

CRIMINAL JUSTICE (NI) ORDER 2008

**GUIDANCE NOTES ON THE COMMENCEMENT OF NEW SENTENCING
AND LICENSING POWERS
ON 1 APRIL 2009**

**Northern Ireland Office
18 March 2009**

CRIMINAL JUSTICE (NI) ORDER 2008: COMMENCEMENT OF NEW SENTENCING AND LICENSING POWERS ON 1 APRIL 2009

1. On 1 April 2009, the next commencement order (the 5th) under the Criminal Justice (NI) Order 2008 (“the 2008 Order”) will bring into effect a series of new sentencing, licensing and recall powers. The new powers will have important consequences for courts, prosecutors, probation officers, prison staff and the legal profession.
2. These Guidance Notes provide advance notice and briefing on the new powers which will be commencing and provides an indication of how they will operate.
3. The Notes are offered as policy guidance on the Commencement Order. They are not legal advice on the new powers. Interpretation and sentencing are a matter for the courts.
4. The commencement order will bring into effect two main sets of powers:
 - From **Part 2** of the 2008 Order, a series of sentencing, licensing and recall powers for certain determinate custodial sentences which in effect remove 50% remission from prison sentences for offences committed on or after 1 April 2009 in respect of sentences of 12 months or more; and
 - **Chapter 5** of the 2008 Order - which will be commenced in its entirety – implementing the curfew and electronic monitoring provisions of the Order. These new powers will be attachable to a range of existing and newly commenced sentences; bail; and, in appropriate circumstances, can be applied to offenders already serving relevant sentences.

Part 2

5. By way of overview, the effect of the **Part 2** powers being commenced will be to create a new type of prison sentence to progressively replace the current form. The new prison sentence (including the sentence of detention on a young offenders centre) will result in up to the first half of the sentence being served in custody followed by a licence period to the end of the sentence. The licence period is the period the court thinks appropriate to take account of the prisoner's supervision by a probation officer on release in preventing the public from harm and preventing re-offending.

6. The custody and licence parts will be set by the court and the licence period will therefore be subject to statutory post-release supervision by a probation officer. Prisoners given these sentences will not receive remission on their custody part.

7. The new sentence will apply only in respect of offences committed on or after 1 April 2009 and will only be available in respect of sentences of 12 months or more. Offences and sentences outside of these categories will still have pre-2008 Order prison/YOC sentences for application.

8. A prisoner subject to such a prison sentence will have a licence that can have two elements. He/she will be automatically subject to a set of standard licence conditions; and the court can also recommend any particular licence conditions to be applied by the Secretary of State on the prisoner's release. Standard and other conditions are provided in a separate set of statutory licensing rules (see below). Licence conditions can be recommended to the court in a report prepared by the probation service.

9. As is already the case with regard to life sentence prisoners and those who will be serving indeterminate or extended custodial sentences, in appropriate circumstances, the Secretary of State will be able to recall a licensed prisoner to prison. The Secretary of State must refer the recall to the Parole Commissioners for consideration who, in respect of these new types of prison sentence, can direct immediate release, set a prospective release date, or refuse release.

10. A series of surrounding procedural powers will also be commenced for such prisoners in relation to general requirements for custodial sentencing, consecutive and concurrent sentences. These largely replicate equivalent provisions in the Criminal Justice (NI) Order 1996 but are commenced to ensure a standard set of powers are available for the newly commenced sentences under the 2008 Order.

11. The commencement of this new form of prison sentence is accompanied by the repeal of two current disposals – but only for those prisoners who would attract the new form of prison sentence. The disposals being repealed are the custody probation order (under Article 24 of the Criminal Justice (NI) Order 1996) and sentences under Article 26 of the 1996 Order (for convenience “the sex offender order”) for offences committed on or after 1 April 2009 where a penalty of one year or more is appropriate. Such offenders will in future receive the new form of imprisonment with statutory licence, supervision and recall under the 2008 Order.

