provision and transitory, transitional or saving provisions as the Department considers necessary or expedient to the making of these regulations. Clause 35(4) states that these regulations may amend, repeal, revoke or otherwise modify any statutory provision. If enacted, this would be a power to amend primary legislation (also known as a Henry VIII power). Under clause 35(5), these regulations may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly (draft affirmative procedure).

Separately, schedule 7, part 5 would repeal Article 2 of the Criminal Justice (No. 2) (Northern Ireland) Order 2004 which currently allows for an enhanced sentence, if an offence has been aggravated by hostility (on a date appointed by order by the Department).

The Department's assessment of the Bill's compatibility with the European Convention on Human Rights (ECHR) indicates that these clauses potentially engage Article 6 (right to a fair trial) and Article 7 (no punishment without law). The Department's assessment indicates that the aggravator must be proven

and the provisions do not have retrospective effect. Therefore, the Department considers that there are no ECHR issues with these clauses.³⁷⁹

- MLAs may wish to seek more information on the additional protected characteristics recommended for inclusion by Judge Marrinan which will not initially be included under the Bill's statutory aggravation model.
- Members may also want to consider the Department's rationale for not including the 'by-reason' of threshold, as recommended by Judge Marrinan.
- Members may wish to consider whether there is sufficient recognition of intersectional hate crimes within the Bill.

8.3 Hostility Aggravator in Other Jurisdictions

8.3.1 England and Wales

In England and Wales, there is a hybrid hate crime model. Under the Crime and Disorder Act 1998, there are a limited number of specific aggravated hate crime offences, including assault, criminal damage, public order offences, harassment and stalking.³⁸⁰ The aggravated forms of these offences carry higher maximum sentences than their basic equivalents.

Currently, these provisions only apply where these crimes are committed due to hostility towards racial and religious groups. However, under the Crime and Policing Act 2026 this is due to be expanded to include hostility related to disability, sexual orientation, transgender identity, and sex.³⁸¹ There would be a

³⁷⁹ Provided through correspondence between RaiSe and Department of Justice (29 April 2026)

³⁸⁰ Crime and Disorder Act 1998, [Sections 28 to 32](#)

³⁸¹ House of Commons Library, [Crime and Policing Bill 2024-26: Lords Amendments](#) (April 2026), page 43

small carve-out in relation to sex-based harassment, to allow that an aggravated offence already exists under the Protection from Sex-Based Harassment in Public Act 2023.³⁸²

For all other hate crimes related to race, religion, disability, sexual orientation and transgender identity, an enhanced sentencing model is in place.³⁸³ Guidelines from the Sentencing Council set out how sentencing should be approached in these cases.³⁸⁴ The thresholds for both the aggravated offences and the enhanced sentences are the same as in Northern Ireland (i.e. demonstration and motivation).

Separately, an independent review is currently being conducted in relation to the existing statutory framework governing public order and hate crime in England and Wales.³⁸⁵

8.3.2 Scotland

In Scotland, hate crime legislation was updated following a Review of the legislation by Lord Bracadale.³⁸⁶ The relevant provisions can now be found in the Hate Crime and Public Order (Scotland) Act 2021.³⁸⁷

The legislation provides that any offence can be aggravated by hostility if it is motivated by or demonstrates “malice or ill will” towards one or more of the protected characteristics. The protected characteristics are:

- age
- disability
- race, colour, nationality (including citizenship), or ethnic or national origins

³⁸² Protection from Sex-based Harassment in Public Act 2023, [Section 1](#) and UK Government, [Crime and Policing Bill: ECHR Fifth Supplementary Memorandum](#) (April 2026)

³⁸³ Sentencing Act 2020, [Section 66](#)

³⁸⁴ Sentencing Council, [Hate Crime: Approach to Sentencing](#)

³⁸⁵ Home Office, [Review of public order and hate crime legislation](#) (November 2025) and [Independent Review of Public Order and Hate Crime Legislation: Terms of Reference](#) (December 2025)

³⁸⁶ Lord Bracadale, [Independent Review of Hate Crime Legislation in Scotland: Final Report](#) (May 2018)

³⁸⁷ [Hate Crime and Public Order \(Scotland\) Act 2021](#)

- religion or, in the case of a social or cultural group, perceived religious affiliation
- sexual orientation
- transgender identity
- variations in sex characteristics³⁸⁸

8.3.3 Republic of Ireland

In the Republic of Ireland, the Criminal Justice (Hate Offences) Act 2024 introduced a hybrid hate crime model of hate crime. Some crimes are subject to a statutory aggravation, where the offender has demonstrated hatred or has been motivated by hatred, towards a protected group.³⁸⁹

The crimes to which a statutory aggravation apply include property damage, threatening, abusive or insulting behaviour in a public place, assault, and harassment, amongst others.

For other offences where the statutory aggravations do not apply, an enhanced sentencing model is in place. In these cases, the courts shall treat hatred against a person or a group on account of their protected characteristics as an aggravating factor in sentencing. The protected characteristics are:

- race, colour, nationality and national or ethnic origin
- descent
- religion
- gender
- sex characteristics
- sexual orientation
- disability³⁹⁰

³⁸⁸ [Section 11](#) provides the meaning of each of these protected characteristics

³⁸⁹ [Criminal Justice \(Hate Offences\) Act 2024](#)

³⁹⁰ [Section 3](#) provides the meaning of each of these protected characteristics

The Irish Government had intended to update incitement to hatred provisions through the Act, although these provisions did not proceed, following significant debate.

8.4 Background to Aggravation by Reason of Vulnerability

Currently, a victim being particularly vulnerable is considered an aggravating factor in relation to sentencing in Northern Ireland.³⁹¹

The Department's Sentencing Review 2016-2021 considered sentencing in relation to crimes committed against older people. During the course of pre-consultation discussions, the Department noted that it became apparent that a victim's vulnerability rather than age was the relevant factor. There is no consistent correlation between age and vulnerability as not all older people are vulnerable and not all vulnerable people are old.³⁹²

Research commissioned by the Commissioner for Older People for Northern Ireland (COPNI) reiterated this. It also highlighted that factors such as a higher rate of fear of crime, higher rates of disability and a greater likelihood of living alone made older people as a group more vulnerable to the harm that being a victim of crime can cause in comparison to other adult age groups.³⁹³

The PSNI publishes data relating to the age of victims of reported crimes. In 2024/25, 6 per cent of victims of recorded crimes were aged 65 or over (17 per cent of the population was in this age bracket).³⁹⁴ This equates to 11 crime victims aged 65 or over per 1,000 of the population aged 65+.³⁹⁵ 54 per cent of victims of crime aged 65+ were victims of theft (including burglary) and criminal damage, a higher proportion than for other age groups. Separately, data on the

³⁹¹ For example, R v Cambridge [2015] NICA 4 at [43] and Judiciary NI, [Sentencing Guidelines: Magistrates' Court Common Assault](#)

³⁹² Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 44

³⁹³ K. Brown and F. Gordon, [Improving Access to Justice For Older Victims of Crime: Older People as Victims of Crime and the Response of the Criminal Justice System in Northern Ireland](#) (2019), page 43-44, 60

³⁹⁴ PSNI, [Trends in Police Recorded Crime in Northern Ireland 1998/99 to 2024/25](#) (November 2025) page 30-31

³⁹⁵ There were 19 crime victims under 18 per 1,000 of the population and 45 crime victims aged 18-64 per 1,000 of the population

vulnerability of victims, whether this relates to age or other factors, is not kept by the courts.

Vulnerability is a broad concept but was addressed as part of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. This defines a vulnerable adult for the purposes of this legislation as “*a person aged 18 or over whose ability to protect himself or herself from violence, abuse or exploitation is significantly impaired through physical or mental disability or illness, old age, addiction to alcohol or drugs or for any other reason*”.³⁹⁶

Judge Marrinan’s Independent Review on Hate Crime asked whether a general aggravation covering victim vulnerability and/or exploitation of vulnerability should be introduced into Northern Ireland hate crime law.³⁹⁷ Respondents to the consultation opposed this idea (81 per cent), although 71 per cent of respondents to the online survey supported this proposal.

Judge Marrinan highlighted that the term vulnerability can carry connotations of weakness or helplessness. He also noted that it can fluctuate, for example in relation to the influence of alcohol or drugs. He noted that the courts will already consider the deliberate targeting of a vulnerable victim as an aggravating factor when sentencing and highlighted that strong sentencing guidelines would potentially be a more practical solution.

8.4.1 Public Consultation

The Sentencing Review 2016-2021 consultation considered the introduction of a statutory aggravating factor, applied to all offence types, which could take the form of either:

- motivation by opportunism, based on a perception or belief that the victim is vulnerable (due to age or other factors) as an aggravating factor or

³⁹⁶ Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, [Section 25](#)

³⁹⁷ Judge Marrinan, [Hate Crime Legislation Independent Review](#) (December 2020), page 241-243

- the simple fact that the victim was a vulnerable person as an aggravating factor.

