

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL JUSTICE (NORTHERN IRELAND) ORDER 2008**  
**(CONSEQUENTIAL PROVISION) ORDER 2009**

**SR 2009 No. 158**

1. 1.1 This Explanatory Memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.  
  
1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Purpose of the instrument**  
  
2.1 This instrument provides a technical adjustment to existing law to ensure that young offenders sentenced to Extended Custodial Sentences of detention under the Criminal Justice Northern Ireland) Order 2008 (S.I 2008/1216 N.I.1) will have any relevant period of pre-sentence custody taken account of when calculating their release date.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**  
  
3.1 None.
4. **Legislative Context**  
  
4.1 This instrument is being made in exercise of the powers conferred by Article 101 of the Criminal Justice (Northern Ireland) Order 2008.
5. **Territorial Extent and Application**  
  
5.1 This instrument applies to Northern Ireland only.
6. **European Convention on Human Rights**  
  
6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.
7. **Policy background**  
  
7.1 The Criminal Justice (Northern Ireland) Order 2008 (“the 2008 Order”) established new sentencing and release arrangements for Northern Ireland including, in Article 14, a new form of sentence, the extended custodial sentence (ECS), for certain violent or sexual offences. Where the offender is aged 21 or over the ECS is a sentence of imprisonment.(Article 14(3) of the 2008 Order). Where the offender is under the age of 21, the ECS is a sentence of detention at such place and under such conditions as the Secretary of State may direct (Article 18(5) of the 2008 Order).

7.2 The policy intention is that the ECS would be subject to reduction by virtue of section 26 of the Treatment of Offenders Act (Northern Ireland) 1968. Section 26(2) of that Act requires that sentences of imprisonment or detention in a young offenders centre are reduced by any relevant period of pre-sentence custody. The time spent in custodial remand is therefore recognised as part of the sentence.

7.3 Whereas section 26(2) in its current form applies to an extended sentence of imprisonment under Article 14(3) of the 2008 Order because it is a sentence of imprisonment, it would not, without this consequential amendment, apply to the equivalent sentence of detention for young offenders under Article 14(5) of the 2008 Order, which is neither a sentence of imprisonment, nor a sentence of detention in a young offenders centre. The Criminal Justice (Northern Ireland) Order 2008 (Consequential Provision) Order 2009 now remedies that anomaly and extends Section 26(2) to ECS sentences of detention under Article 14 (5) of the 2008 Order. No ECS disposals for young persons have been imposed to date.

## **8. Consultation outcome**

8.1 The 2008 Order was subject to full and public consultation with the majority of respondents fully supportive of the sentencing proposals and the introduction of public protection sentences. An Ad-Hoc Committee of the Northern Ireland Assembly was established to consider the draft Order and produced a formal Report which was ratified by the Assembly supporting the sentencing proposals. A summary of the responses is available on [www.nio.gov.uk](http://www.nio.gov.uk).

## **9. Guidance**

9.1 A set of Guidance Notes on the 2008 Order describing the new disposals and their requirements has been published and made available by the Northern Ireland Office on [www.nio.gov.uk](http://www.nio.gov.uk).

## **10. Impact**

10.1 A Regulatory Impact Assessment was completed on the sentencing provisions of the Order as a whole. The Order will not create additional burdens for business charities or voluntary bodies.

10.2 Impact on the public sector will fall primarily on the Northern Ireland Prison Service, the Probation Board for Northern Ireland and the Parole Commissioners for Northern Ireland. Resources have been made available to ensure effective implementation of the provisions

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The operation of sentence calculation is subject to regular validation by the Northern Ireland Prison Service.

### **13. Contact**

13.1 Tom Haire at the Northern Ireland Office Tel: 028 9052 9122 or email: [tom.haire@nio.x.gsi.gov.uk](mailto:tom.haire@nio.x.gsi.gov.uk) can answer any queries regarding this instrument.