
STATUTORY INSTRUMENTS

1996 No. 3160

The Criminal Justice (Northern Ireland) Order 1996

PART II

TREATMENT OF OFFENDERS

Custodial sentences

Restriction on imposing sentences of imprisonment or detention on persons not legally represented

18.—(1) A magistrates' court on summary conviction or the Crown Court on conviction on indictment shall not pass a sentence of imprisonment or detention in a young offenders centre or a sentence of detention during the Secretary of State's pleasure under section 73(1) of the Children and Young Persons Act (Northern Ireland) 1968 on, or make a training school order with respect to, a person who is not legally represented in that court and has not been previously sentenced to that punishment by a court in any part of the United Kingdom, unless either—

- (a) he applied for legal aid and the application was refused on the ground that it did not appear his means were such that he required assistance; or
- (b) having been informed of his right to apply for legal aid and had the opportunity to do so, he refused or failed to apply.

(2) In paragraph (1)(a) and (b) "legal aid" means legal aid for the purposes of proceedings in that court, whether the whole proceedings or the proceedings on or in relation to sentence.

(3) In the case of a person committed to the Crown Court for trial, it is immaterial whether he applied for legal aid in the Crown Court to, or was informed of his right to apply by, that Court, or the court which committed him.

(4) For the purposes of this Article—

- (a) a person is to be treated as legally represented in a court if, but only if, he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced;
- (b) a previous sentence of imprisonment or order for detention in a young offenders centre which has been suspended and which has not taken effect under section 40 of the Criminal Justice Act 1967, section 19 of the Treatment of Offenders Act (Northern Ireland) 1968 or section 23 of the Powers of Criminal Courts Act 1973 shall be disregarded; and
- (c) "young offenders centre" means in relation to Great Britain a young offenders institution.

Restrictions on imposing custodial sentences

19.—(1) This Article applies where a person is convicted of an offence punishable with a custodial sentence other than one fixed by law.

(2) Subject to paragraph (3), the court shall not pass a custodial sentence on the offender unless it is of the opinion—

- (a) that the offence, or the combination of the offence and one or more offences associated with it, was so serious that only such a sentence can be justified for the offence; or
- (b) where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him.

(3) Nothing in paragraph (2) shall prevent the court from passing a custodial sentence on the offender if he refuses to give his consent to a community sentence which is proposed by the court and requires that consent.

(4) Where a court passes a custodial sentence, it shall—

- (a) in a case not falling within paragraph (3), state in open court that it is of the opinion that either or both of sub-paragraphs (a) and (b) of paragraph (2) apply and why it is of that opinion; and
- (b) in any case, explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.

(5) A magistrates' court shall cause a reason stated by it under paragraph (4) to be specified in the warrant of commitment and to be entered in the Order Book.

Length of custodial sentences

20.—(1) This Article applies where a court passes a custodial sentence other than one fixed by law or an order sending an offender to a training school under section 74(1)(a) of the Children and Young Persons Act (Northern Ireland) 1968.

(2) The custodial sentence shall be—

- (a) for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it; or
- (b) where the offence is a violent or sexual offence, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender.

(3) Where the court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it, the court shall—

- (a) state in open court that it is of the opinion that paragraph (2)(b) applies and why it is of that opinion; and
- (b) explain to the offender in open court and in ordinary language why the sentence is for such a term.

(4) A custodial sentence for an indeterminate period shall be regarded for the purposes of paragraphs (2) and (3) as a custodial sentence for a term longer than any actual term.

Procedural requirements for custodial sentences

21.—(1) Subject to paragraph (2), a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in Article 19(2) or 20(2).

(2) Paragraph (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report and where the court does not obtain and consider a pre-sentence report, it shall state in open court that it is of that opinion and what the circumstances are.

(3) In the case of an offender under the age of 17 years, except where the offence or any other offence associated with it is punishable only on conviction on indictment, the court shall not form such an opinion as is mentioned in paragraph (2) or (6) unless there exists a previous pre-sentence report obtained in respect of the offender and the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.

(4) In forming any such opinion as is mentioned in Article 19(2) or 20(2) a court—

(a) shall take into account all such information about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated with it (including any aggravating or mitigating factors) as is available to it; and

(b) in the case of any such opinion as is mentioned in sub-paragraph (b) of that paragraph, may take into account any information about the offender which is before it.