The Review noted that proving that the perceptions or beliefs of a person motivated their offending behaviour is inherently difficult, and could lead to low success rates in the application of any such aggravation. However, treating the simple fact that a victim was vulnerable as an aggravating factor would be unjust in those cases where the victim's characteristics were entirely irrelevant to the commission of the offence.³⁹⁸

Another potential option raised by the Sentencing Review was to provide for a new offence of assault on older/ vulnerable people, with higher maximum sentences than currently exist for the offence of common assault.³⁹⁹ The consultation noted that this could address concerns that sentencing for such assaults is too lenient, and underline the seriousness with which society regards this type of offending, as well as providing a mechanism for identifying and recording patterns of offending.

There was a relatively low level of responses to the consultation on this topic (between 14-20).⁴⁰⁰ As summarised by the Department:

- there was a high level of support for the proposition that wider vulnerability rather than narrower old age should be protected
- there was strong support for the creation of statutory aggravating factors, both on the basis of the actual vulnerability of the victim and their perceived vulnerability
- there was no clear overall support for the creation of a new offence.

The NIHRC recommended that any new legislation deals with 'vulnerable' people, based on personal circumstances, as opposed to simply broad specific

³⁹⁸ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 102

³⁹⁹ Ibid, page 103

⁴⁰⁰ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 44

categories such as 'older' people.⁴⁰¹ Separately from this consultation, both COPNI and the ECNI have highlighted the need to avoid stereotyping groups, including older people and disabled, as all being vulnerable.⁴⁰²

Following the Sentencing Review, the Minister agreed that:

- 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
- the definition of vulnerability should reflect the definition found in the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015
- no new offence of assault on a vulnerable person is required.⁴⁰³

In advance of the Criminal Justice (Sentencing etc) Bill's introduction, COPNI expressed concerns that the vulnerability aggravator would "*not address cases in which hostility is specifically directed towards older people as a group*". In correspondence to the Committee for Justice, COPNI noted that relying on vulnerability alone would "*imply that any crime committed against an older person is motivated solely by their perceived vulnerability, as if all older persons were vulnerable*".⁴⁰⁴

The Department has highlighted that the Adult Protection Bill, as introduced, would contain new offences of ill-treatment and wilful neglect by those who have the care of an adult.⁴⁰⁵ The Department believes that these offences, alongside the vulnerability aggravator, will address many of the concerns which

⁴⁰¹ Northern Ireland Human Rights Commission, [Submission to DOJ's Sentencing Review Consultation](#) (February 2020) page 22-25

⁴⁰² Commissioner for Older People Northern Ireland, [Crime and Justice: The Experience of Older People in Northern Ireland](#) (May 2019), page 10 and Equality Commission for Northern Ireland, [Hate Crime in Northern Ireland: Policy Recommendations and Supporting Rationales](#) (November 2020), page 76

⁴⁰³ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 45

⁴⁰⁴ Commissioner for Older People, [Criminal Justice \(Sentencing etc\) Bill](#) (January 2026)

⁴⁰⁵ [Adult Protection Bill](#) (as introduced June 2025), Part 3

prompted Judge Marrinan's recommendation for the inclusion of age as a protected characteristic in hate crime legislation.⁴⁰⁶

8.5 Clause 36 of the Criminal Justice (Sentencing etc) Bill

Clause 36(1) would provide that an allegation of aggravation by reason of a victim's vulnerability can be specified alongside a charge of an offence. A vulnerable person in this context means a person under the age of 18 or "*a person whose ability to protect himself or herself from violence, abuse, neglect or exploitation is significantly impaired through physical or mental disability or illness, old age or for any other reason*".⁴⁰⁷

This is subject to clause 36(6) which would mean that the vulnerability aggravator cannot be alleged where the vulnerability characteristic relied on to prove that the victim is vulnerable, for example a child, is also an element of the offence.

Clause 36(2) would provide the two conditions which must be fulfilled before an offence can be categorised as being aggravated by way of a 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

Clause 36(3) would cover situations where there is a specified allegation of aggravation and both the charge and the aggravation are proven. Under clause 36(4), the court would have to state that the offence is aggravated by reason of the victim's vulnerability on conviction and record it as such. In determining the sentence, the court would also be required to treat the aggravation as a factor

⁴⁰⁶ Department of Justice, [Sentencing Bill – Hate Crime Protected Characteristics](#) (February 2026)

⁴⁰⁷ This is similar to the wording of Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, [Section 25](#) which refers to a vulnerable adult as "*a person aged 18 or over whose ability to protect himself or herself from violence, abuse or exploitation is significantly impaired through physical or mental disability or illness, old age, addiction to alcohol or drugs or for any other reason*".

that increases the seriousness of the offence. In addition, an explanation of how the aggravation affects the sentence would be required.

Clause 36(5) would cover a scenario where an offence is proven but the aggravator is not. It would provide that an offender's conviction should continue as if there was no reference to the aggravator alongside the charge.

The Department's assessment of the Bill's compatibility with the European Convention on Human Rights (ECHR) indicates that these clauses potentially engage Article 6 (right to a fair trial) and Article 7 (no punishment without law). The Department's assessment indicates that the aggravator must be proven and the provisions do not have retrospective effect. Therefore the Department considers that there are no ECHR issues with these clauses.⁴⁰⁸

- Members may want to ask the Department for clarity on how crimes where multiple aggravations are relevant will be treated e.g. a crime against a disabled person based on both hostility and vulnerability, or a crime against a vulnerable person where the domestic abuse aggravation also applies.
- Members may wish to consider whether it is appropriate that the vulnerability aggravator could be added, in cases where the victim's vulnerability is not a motivating factor.
- MLAs may also want to consider how the broad definition of vulnerability in this context will operate in practice.

⁴⁰⁸ Provided through correspondence between RaiSe and Department of Justice (29 April 2026)

8.6 Vulnerability Aggravator in Other Jurisdictions

Sentencing guidelines across the UK and the Republic of Ireland generally require that the fact that a victim was older or otherwise vulnerable be treated as an aggravating factor.

For instance, in England and Wales, the Sentencing Council's guidance outlines that "*an offence is more serious if the victim is vulnerable because of personal circumstances such as (but not limited to) age, illness or disability (unless the vulnerability of the victim is an element of the offence)*".⁴⁰⁹ Culpability will be increased if the offender targeted a victim because of an actual or perceived vulnerability.

Although different from a specific offence or aggravator based on vulnerability, in Scotland, as noted above, age is a protected characteristic in hate crime legislation.⁴¹⁰ Disability is included as a protected characteristic in relation to hate crime across the UK and the Republic of Ireland.

8.7 Background to Assaults on Public Workers

The Sentencing Review 2016-2021 highlighted public concern that sentencing for attacks on people providing frontline public services, particularly in hospitals, does not reflect the gravity of the offences.⁴¹¹

Comprehensive data on assaults on people providing frontline public services in Northern Ireland is not available. However, there is some evidence of the scale of the issue:

- from April 2020 to March 2025, there were more than 59,000 incidents of physical abuse of health and social care staff⁴¹²

⁴⁰⁹ Sentencing Council, [General Guideline: Overarching Principles](#) (October 2019)

⁴¹⁰ Hate Crime and Public Order (Scotland) Act 2021, [Section 1](#)

⁴¹¹ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 84

⁴¹² [AQW 35181/22-27](#) (April 2026)

- from 2022-2024, there were 1,677 physical assaults on school based staff⁴¹³
- from 2020-2024, there were 324 assaults on prison officers⁴¹⁴
- from October 2024 to September 2025, there were 2,630 assaults on police officers⁴¹⁵

Most sentencing provisions for assault offences are found in the Offences Against the Person Act 1861.⁴¹⁶ These range from common assault and assault occasioning actual bodily harm to grievous bodily harm and wounding or causing grievous bodily harm with intent.⁴¹⁷ These will apply regardless of the occupation of a victim with the nature and severity of the injury determining the offence charged. Table 8 details the maximum sentences available to the court under the 1861 Order for the various assault offences.

Table 8: Maximum Sentences for Main Assault Offences in the Offences Against the Person Act 1861

Offence	Magistrates' Court Maximum Penalty	Crown Court Maximum Penalty
Common Assault or Battery	6 months custody (and/or level 3 fine of £1,000)	2 years custody (and/or unlimited fine)
Assault Occasioning Actual Bodily Harm	12 months custody (and/or level 5 fine of £5,000)	7 years custody (and/or unlimited fine)

⁴¹³ [AQW 22206/22-27](#) (February 2025)

⁴¹⁴ [AQW 30836/22-27](#) (September 2025)

⁴¹⁵ PSNI, [Over 2,500 assaults on police officers and more than 100 police vehicles rammed](#) (November 2025)

⁴¹⁶ [Offences Against the Person Act 1861](#)

⁴¹⁷ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 84

Offence	Magistrates' Court Maximum Penalty	Crown Court Maximum Penalty
Threats to Kill	12 months custody (and/or level 5 fine of £5,000)	10 years custody (and/or an unlimited fine)
Wounding or Inflicting Grievous Bodily Harm (GBH)	12 months custody (and/or level 5 fine of £5,000)	7 years custody (and/or unlimited fine)
<ul style="list-style-type: none"> • wounding with intent to cause GBH • wounding with intent to resist apprehension • causing GBH with intent to cause GBH • causing GBH with intent to resist apprehension 	N/A	Life imprisonment (and/or an unlimited fine)

Source: Offences Against the Person Act 1861, Sections 16, 18, 20, 42 and 47
(Valentine: All Laws of Northern Ireland)

Specific offences also currently exist for assaults committed on some categories of public servant in the execution of their duties:

- assault on police⁴¹⁸
- assault on fire and rescue personnel⁴¹⁹
- assault on ambulance workers⁴²⁰

⁴¹⁸ Police (Northern Ireland) Act 1998, [Section 66](#). The Prison Act (Northern Ireland) 1953, [Section 8](#) gives prison officers the “*powers, authority, protection and privileges of a constable*” which implies that an assault on a prison officer will be treated the same as an assault on a police officer.

⁴¹⁹ Fire and Rescue Services (Northern Ireland) Order 2006, [Article 57](#)

⁴²⁰ Justice Act (Northern Ireland) 2016, [Section 54](#)

These provisions are designed to deal with offences on a par with common assault offences. They can all be tried either in a Magistrates' Court (maximum sentence of 6 months' imprisonment) or in the Crown Court (maximum sentence of 2 years' imprisonment).⁴²¹ If a more serious offence occurs, charges will be brought under the relevant provision of the 1861 Act outlined in table 7.

The existing Magistrates' Courts sentencing guidelines for common assault require that, where the victim was engaged in providing a service to the public, the court shall use a starting point higher than that prescribed, or it may impose a sentence outside the prescribed sentencing range.⁴²² Relevant aggravating factors include that the offence was committed in a victim's workplace or took place in an isolated area.⁴²³ It is unclear how often these aggravating factors are applied.

The equivalent guidelines for assaults on police officers specify the same starting points and range of sentencing as for common assault.⁴²⁴ The fact that the victim was a police officer is an element of the offence and not treated as an aggravating factor. Therefore a person convicted of common assault where the victim was engaged in providing a service to the public, could receive a higher sentence than a person convicted of a similar assault on police. The Department noted that this appeared to be "*contrary to the intention of the legislature*" which sought to give additional protection to police and some other emergency workers.⁴²⁵

In 2025, the Court of Appeal considered a case involving an offender sentenced for attempted wounding with intent to cause grievous bodily harm and assault occasioning actual bodily harm on police officers. The Court of Appeal identified that the fact that the officers were acting in the course of their public duty was

⁴²¹ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 85

⁴²² Judiciary NI, [Sentencing Guidelines: Magistrates' Court Common Assault](#)

⁴²³ Ibid

⁴²⁴ Judiciary NI, [Sentencing Guidelines: Magistrates' Court Assault on Police](#)

⁴²⁵ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 92

treated as an aggravating factor in selecting the starting point in the Crown Court.⁴²⁶

The court emphasised that “*this type of behaviour should not be tolerated or normalised and justified as something that police officers simply have to tolerate in the exercise of their duty. Rather, this sentence should be a signal to those who offend against police in this way that they will be appropriately punished by the courts*”.⁴²⁷

The figures provided in tables 9, 10 and 11 provide the number of prosecutions and convictions in the Magistrates’ Court and the Crown Court for the 3 existing assault offences covering police, ambulance workers and fire and rescue officers from 2020-2024.

⁴²⁶ [R v Quigley](#) 2025 [NICA] 6 at [50]

⁴²⁷ *Ibid* at [52]

Table 9: Prosecutions and Convictions at Courts for the Offence of ‘assault on police’, Northern Ireland, 2020 to 2024

	Prosecutions		Convictions	
	Crown Court	Magistrates’ Courts	Crown Court	Magistrates’ Courts
2020	40	1,094	33	984
2021	48	1,436	44	1,265
2022	53	1,513	51	1,292
2023	60	1,515	56	1,336
2024	52	1,482	46	1,242

Table 10: Prosecutions and Convictions at Courts for the Offence of ‘assault on ambulance worker’, Northern Ireland, 2020 to 2024

	Prosecutions		Convictions	
	Crown Court	Magistrates’ Courts	Crown Court	Magistrates’ Courts
2020	0	19	0	18
2021	0	24	0	24
2022	0	28	0	26
2023	*	39	*	36
2024	*	19	*	18

Table 11: Prosecutions and Convictions at Courts for the Offence of ‘assault on fire and rescue officer’, Northern Ireland, 2020 to 2024

	Prosecutions		Convictions	
	Crown Court	Magistrates’ Courts	Crown Court	Magistrates’ Courts
2020	0	0	0	0
2021	0	0	0	0
2022	0	0	0	0
2023	0	0	0	0
2024	0	0	0	0

Source: Correspondence between RaSe and Department of Justice (29 April 2026)

Note:

1. Figures relate to initial disposals at courts. Appeals are not included.
2. Figures relate to cases where there was a prosecution/conviction for at least 1 of the offences specified.
3. Figures for Magistrates’ Courts include adult and youth courts.
4. * means a figure of less than 3 has been treated under rules of disclosure.

8.7.1 Public Consultation

The Sentencing Review 2016-2021 considered the option of introducing higher penalties, proposing 12 months as an appropriate level in the Magistrates' Courts. The rationale for this was that it would reinstate the original intention that these offences should be capable of being punished more severely than other common assaults. However, the Department did not propose increasing the maximum sentence in the Crown Courts, due to a lack of consistency in other jurisdictions and the lack of use of the maximum sentence by the Crown Courts in previous years.⁴²⁸

The Review also sought to identify the categories of public servants who particularly require extra protection, with reference made to front-line hospital and other healthcare workers, prison officers, social workers and others providing direct care in the community.⁴²⁹

In cases where the 3 specific offences outlined in section 8.7 do not apply, the Review noted that there is no mechanism for recording when a court aggravates a sentence on the basis of a victim's occupation.⁴³⁰ It is not clear how this is being used or how prevalent such offending is, which could aid in targeting resources. It is also not reflected on an offender's criminal record.⁴³¹ Therefore the Sentencing Review considered whether this could be addressed through the creation of a statutory aggravating factor for assault offences where the victim is a specified public servant.

In general, the Sentencing Review received a low number of responses on the issue of attacks on public workers (less than 20).⁴³² The majority of responses

⁴²⁸ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 93

⁴²⁹ Ibid, page 94

⁴³⁰ Ibid, page 95

⁴³¹ Ibid

⁴³² Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 39-40

to the consultation supported an increase in the maximum penalty in the Magistrates' Court and the introduction of a statutory aggravator.⁴³³

The Review did reflect that the creation of a statutory aggravating factor may not make a practical difference to the sentences imposed by the courts, given existing guidelines. Nevertheless, they considered that placing an obligation in statute would strengthen public messaging, improve transparency and consistency and better recognise the concerns of the public.

Following the Sentencing Review in 2021, 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 front line worker should become a statutory aggravating factor
- 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.⁴³⁴

In relation to which workers should be protected, 11 of 14 respondents were in favour of a change to cover the groups named in the Review (frontline healthcare workers in hospitals, prison officers, social workers, and others providing direct care in the community).⁴³⁵ Those not in favour had previously stated the view that all assaults should be treated the same.

Although not consulted on, it was noted that the Northern Ireland Retail Consortium, Retail NI, Retailers Against Crime and Belfast City Centre Management were in favour of a new offence of abuse of retail workers.⁴³⁶ The Department noted that existing assault offences and sentencing guidelines apply to retail workers and any other person providing a public service. The

⁴³³ Ibid

⁴³⁴ Ibid

⁴³⁵ Ibid, page 41

⁴³⁶ Ibid, page 41

danger that the “special” status granted becomes so diluted as to become meaningless was also noted.⁴³⁷

Following the Sentencing Review in 2021, the Minister 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
- further consideration be given to the extension of any new sentencing provision to retail workers.⁴³⁸

Subsequently, the Minister 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.⁴³⁹

Departmental officials, in evidence to the Justice Committee, indicated this was largely driven by the retail sector’s campaign, as well as concerns from those working in public transport and solicitors.⁴⁴⁰

During the Second Stage debate, the Minister also referenced unprovoked attacks on hospitality workers and wider service providers.⁴⁴¹ Some concerns were expressed around assaults on emergency workers being treated the same as those on all other public workers.⁴⁴² Retail NI has welcomed the progress in relation to the recognition of a public worker but also highlighted concerns that the Bill contains no specific reference to a “retail worker”.⁴⁴³

⁴³⁷ Ibid, page 42

⁴³⁸ Ibid

⁴³⁹ Criminal Justice (Sentencing etc) Bill, [Explanatory and Financial Memorandum](#) (March 2026) page 11

⁴⁴⁰ Northern Ireland Assembly Committee for Justice, [Official Report: Sentencing Bill: Department of Justice](#) (27 November 2025), page 11

⁴⁴¹ Northern Ireland Assembly, [Official Report 16 March 2026](#), Vol 191 No 1, page 11

⁴⁴² Ibid, page 15

⁴⁴³ Retail NI, [Retail NI response to Criminal Justice \(Sentencing etc\) Bill](#) (April 2026)

8.8 Clauses 37-39 of the Criminal Justice (Sentencing etc) Bill

Clause 37 would create 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.

Clause 37(2) would also create the offence of assault on a person assisting 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 assisting a public worker.