(5) No custodial sentence shall be invalidated by the failure of a court to obtain and consider a pre-sentence report before forming an opinion referred to in paragraph (1) but any court on an appeal against such a sentence—

(a) shall, subject to paragraph (6), obtain a pre-sentence report if none was obtained by the court below; and

(b) shall consider any such report obtained by it or by that court.

(6) Paragraph (5)(a) does not apply if the court is of the opinion—

(a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report, or

(b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it report.

Additional requirements offenders is unnecessary to obtain a pre-sentence in the case of mentally disordered

22.—(1) Subject to paragraph (2), in any case where Article 21(1) applies and the offender is or appears to be mentally disordered, the court shall obtain and consider a medical report before passing a custodial sentence other than one fixed by law.

(2) Paragraph (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.

(3) Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court shall consider—

(a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise); and

(b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.

(4) No custodial sentence which is passed in a case to which paragraph (1) applies shall be invalidated by the failure of a court to comply with that paragraph, but any court on an appeal against such a sentence—

(a) shall obtain a medical report if none was obtained by the court below; and

(b) shall consider any such report obtained by it or by that court.

(5) In this Article “medical report” means a report as to an offender’s mental condition made or submitted orally or in writing by a registered medical practitioner appointed by the Mental Health Commission for Northern Ireland for the purposes of Part II of the Mental Health (Northern Ireland) Order 1986.

(6) Nothing in this Article shall be taken as prejudicing the generality of Article 21.

Suspended sentences of imprisonment or orders for detention

23. In section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 (suspended sentences of imprisonment or orders for detention in a young offenders centre)—

- (a) in subsections (1) and (1A) at the beginning there shall be inserted “Subject to subsection (1C)”;
- (b) after subsection (1B) there shall be inserted—

“(1C) A court shall not deal with an offender by means of a suspended sentence or order for detention unless it is of the opinion—

- (a) that the case is one in which a sentence of imprisonment or order for detention in a young offenders centre would have been appropriate even without the power to suspend the sentence or order; and
- (b) that the exercise of that power can be justified by the exceptional circumstances of the case.

(1D) A court which passes a suspended sentence or makes an order for detention on any person for an offence shall consider whether the circumstances of the case are such as to warrant in addition the imposition of a fine or the making of a compensation order.”.

Custody probation orders

24.—(1) Where, in the case of a person convicted of an offence punishable with a custodial sentence other than one fixed by law, a court has formed the opinion under Articles 19 and 20 that a custodial sentence of 12 months or more would be justified for the offence, the court shall consider whether it would be appropriate to make a custody probation order, that is to say, an order requiring him both—

- (a) to serve a custodial sentence; and
- (b) on his release from custody, to be under the supervision of a probation officer for a period specified in the order, being not less than 12 months nor more than 3 years.

(2) Under a custody probation order the custodial sentence shall be for such term as the court would under Article 20 pass on the offender less such period as the court thinks appropriate to take account of the effect of the offender’s supervision by the probation officer on his release from custody in protecting the public from harm from him or for preventing the commission by him of further offences.

(3) A court shall not make a custody probation order in respect of any offender unless the offender consents and, where an offender does not so consent, the court shall not pass a custodial sentence of a greater length than the term the court would otherwise pass under Article 20.

(4) Where in any case a court does not consider a custody probation order to be appropriate, the court shall state in open court that it is of that opinion and why it is of that opinion.

(5) A court which makes a custody probation order shall state the term of the custodial sentence it would have passed under Article 20 if the offender had not consented to the order.

Supplementary provisions as to custody probation orders

25.—(1) The period of supervision under a custody probation order shall commence on the offender’s release from custody at the expiry of the custodial sentence.

(2) Subject to Article 24(1), in relation to a custody probation order—

- (a) in so far as it imposes a custodial sentence, all statutory provisions relating to such custodial sentences shall apply as if it were such a sentence; and —

(b) in so far as it imposes such a requirement as is mentioned in paragraph (1)(b) of that Article, this Part shall, subject to paragraph (3), apply as if it were a probation order.

(3) In its application to a custody probation order, a court exercising its powers under paragraph 3(1)(d), 4(1)(d), 7(2)(a)(ii) or 8(2)(b) of Schedule 2 shall have regard to the term of the custodial sentence which would have been imposed by the court which made the order had the offender not consented to the order and to the term of the custodial sentence served by the offender in respect of the offence.

(4) In relation to release from custody under paragraph (1), section 13(7) of the Prison Act (Northern Ireland) 1953 (prison rules) shall have effect as if the words from “and on the discharge” onwards were omitted.