Clause 37(3) would define a public worker as “*a person employed or engaged to provide a service to the public, perform a public duty, or deliver a public service*”. This work can be paid or unpaid. The provision of services to the public would cover providing goods or facilities to the public, including a section of the public.

On summary conviction, an offender would be liable to imprisonment of 12 months maximum (or a fine up to the statutory maximum or both). On conviction on indictment, imprisonment can be for a maximum of 2 years (or an unlimited fine or both).

Clause 38 would provide that an allegation of aggravation by reason of being committed against a public worker can be specified alongside a charge of a specified offence. This aggravator would apply 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. It would apply to the following specified offences:⁴⁴⁴

- manslaughter
- kidnapping
- threats to kill
- wounding with intent to cause grievous bodily harm

⁴⁴⁴ This includes provisions from the Offences against the Person Act 1861, [Section 28](#) of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 and [Article 7](#) of the Sexual Offences (Northern Ireland) Order 2008

- malicious wounding
- administering poison
- causing bodily injury by explosives
- using explosives with intent to do grievous bodily harm
- assault occasioning actual bodily harm
- non-fatal strangulation or asphyxiation
- sexual assault
- an ancillary or inchoate offence relating to those listed⁴⁴⁵

Clause 38(6) would also allow 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 above.

Clause 39(1) would cover situations where there is a specified allegation of aggravation and both the charge and the aggravation are proven. Under clause 39(2), the court would have to state on conviction that the offence is aggravated by reason of being committed against a public worker exercising their functions and record it as such. In determining the sentence, the court would also be required to treat the aggravation as a factor that increases the seriousness of the offence. In addition, an explanation of how the aggravation affects the sentence would be required.

Clause 39(3) would cover a scenario where an offence is proven but the aggravator is not. It would provide that an offender's conviction should continue as if there was no reference to the aggravator alongside the charge.

Schedule 7, part 6, chapter 1 contains the provisions that would repeal the existing assault offences against public workers covering police, fire and rescue personnel and ambulance workers (on a date appointed by order by the Department).

The Department's assessment of the Bill's compatibility with the European Convention on Human Rights (ECHR) indicates that these clauses potentially

⁴⁴⁵ This would mean that the aggravator would apply in cases of aiding, abetting, counselling or procuring the commission of the offence. It would also apply to attempts or conspiracy to commit the offence or encouraging or assisting an offence under the Serious Crime Act 2007, [Part 2](#)

engage Article 6 (right to a fair trial) and Article 7 (no punishment without law). The Department's assessment indicates that the aggravator must be proven and the provisions do not have retrospective effect. It acknowledges that the definition of "public workers" is broad but states that this does not give rise to any concerns. Therefore the Department considers that there are no ECHR issues with these clauses.⁴⁴⁶

- MLAs may wish to consider the broad definition of a 'public worker' in further detail.
- MLAs may also wish to consider whether it is appropriate that the offence of assault on a public worker, when convicted on indictment, would have the same maximum sentence as common assault.
- Given that a number of workers and volunteers will be newly brought within these statutory protections, it may be worth considering how the Department intends to implement and communicate this across a range of sectors.

8.9 Public Worker Aggravator in Other Jurisdictions

8.9.1 England and Wales

In England and Wales, there are specific offences of assaulting on-duty police officers, prison officers and immigration officers.⁴⁴⁷ Each of these offences is summary only (i.e. triable only in the Magistrates' Court) and carries a maximum sentence of six months' imprisonment and/or a fine.

These offences are broadly equivalent (in terms of seriousness and injury caused) to the general offence of common assault and battery under the

⁴⁴⁶ Provided through correspondence between RaiSe and Department of Justice (29 April 2026)

⁴⁴⁷ Assaults on on-duty police officers are covered by Police Act 1996, [Section 89](#). These protections are extended to prison officers by Prison Act 1952, [Section 8](#) and immigration officers are covered by the UK Border Act 2007, [Section 22](#)

Criminal Justice Act 1988.⁴⁴⁸ This is also a summary offence which carries a maximum sentence of six months' imprisonment and/or a fine.⁴⁴⁹

The Assault on Emergency Workers (Offences) Act 2018 makes provision for offences of common assault and battery on emergency workers. On summary conviction, the maximum sentence for imprisonment is the general limit in a Magistrates' Court (currently 12 months) and/or a fine. On conviction on indictment, the maximum sentence is 2 years' imprisonment and/or a fine. The emergency workers included are:

- police officers
- National Crime Agency officers
- prison officers (and other workers employed in custodial institutions)
- prisoner custody officers
- custody officers (involved in escort functions)
- fire service personnel
- search and rescue services
- providers of NHS health services, or those in support of same (general activities involving face to face interaction).⁴⁵⁰

In 2025, the Crown Prosecution Service issued updated guidance to prosecutors to consider the full range of available offences when charging assaults against emergency workers, including where cases can be dealt with more swiftly in the Magistrates' Court.⁴⁵¹

Section 2 of the 2018 Act also made the victim's status as an emergency worker a statutory aggravating factor, increasing the seriousness of the offence when an offender is charged with certain offences. This has since been repealed and replaced under the Sentencing Act 2020 which consolidated

⁴⁴⁸ Criminal Justice Act 1988, [Section 39](#)

⁴⁴⁹ House of Commons Library, [Assaults on Emergency Workers \(Offences\) Bill 2017-19](#) (April 2018)

⁴⁵⁰ Assaults on Emergency Workers (Offences) Act 2018, [Section 3](#)

⁴⁵¹ Crown Prosecution Service, [Assaults against emergency workers: Update to CPS prosecution guidance](#) (May 2025)

sentencing legislation in England and Wales.⁴⁵² The offences to which the aggravator can apply include:

- threats to kill
- malicious wounding
- wounding with intent to cause grievous bodily harm
- causing bodily injury by explosives
- using explosive substances with intent to cause grievous bodily harm
- assault occasioning actual bodily harm
- strangulation or suffocation
- sexual assault
- manslaughter
- kidnapping
- ancillary offences in relation to any of the above.⁴⁵³

The Crime and Policing Act 2026 would create an offence of threatening, abusive or insulting behaviour towards emergency workers. The maximum sentence for imprisonment is the general limit in a Magistrates' Court (currently 12 months) and/or a fine.⁴⁵⁴ On conviction on indictment, the maximum sentence is 2 years' imprisonment and/or a fine.

In response to debates about protections for retail workers, section 68A of the Sentencing Act 2020 was introduced by section 156 of the Police, Crime, Sentencing and Courts Act 2022.⁴⁵⁵ Under this provision, when sentencing an offender convicted a specified offence against a person,⁴⁵⁶ the court must treat it as an aggravating factor if the offence was committed against a person

⁴⁵² Sentencing Act 2020, [Section 67](#) and [Section 68](#)

⁴⁵³ This includes provisions from the Offences against the Person Act 1861, [Section 75A](#) of the Serious Crime Act 2015 and [Section 3](#) of the Sexual Offences Act 2003

⁴⁵⁴ Crime and Policing Act 2026, [Section 146](#)

⁴⁵⁵ Sentencing Act 2020, [Section 68A](#) inserted by Police, Crime, Sentencing and Courts Act 2022, [Section 156](#)

⁴⁵⁶ Common assault or battery or any of the following offences under the Offences Against the Person Act 1861: threats to kill (section 16), wounding with intent to cause grievous bodily harm (section 18), malicious wounding (section 20) or assault occasioning actual bodily harm (section 47)

providing a public service, performing a public duty or providing services to the public.

The Crime and Policing Act 2026 would also create a new offence of assaulting a retail worker.⁴⁵⁷ The new offence would be summary only, meaning it could only be tried in the Magistrates' Court, and the maximum sentence would be 6 months' imprisonment and/or an unlimited fine. This is the same maximum penalty as the existing offence of common assault.⁴⁵⁸ The Act also makes provision requiring the court to impose a Criminal Behaviour Order (CBO) on conviction in certain circumstances.⁴⁵⁹

Beyond those working in the above occupations, the Sentencing Council's overarching principles guideline advises that it is an aggravating factor if the "*victim was providing a public service or performing a public duty at the time of the offence*".⁴⁶⁰ This applies whether the victim is a public or private employee or acting in a voluntary capacity, but should not be 'double-counted' with the above statutory aggravating factor. The Council explains that this aggravating factor reflects that people in public facing roles are more exposed to the possibility of harm and consequently more vulnerable and/or that someone working in the public interest merits the additional protection of the courts.

8.9.2 Scotland

Assault in Scotland is generally treated as a common law offence. This allows significant discretion in sentencing, ranging from an admonishment⁴⁶¹ to life imprisonment, depending on whether the proceedings are summary or solemn,

⁴⁵⁷ Crime and Policing Act 2026, [Section 45](#)

⁴⁵⁸ House of Commons Library, [Crime and Policing Bill 2024-26](#) (March 2025), page 44

⁴⁵⁹ A CBO is an order which is made for the purpose of preventing the offender from engaging in behaviour that is likely to cause harassment, alarm or distress to any person in the future. See Sentencing Council, [Criminal Behaviour Order](#)

⁴⁶⁰ Sentencing Council, [General guideline: overarching principles](#) (October 2019)

⁴⁶¹ An admonition is where a person is warned not to offend again and the crime is recorded on their criminal record

and the level of the type of court in which they occur (justice of the peace courts, sheriff courts or High Court).⁴⁶²

There are also specific statute-based crimes of assaulting:

- police⁴⁶³
- fire fighters
- ambulance workers
- registered medical practitioners, nurses and midwives
- prison officers
- members of HM Coastguard and crew members of vessels operated by the Royal National Lifeboat Institution or other water rescue services
- social workers
- mental healthcare workers⁴⁶⁴
- retail workers⁴⁶⁵

These offences are summary only and carry a maximum penalty of 12 months in prison. There are no offence specific guidelines in Scotland concerning the sentencing of assault offences. Rather, sentencing is informed by considerations as set out in the general Sentencing Process Guideline and guided by case law and appeal judgments.⁴⁶⁶

8.9.3 Republic of Ireland

The Republic of Ireland has a range of general assault offences which largely equate to those under the 1861 Act.⁴⁶⁷ Under the Criminal Justice (Public

⁴⁶² Scottish Sentencing Council, [Literature Review: Sentencing Assault Offences](#) (October 2022), page 4

⁴⁶³ Police and Fire Reform (Scotland) Act 2012, [Section 90](#)

⁴⁶⁴ Emergency Workers (Scotland) Act 2005 [Section 1](#) and [Section 2](#)

⁴⁶⁵ Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Act 2021, [Section 1](#). This Act also imposes an aggravation if the offence occurs because the retail worker enforces a statutory age restriction (e.g. in relation to alcohol or tobacco products).

⁴⁶⁶ Scottish Sentencing Council, [The Sentencing Process Guideline](#) (September 2021)

⁴⁶⁷ [Non-Fatal Offences Against the Person Act](#) 1997

Order) Act 1994, as amended, there is a specific offence assault or obstruction of:⁴⁶⁸

- doctors
- dentists
- psychiatrists
- nurses
- midwives
- pharmacists
- health and social care professionals and others providing medical services at or in a hospital
- members of the Garda Síochána
- prison officers
- members of the Defence Forces
- ambulance personnel
- fire brigade personnel

The offence may be tried in a Magistrates' Court with a maximum penalty of 12 months' imprisonment (and/or a €5,000 fine) or in the Crown Court with a maximum penalty of 12 years. This was increased from 7 to 12 years in 2023.⁴⁶⁹

Furthermore, the Protection of Retail Workers Bill 2025 is a Private Members' Bill introduced in April 2025. It aims to amend the Criminal Justice (Public Order) Act 1994 to create specific offences of assaulting, threatening or abusing retail staff.⁴⁷⁰

⁴⁶⁸ Criminal Justice (Public Order) Act 1994, [Section 19](#)

⁴⁶⁹ Department of Justice, Home Affairs and Migration, [New criminal offences and tougher sentences take effect from 01 November 2023](#) (November 2023) and Criminal Justice (Miscellaneous Provisions) Act 2023, [Section 63](#)

⁴⁷⁰ [Protection of Retail Workers Bill 2025](#) (Bill 17 of 2025)

- MLAs may wish to consider whether the Department of Justice should be required to report on the operation of the new statutory aggravators in the Criminal Justice (Sentencing etc) Bill. This could help to provide information on how they are being identified and applied in relevant cases, included in prosecutions and reflected in convictions and sentence records.

9 Part 7: Road Traffic Offences

Part 7 of the Bill would make provision for increasing the maximum penalties for certain road traffic offences where death or serious injury is caused. It would also allow for an increased maximum sentence where an offender has a previous relevant conviction. Schedule 6 would make 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.

9.1 Background

A broad range of driving offences can be found in the Road Traffic (Northern Ireland) Order 1995. Serious road traffic offences include causing death or grievous bodily injury by dangerous driving or by careless driving⁴⁷¹ when under the influence of drink or drugs.⁴⁷² These offences will be tried in the Crown Court which will undertake an assessment of a defendant's culpability and the magnitude of the harm caused. The maximum sentence that can be imposed for these serious offences is 14 years (and/or an unlimited fine with an

⁴⁷¹ The Road Traffic (Northern Ireland) Order 1995, [Article 11](#) defines dangerous driving as falling "far below what would be expected of a competent and careful driver". [Article 12A](#) defines careless driving as falling "below what would be expected of a competent and careful driver".

⁴⁷² The Road Traffic (Northern Ireland) Order 1995, [Article 9](#) and [Article 14](#). Article 14 also covers a situation involving death or grievous bodily harm by careless driving when under the influence of drink or drugs where a person fails to provide a specimen of breath, blood or urine without reasonable excuse.

obligatory disqualification for a minimum of two years)⁴⁷³ which will comprise a custody period and a licence period.⁴⁷⁴

The most recent guideline case for causing death by dangerous driving was handed down in November 2024.⁴⁷⁵ The Court of Appeal reaffirmed an earlier guideline case from 2007 which provides four levels of culpability and the range of custodial sentences which apply in Northern Ireland for cases involving death or grievous bodily harm.

Table 12: Court of Appeal Guidelines on Culpability and Sentencing

Level of Culpability	Sentence of Imprisonment
No aggravating circumstances	12 months to 2 years
Intermediate culpability	2 to 4.5 years
Higher culpability	4.5 to 7 years
Most serious culpability	7 to 14 years

Source: [R v McCartney](#) [2007] NICA 41 at [35]

The Court of Appeal noted that cases of the most serious culpability could involve the presence of 3 or more aggravating factors (though an exceptionally bad example of a single factor could be sufficient to place an offence in this category). Cases of higher culpability are likely to involve 2 or more aggravating factors whilst cases of intermediate culpability may involve 1 aggravating factor.

Examples of these factors include the consumption of alcohol or drugs, greatly excessive speed, driving when knowingly suffering from a medical condition which significantly impairs the offender's driving skills or driving while the

⁴⁷³ This can increase to 3 years if there is a similar offence in the previous 10 years

⁴⁷⁴ Public Prosecution Service, [Policy for Prosecuting Road Traffic Offences](#) (December 2020), page 11. See also The Road Traffic Offenders (Northern Ireland) Order 1996, [Schedule 1](#) for the penalties associated with the offences under the 1995 Order.

⁴⁷⁵ [R v Kovac](#) [2024] NICA 72

driver's attention is avoidably distracted e.g. by using a mobile phone.⁴⁷⁶ Mitigating factors might include a good driving record or the absence of previous convictions.⁴⁷⁷

The Road Traffic (Northern Ireland) Order 1995 also makes provision for causing death or grievous bodily injury by driving whilst disqualified from holding or obtaining a driving license.⁴⁷⁸ This offence does not require proof of dangerous driving or careless driving, but does require proof of some act or omission in the control of the car, which involves some element of fault.⁴⁷⁹

Upon summary prosecution, this offence carries a maximum penalty of 6 months imprisonment and/or the statutory maximum fine of £5,000. On indictment, the maximum penalty is 2 years imprisonment and/or an unlimited fine. Disqualification from driving for a minimum of 12 months is mandatory.⁴⁸⁰

It is worth noting that the Road Traffic (Northern Ireland) Order 1995 provides a definition of a motor vehicle covering mechanically propelled vehicles.⁴⁸¹ E-scooters generally do not comply with construction and vehicle standards required for motor vehicles and their use is restricted to off-road only.⁴⁸² The 1995 Order also outlines certain vehicles not to be treated as motor vehicles including, for example, electrically assisted pedal cycles.⁴⁸³ Offences related to dangerous or careless cycling can be found in Articles 42-46 of the 1995 Order.

Furthermore, the Department provided RalSe with data on convictions, sentence length and disqualification from driving periods for 2020-2024. This relates to convictions for:

⁴⁷⁶ [R v McCartney](#) [2007] NICA 41 at [20]

⁴⁷⁷ Ibid

⁴⁷⁸ The Road Traffic (Northern Ireland) Order 1995, [Article 12B](#)

⁴⁷⁹ Public Prosecution Service, [Policy for Prosecuting Road Traffic Offences](#) (December 2020), page 15

⁴⁸⁰ The Road Traffic Offenders (Northern Ireland) Order 1996, [Schedule 1](#)

⁴⁸¹ The Road Traffic (Northern Ireland) Order 1995, [Article 3](#)

⁴⁸² [Motor Vehicles \(Construction and Use\) Regulations \(Northern Ireland\) 1999](#) and [PSNI, E-scooter, Scrambler and Quad Safety](#)

⁴⁸³ Electric bikes must be compliant with the requirements in [The Electrically Assisted Pedal Cycles \(Construction and Use\) Regulations \(Northern Ireland\) 2020](#)

- causing death or grievous bodily harm by dangerous driving (Article 9 Road Traffic (Northern Ireland) Order 1995)
- causing death or grievous bodily harm by careless driving under the influence of alcohol or drugs (Article 14 Road Traffic (Northern Ireland) Order 1995)
- causing death or grievous bodily injury when driving while disqualified (Article 12B(c) Road Traffic (Northern Ireland) Order 1995)

Table 13: Number of Convictions and Custodial Sentences for Offences under Article 9/14/12B(c) of the Road Traffic (Northern Ireland) Order 1995, Northern Ireland, 2020 - 2024

Year	Convictions	Number of Custodial Sentences for Offences
2020	18	10
2021	14	12
2022	16	12
2023	24	15
2024	13	9

Source: Source: Correspondence between RalSe and Department of Justice (28 April 2026)

Note:

1. Figures relate to initial disposals at courts. Appeals are not included.
2. Figures include convictions for at least 1 offence relating to causing death or injury by dangerous or careless driving under the legislation specified.

In terms of the available data on length of sentence for convictions, this is based on small numbers of cases and is affected by disclosure limits.⁴⁸⁴ Looking across the period 2020–2024, sentences (including custody and licence) varied considerably, although most were between 1 and 3 years. Because of the low volume of cases, this data should be treated as indicative rather than representative.

In summary, between 2020 and 2024, there were 55 convictions for causing death or grievous bodily harm by dangerous driving. Available data shows that custodial sentences (including custody and licence) covered a range of lengths. Where sentence durations could be reported, most fell between 1 and 3 years, with smaller numbers in higher bands, including sentences exceeding 5 years. Interpretation is limited by small case volumes and disclosure controls.

Driving disqualification periods imposed for these offences also varied. Where disclosed, most bans were between 1 and 2 years, with a smaller number of longer disqualifications, including periods of 4 years or more.

For the offence of causing death or grievous bodily harm by careless driving while under the influence of alcohol or drugs, there were 30 convictions over the same period. Disclosed data indicates that custodial sentences most commonly fell within the 1 to 3 year range and disqualification periods were most often between 1 and 2 years, followed by bans of 2 to 3 years.

Due to the small number of convictions for causing death or grievous bodily injury while driving, figures are suppressed for disclosure reasons. Where data could be reported, custodial sentences were in the 3 to 4 year range, though conclusions are constrained by the low number of cases.

⁴⁸⁴ This data relates to Article 9/14/12B(c) of the Road Traffic (Northern Ireland) Order 1995

9.2 Public Consultation

The Department's Sentencing Review 2016-2021 considered the following offences:

- causing death or grievous bodily injury by dangerous driving⁴⁸⁵
- causing death or grievous bodily injury by careless driving when under the influence of drink or drugs⁴⁸⁶
- causing death or grievous bodily injury by driving whilst disqualified from holding or obtaining a driving license.⁴⁸⁷

This section of the Department's consultation received around 200 responses which was higher any other part of the consultation.⁴⁸⁸ The Department considered increasing the maximum sentence for the first two categories of offence listed above from 14 years to a maximum of 20 years or a discretionary life sentence.⁴⁸⁹ 97 per cent of respondents considered the current maximum sentence of 14 years insufficient and nearly 75 per cent favoured an increase to a discretionary life sentence.⁴⁹⁰ There was also strong support for increasing the maximum sentence for causing death or grievous bodily injury while driving disqualified.

The Department concluded that it would 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 14 years to 20 years.⁴⁹¹ This reflected other offences of similar seriousness and the approach of increasing the current maximum by a

⁴⁸⁵ The Road Traffic (Northern Ireland) Order 1995, [Article 9](#)

⁴⁸⁶ The Road Traffic (Northern Ireland) Order 1995, [Article 14](#)

⁴⁸⁷ The Road Traffic (Northern Ireland) Order 1995, [Article 12B](#)

⁴⁸⁸ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 46

⁴⁸⁹ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 109

⁴⁹⁰ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 47

⁴⁹¹ *Ibid*, page 49

similar percentage to the changes previously enacted in 2004, resulting in a maximum sentence of around 20 years.⁴⁹²

The Department proposed that a discretionary life sentence should be the maximum sentence available to a judge for these offences where an offender has a previous conviction for that offence.⁴⁹³ The Department also concluded that the current position should be maintained of parity in the maximum sentence whether death or grievous bodily injury is caused.⁴⁹⁴

On the offence of causing death or grievous bodily injury when driving while disqualified, the Department proposed to increase the maximum sentence to 4 years when tried on indictment and 12 months when tried summarily.⁴⁹⁵

Alternative options of 4 years and 10 years were discounted. As noted in the consultation document, whilst the standalone offence requires a causal connection between driving and the death or injury, the defendant's culpability does not meet the threshold of careless driving.⁴⁹⁶

Convictions for this offence can be accompanied by more serious driving offences such as causing death or grievous bodily injury by dangerous driving. In this scenario, the court will seek to ensure that the total sentence reflects all the offending behaviour when sentencing for more than one offence. Therefore the Department decided against a higher maximum sentence for the standalone offence.

As noted above, a court sentencing an offender convicted of the most serious road traffic offences can currently impose a 14 year maximum sentence. The court will also have to impose an obligatory disqualification for a minimum of 2

⁴⁹² Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 111. The maximum sentence was increased by 40 per cent when it increased from 10 years to 14 years under the Criminal Justice Act 2003, [Section 285](#)

⁴⁹³ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 49

⁴⁹⁴ Ibid, page 50

⁴⁹⁵ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 50

⁴⁹⁶ Department of Justice, [Sentencing Review Northern Ireland: A Public Consultation](#) (October 2019), page 117

years, unless there are special reasons not to disqualify.⁴⁹⁷ This can increase to 3 years if there is a similar offence in the previous 10 years. The court is also obliged to endorse between 3 to 11 penalty points on the driver's licence.⁴⁹⁸ The courts can also impose longer disqualification periods where this is considered necessary given the circumstances of the case.

The Department asked respondents whether the minimum disqualification period of 2 years should be increased to 4 years with a majority expressing support for this. There was also a high level of support for doubling the disqualification period for repeat offenders to a minimum of 6 years. The Department indicated its intention to proceed with both of these changes.⁴⁹⁹ It also proposed to review and update existing legislation which would allow a court to extend a driving disqualification to take account of any period spent in custody.⁵⁰⁰ This would mean that a driving ban does not end or reduce significantly whilst an offender is in prison.⁵⁰¹

Finally, the consultation contained some discussion on whether disqualification restrictions should be imposed on an offender wishing to remove a disqualification. At present, an application can be made to a court to remove this when at least half of the disqualified period is completed.⁵⁰² The Department proposed that disqualification should not be capable of being reduced below 2/3rds of the disqualification period ordered by the sentencing court. In addition, it proposed that repeat offenders would be disallowed from applying for a reduction of a disqualification imposed before the minimum period for disqualification has been served.⁵⁰³

⁴⁹⁷ Public Prosecution Service, [Policy for Prosecuting Road Traffic Offences](#) (December 2020), page 12

⁴⁹⁸ The Road Traffic Offenders (Northern Ireland) Order 1996, [Schedule 1](#)

⁴⁹⁹ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 52

⁵⁰⁰ Coroners and Justice Act 2009, [section 137](#) and [schedule 16](#). These are not yet commenced.

⁵⁰¹ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 53

⁵⁰² The Road Traffic Offenders (Northern Ireland) Order 1996, [Article 47\(3\)](#)

⁵⁰³ Department of Justice, [Sentencing Policy Review Consultation: Way Forward](#) (April 2021), page 53

However, legislative provision has not been made for these changes in part 7 of the Criminal Justice (Sentencing etc) Bill. The Department concluded during drafting that additional legislative provisions were not required to achieve a lengthy period off the road for offenders guilty of these offences.⁵⁰⁴

9.3 Part 7 of the Criminal Justice (Sentencing etc) Bill Paper

Clause 40(1) would insert new Article 12C into the Road Traffic (Northern Ireland) Order 1995 relating to the offence of causing death or grievous bodily injury by driving while disqualified. Clause 40(2) would 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. This would increase to 4 years or a fine or both when tried on indictment.⁵⁰⁵

Clause 41(2) would increase the maximum penalty for causing death or grievous bodily injury by dangerous driving from 14 years to 20 years.⁵⁰⁶ Clause 41(3) would increase the maximum penalty for causing death or grievous bodily injury by careless driving when under the influence of drink or drugs from 14 years to 20 years.⁵⁰⁷

Clause 42 would insert new article 34A into the Road Traffic Offenders (Northern Ireland) Order 1996 relating to an increased maximum sentence for repeat offenders of imprisonment for life. This would cover cases where an offender has a previous conviction for an offence of causing death or grievous bodily injury by dangerous driving or careless driving when under the influence of drink or drugs.⁵⁰⁸

⁵⁰⁴ Department of Justice, Annex C: Matters Approved for Drafting and Details of Those Not Taken Forward (13 April 2026)

⁵⁰⁵ Clause 40(2) would amend part 1 of [schedule 1](#) to the Road Traffic Offenders (Northern Ireland) Order 1996

⁵⁰⁶ Clause 41(2) would amend part 1 of [schedule 1](#) to the Road Traffic Offenders (Northern Ireland) Order 1996 for the entry relating to The Road Traffic (Northern Ireland) Order 1995, [Article 9](#)

⁵⁰⁷ Clause 41(3) would amend part 1 of [schedule 1](#) to the Road Traffic Offenders (Northern Ireland) Order 1996 for the entry relating to The Road Traffic (Northern Ireland) Order 1995, [Article 14](#)

⁵⁰⁸ Road Traffic (Northern Ireland) Order 1995, [Article 9](#) and [Article 14](#)

The offender would then commit a further offence under these provisions within the 'relevant period'. Where a custodial sentence (except 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'. In any other case, the 'relevant period' is 10 years beginning at the date of conviction for the previous offence.

Further definition of the 'required custodial period' is included in article 34A(4) which outlines a number of existing statutory provisions. The 'required custodial period' would refer to the tariff period specified by the court for a life sentence. It would also cover the custodial period across the range of other sentences available to the courts, including a determinate sentence, an indeterminate custodial sentence, a serious terrorism sentence and a sentence relating to certain grave crimes committed by children. In the case of certain extended custodial sentences or terrorism sentences involving a fixed licence period, the 'required custodial period' can also relate to half or two-thirds of the term imposed by the court depending on the specific statutory provision.

New article 34A(5) would make further provision in relation to determining the end of the 10 year period after an offender has served the 'required custodial period'. This would provide that no account is to be taken of any time during which an offender was unlawfully at large, unless the Department of Justice directs otherwise.

New article 34A(6) would relate to cases where an earlier offence was one of 2 or more associated offences and the court imposed 2 or more custodial sentences (other than suspended sentences).⁵⁰⁹ It would provide that the court must treat the longest of the custodial periods as the 'required custodial period'.

A regulation making power would also be included in new article 34A(9). This would align with existing provision in the Criminal Justice (Northern Ireland) Order 2008 relating to the duty to release prisoners serving extended custodial

⁵⁰⁹ Under new article 34A(7), an offence is associated with another where the offender is convicted of both offences in the same proceedings, or is sentenced for both offences at the same time, or the offender admits the commission of it in the sentencing proceedings for the other offence and requests the court to take it into consideration in the sentence for that offence.

sentences which allows the Department to change the proportion of custodial sentences that must be served before referral to the PCNI by way of an amending order.⁵¹⁰

If an amending order changes the release proportions of the ECS, then the Department of Justice may also amend the 'required custodial period' in article 34A so that references to the old proportion are read as references to the new proportion. These regulations would be subject to the negative resolution procedure (laid before the Assembly by the Department and would take effect when its 'comes into force' date is reached).

Clause 42 would also insert new article 34B into the Road Traffic Offenders (Northern Ireland) Order 1996. As noted above, article 34A provides for a maximum sentence of life imprisonment in cases involving serious road traffic offences where an offender commits a further offence within the 'relevant period'. If an earlier conviction is subsequently set aside or modified on appeal then the requirements of article 34A would not have been met. Therefore this provision would allow for a notice of appeal against sentence to be submitted at any time within 28 days beginning with the date on which the previous conviction was set aside or modified.

Clause 43 would amend article 35 of the Road Traffic Offenders (Northern Ireland) Order 1996. This would increase the minimum period of disqualification from 2 years to 4 years for being convicted of an offence of causing death or grievous bodily injury by dangerous driving or careless driving when under the influence of drink or drugs. This would be subject to the provisions in clause 44 for a 6 year minimum disqualification period in cases involving a repeat offence.

Clause 44 would make further changes to article 35 by providing for an increase in the minimum disqualification period for a repeat offence during the relevant period (ten years after serving a custodial period or from the date of conviction in other cases under Article 34A). Table 14 shows the minimum disqualification periods applicable to each combination of offences.

⁵¹⁰ The Criminal Justice (Northern Ireland) Order 2008, [Article 18\(2\)\(b\)](#) and [Article 18\(9\)](#)

Table 14: Minimum Disqualification Period for Road Traffic Offences

Combination of New Offence and Earlier Offence	Minimum Disqualification Period
<p>If both offences:</p> <ul style="list-style-type: none"> • causing death, or grievous bodily injury, by dangerous driving • causing death, or grievous bodily injury by careless driving when under the influence of drink or drugs⁵¹¹ 	6 years
<p>If new offence:</p> <ul style="list-style-type: none"> • causing death, or grievous bodily injury, by dangerous driving OR by careless driving when under the influence of drink or drugs⁵¹² <p>If earlier offence:</p> <ul style="list-style-type: none"> • driving or attempting to drive while unfit⁵¹³ • driving or attempting to drive with excess alcohol⁵¹⁴ • failing to provide a specimen⁵¹⁵ 	4 years

⁵¹¹ The Road Traffic (Northern Ireland) Order 1995, [Article 9](#) and [Article 14](#)

⁵¹² The Road Traffic (Northern Ireland) Order 1995, [Article 9](#) or [Article 14](#)

⁵¹³ The Road Traffic (Northern Ireland) Order 1995, [Article 15\(1\)](#)

⁵¹⁴ The Road Traffic (Northern Ireland) Order 1995, [Article 16\(1\)\(a\)](#)

⁵¹⁵ The Road Traffic (Northern Ireland) Order 1995, [Article 18\(7\)](#)

Combination of New Offence and Earlier Offence	Minimum Disqualification Period
<ul style="list-style-type: none"> • failing to allow a specimen to be subjected to laboratory test⁵¹⁶ 	
<p>If both offences:</p> <ul style="list-style-type: none"> • driving or attempting to drive while unfit⁵¹⁷ • driving or attempting to drive with excess alcohol⁵¹⁸ • failing to provide a specimen⁵¹⁹ • failing to allow a specimen to be subjected to laboratory test⁵²⁰ 	3 years

Source: Criminal Justice (Sentencing etc) Bill, [Clause 44](#) (March 2026)

Clause 45 would introduce schedule 6. This would make amendments to a number of provisions in the Criminal Justice (Northern Ireland) Order 1980,⁵²¹ the Road Traffic Offenders (Northern Ireland) Order 1996⁵²² and the Criminal Justice (Northern Ireland) Order 2008.⁵²³

The EFM notes that these would 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

⁵¹⁶ The Road Traffic (Northern Ireland) Order 1995, [Article 18A\(6\)](#)

⁵¹⁷ The Road Traffic (Northern Ireland) Order 1995, [Article 15\(1\)](#)

⁵¹⁸ The Road Traffic (Northern Ireland) Order 1995, [Article 16\(1\)\(a\)](#)

⁵¹⁹ The Road Traffic (Northern Ireland) Order 1995, [Article 18\(7\)](#)

⁵²⁰ The Road Traffic (Northern Ireland) Order 1995, [Article 18A\(6\)](#)

⁵²¹ Criminal Justice (Northern Ireland) Order 1980, [Article 8A](#) (not yet commenced)

⁵²² The Road Traffic Offenders (Northern Ireland) Order 1996, [Article 40A](#) (not yet commenced)

⁵²³ The Criminal Justice (Northern Ireland) Order 2008, [Article 91A](#) (not yet commenced)

custody.⁵²⁴ Clause 50 states that these would come into operation on the same day as paragraphs 1, 4 and 6 of schedule 16 to the Coroners and Justice Act 2009.⁵²⁵

The Department's assessment of the Bill's compatibility with the European Convention on Human Rights (ECHR) indicates that this part of the Bill potentially engages Article 5 (right to liberty), Article 6 (right to a fair trial) and Article 8 (right to respect of private and family life). The assessment indicates that the provisions do not have a retrospective effect. In addition, whilst offenders will be liable to the higher maximum penalties and minimum periods of disqualification, it will be for the sentencing judge to determine a sentence which is proportionate within the context of the circumstances of each particular case. Therefore the Department considers that there are no ECHR issues.⁵²⁶

9.4 Other Jurisdictions

In England and Wales, the maximum sentence for death by dangerous driving or by careless driving whilst under the influence of drink or drugs is life imprisonment for offences committed after 28 June 2022.⁵²⁷ This also involves an obligatory disqualification of minimum 5 years with a compulsory extended retest. Otherwise the maximum sentence is 14 years' imprisonment with a minimum disqualification period of 2 years and a compulsory extended retest.⁵²⁸

In England and Wales, conviction for the offence of causing serious injury by dangerous driving involves a maximum sentence of 12 months' imprisonment when tried summarily.⁵²⁹ On indictment, the maximum sentence is 5 years or a fine or both. The obligatory disqualification period is a minimum of 2 years with

⁵²⁴ Criminal Justice (Sentencing etc) Bill, [Explanatory and Financial Memorandum](#) (March 2026)

⁵²⁵ Coroners and Justice Act 2009, [Schedule 16](#) (not yet commenced)

⁵²⁶ Provided through correspondence between RaiSe and Department of Justice (29 April 2026)

⁵²⁷ This was increased by the Police, Crime, Sentencing and Courts Act 2022, [Section 86](#)

⁵²⁸ Road Traffic Act 1988, [Section 1](#) and [Section 3A](#) and Road Traffic Offenders Act 1988, [Schedule 2](#)

⁵²⁹ Serious injury is physical harm which amounts to grievous bodily harm

a compulsory extended re-test.⁵³⁰ Unlike in Northern Ireland, there is no specific offence of causing serious injury by careless driving whilst under the influence of drink or drugs.

Cases involving death by driving while disqualified involve a maximum sentence of 10 years. Those involving serious injury have a maximum sentence of 4 years when tried on indictment and 12 months when tried summarily.⁵³¹ The obligatory disqualification period is 2 years with an extended retest.

In 2022, a new offence of causing serious injury by careless, or inconsiderate, driving was introduced.⁵³² The maximum sentence for this either way offence is 2 years on indictment with a minimum disqualification period of 12 months.

In 2023, the Sentencing Council produced guidelines for the sentencing of motor offences.⁵³³ Each separate guideline sets out the key steps involved in the sentencing process.⁵³⁴ These assist judges in determining the appropriate sentences for a number of motoring offences based on an assessment of the offender's culpability and the harm caused. They also specify a sentencing range appropriate for each offence category. For example, the range is 26 weeks to 18 years' custody for causing death by careless driving whilst under the influence of drink or drugs.⁵³⁵ This increases to 2 to 18 years' custody for death by dangerous driving.

In Scotland, the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988 are reserved matters.⁵³⁶ The Scottish Sentencing Council published a guideline

⁵³⁰ Road Traffic Act 1988, [Section 1A](#) and Road Traffic Offenders Act 1988, [Schedule 2](#)

⁵³¹ Road Traffic Act 1988, [Section 3ZC](#) and [Section 3ZD](#)

⁵³² Road Traffic Act 1988, [Section 2C](#)

⁵³³ Sentencing Council, [Sentencing guidelines for motoring offences published](#) (June 2023)

⁵³⁴ For example, Sentencing Council, [Causing death by dangerous driving](#) (June 2023)

⁵³⁵ Sentencing Council, [Causing death by careless driving whilst under the influence of drink or drugs](#) (June 2023)

⁵³⁶ House of Commons Library, [Transport in Scotland, Wales & Northern Ireland](#) (June 2017)

on the statutory offences of causing death by driving which applies from 16 January 2024.⁵³⁷ The offences covered by the guideline are:

- causing death by dangerous driving or careless driving when under the influence of drink or drugs
- causing death by careless, or inconsiderate, driving
- causing death by driving while unlicensed, uninsured, or disqualified⁵³⁸

The guideline provides sentencing ranges, which reach up to 12 years' imprisonment for the most serious death by dangerous driving offences, which are based on current practice and reflect the upper limits of sentences which have been imposed by the Scottish courts. However, the guidelines do not cover every eventuality and the maximum potential sentence under statute for causing death by dangerous driving or careless driving under the influence of alcohol or drugs is a life sentence.

In the Republic of Ireland, the maximum sentence for causing death or serious bodily harm by dangerous driving when tried on indictment is 10 years' imprisonment and a fine not exceeding €20,000 or both.⁵³⁹ The maximum sentence for causing death or serious bodily harm by careless driving when tried on indictment is 2 years' imprisonment or a fine not exceeding €10,000 or both.⁵⁴⁰ The Judicial Council's Sentencing Guidelines and Information Committee has identified plans for the development of a draft guideline on fatal driving offences.⁵⁴¹

The minimum period of disqualification for dangerous driving causing death or serious bodily injury is 4 years for a first offence when tried on indictment. This increases to 6 years for a second or subsequent offence.⁵⁴² In cases involving careless driving causing death or serious bodily injury, a Court of Appeal case

⁵³⁷ Scottish Sentencing Council, [Death by driving sentencing guideline approved by the High Court](#) (October 2023)

⁵³⁸ Scottish Sentencing Council, [Statutory offences of causing death by driving](#) (January 2024)

⁵³⁹ Road Traffic Act 1961, [Section 53](#)

⁵⁴⁰ Road Traffic Act 1961, [Section 52](#)

⁵⁴¹ The Judicial Council, [Annual Report 2024](#) (June 2025), page 25

⁵⁴² Road Traffic Act 1961, [Section 26](#)

held that mandatory disqualification only applies if the accused had 2 previous convictions for careless driving in a 3 year period prior to the offence.⁵⁴³

10 Part 8: Further Provision and Commencement

10.1 Statutory Regulations

Clause 46 would confer, on the Department, the 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 46(2) states that these regulations may amend, repeal, revoke or otherwise modify any statutory provision. If enacted, this would be a power to amend primary legislation (also known as a Henry VIII power).⁵⁴⁴ This is a significant form of delegated power and the House of Lords has highlighted that there is a general presumption that the draft affirmative resolution procedure should be used for any regulation making power that includes the power to amend primary legislation.⁵⁴⁵

Clause 46(3) would provide that any regulations that amend, repeal, revoke or otherwise modify primary legislation may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly (draft affirmative procedure). Under clause 46(4) any other regulations made under this clause would be subject to the negative resolution procedure (laid before the Assembly by the Department and would take effect when its 'comes into force' date is reached).

In addition to the regulation making powers detailed above, table 15 summarises the other delegated powers contained in the earlier parts of the Bill.

⁵⁴³ [Director of Public Prosecutions v McCann](#) [2022] IECA 302

⁵⁴⁴ The expression is a reference to King Henry VIII's preference for legislating directly by proclamation rather than through Parliament.

⁵⁴⁵ House of Lords Delegated Powers and Regulatory Reform Committee, [Democracy Denied? The urgent need for rebalance power between Parliament and the Executive](#) (November 2021), page 32 and House of Lords Select Committee on the Constitution, [The Legislative Process: The Delegation of Powers 16th Report of Session 2017–19](#) (November 2018), page 19 and House of Lords Delegated Powers and Regulatory Reform Committee, [Third Report Session 2002 – 2003](#) (December 2002)

Table 15: Delegated Powers in the Criminal Justice (Sentencing etc) Bill, Parts 1 - 7

Relevant Clause	Description	Assembly Procedure
10(7)(b) in part 2 on suspended sentences	The content and presentation of a pre-sentence report may be prescribed in regulations where a suspended sentence order with community requirements is being made	Negative (clause 10(8))
15 in part 2 on suspended sentences	The Department may make regulations covering the supervision of offenders subject to suspended sentence orders, arrangements for work and the functions of responsible officers	Negative (clause 15(3))
19(2) and schedule 3 which insert schedule A1 into the Life Sentences (NI) Order 2001, paragraph 8(1) in part 3 on life sentences	The Department may amend provision relating to starting points for mandatory life sentences for adults	Draft Affirmative (paragraph 8(4))

Relevant Clause	Description	Assembly Procedure
20(3)(b) in part 4 on unduly lenient sentences	The scheme can apply to sentences imposed on summary trial for offences of a description specified by the Department in regulations	Negative (clause 20(4))
23 and Schedule 4, paragraph 3 on unduly lenient sentences	This would make provision for what the Rules of Court may do in these cases. These are made under section 55 of the Judicature (Northern Ireland) Act 1978.	Negative
28(5) and (6) in part 5 on failure to disclosure information about victim's remains	The Department may make provision about relevant disclosures	Draft Affirmative (clause 28(7))
35 in part 6 on particular persons or groups	The Department may add further kinds of hostility and specify circumstances where an offence is aggravated by hostility. This must relate to a group or characteristic.	Draft Affirmative (clause 35(5))
42 which inserts article 34A(9) into the Road Traffic Offenders	If an amending order under Article 18(9) of the Criminal Justice (Northern Ireland) Order changes the release proportions of certain extended custodial sentences,	Negative (clause 42, new article 34A(10) of the Road

Relevant Clause	Description	Assembly Procedure
(Northern Ireland) Order 1996 in part 7 on road traffic offences	then the Department may also amend the 'required custodial period' in article 34A	Traffic Offenders (Northern Ireland) Order 1996)

Source: [Criminal Justice \(Sentencing etc\) Bill](#) (March 2026)

10.2 Transitional Provisions and Savings

Clause 49 would mean that a number of provisions in the Bill do not apply where a person is convicted of an offence committed before commencement.

These are:

- part 2 on suspended sentences
- part 3 on life sentences
- clauses 33 to 35 on aggravation by hostility
- clause 36 on aggravation by reason of vulnerability
- clause 38 and 39 on aggravation where offence is committed against a public worker
- part 7 on road traffic offences

In addition, part 4 on unduly lenient sentences would not apply in relation to a sentence passed by a court before commencement. Separately, as noted in section 7.2, clause 30 in part 5 on failure to disclose information about a victim's remains would allow the provisions relating to a reduction in sentence following a relevant disclosure to be applied in cases where an offender is already serving a custodial sentence for murder or manslaughter before the commencement date.

10.3 Commencement

The provisions in the Bill would have varying commencement days under clause 50. Some clauses would come into force on Royal Assent. Other clauses come into force two months after Royal Assent. The remaining provisions will come into force once the Department has made commencement regulations.

The provisions that would commence on Royal Assent are:

- part 7 on road traffic offences (except clause 45 which would come into operation on the same day as paragraphs 1, 4 and 6 of schedule 16 to the Coroners and Justice Act 2009. This relates to the extension period that should be added to a period of disqualification from driving to account for any time that an offender spends in custody).

The provisions that would commence two months after Royal Assent are:

- part 1 on the exercise of the court's discretion when sentencing
- part 3 on life sentences
- part 4 on unduly lenient sentences
- part 5 on failure to disclose information about victim's remains

The provisions that would commence by regulation on a date appointed by the Department:

- part 2 on suspended sentences
- part 6 on particular persons or groups

Some of the provisions in schedule 7 which would contain minor and consequential amendments come into effect at different points as detailed in clause 50(4).