12. The custody probation order is not repealed for offences committed before 1 April 2009 and will still be available to the court in these cases. The sex offender order will also remain available to the court – though in a more sophisticated way. It too will be available for all offences committed before 1 April 2009. But it will also remain available for offences on or after 1 April 2009 where the sentence is less than 12 months. For 12 months or more sentences it will be replaced by the new form of prison sentence; but for offences where an Article 26 sex offender order of less than 12 months would be appropriate, it will still be available.

13. This ongoing availability of the sex offender order for shorter sentences differs from the custody probation order. The custody probation order has a minimum requirement of 12 months custody and will therefore cease to exist for all post-1 April 2009 offences. Only when the new form of imprisonment is extended to include sentences of less than 12 months – and Ministers have yet to take decisions on this aspect – will the sex offender licence disappear in a similar way.

14. Also repealed for offences committed after 1st April 2009 is a power under Article 20(2)(b) of the 1996 Order to make a sentence longer where the offence is violent or sexual. The sentencing powers in the 2008 Order provide the court with replacement package.

15. A list of the Part 2 Articles being commenced is attached at Annex A.

Chapter 5

16. Chapter 5 of the 2008 Order is commenced in its entirety. Ten Articles in total are commenced permitting curfews and electronic monitoring requirements to be attached to a specific set of powers:

- as a condition of bail granted by a court;
- as a condition of a life sentence or a “detention at the Secretary of State’s Pleasure” licence;
- as a condition of a sex offender licence;
- as a requirement of a probation order or the probation part of a combination order or custody probation order;
- as a requirement of a youth conference plan to which a youth conference order relates;
- as a condition of a licence issued under the sentencing provisions of the 2008 Order which includes an indeterminate or extended custodial sentence and a licence imposed as part of the new form of prison sentence; and
- as part of a juvenile justice centre order when imposed at court.

17. If an existing offender, currently subject to any of these disposals or requirements, appears in court for variation proceedings, the offender could have a curfew or electronic monitoring requirement included.

18. A list of the Articles being commenced is attached at Annex B.

Rules

19. On the same day as the relevant Part 2 and Chapter 5 powers are being commenced, three sets of Statutory Rules will also come into effect to underpin these new powers:

20. The **Electronic Monitoring Requirements (Responsible Officer) Order (Northern Ireland) 2009** identifies G4S Security Services (UK) Limited, Sutton Park House, 15 Carhsalton Road, Sutton, Surrey SM1 4LD as the company whose employees will be responsible for the monitoring of electronic monitoring requirements.

21. The **Criminal Justice (Sentencing) (Licence Conditions) (Northern Ireland) Rules 2009** (“the Licences Rules”) provide the template for licence conditions to be added to life sentence, ICS and ECS prisoners and the new form of determinate sentence prisoner. The Licence Conditions will be available for the new 12 months+ prison sentence (and will become available for the less than 12 months equivalent when commenced). They are also the template for the Parole Commissioners when making recommendations to the Secretary of State. Part 2 of the Rules provides for the Standard conditions which are applied to all such prisoners and cover contact with a probation officer; address, work and travel approval by a probation officer; behaviour and further offending; Part 3 provides the list of other conditions that can be attached to a licence to tailor it to a particular offender. These can restrict particular activity or contacts; programme attendance, activities, testing (such as for drugs or alcohol); curfew; tagging; or other supervisory requirements.

22. The **Parole Commissioners’ Rules (Northern Ireland) 2009** (“the Parole Rules”) provide the operational procedures for life, indeterminate and extended sentence cases referred to the Parole Commissioners by the Secretary of State under both the 2008 Order and the Life Sentences (NI) Order 2001. (The Parole Rules provide for life sentence cases already in the system to be mapped into the same package and for the Life Sentence Review Commissioners’ Rules to be revoked.) The process allows a 26 week

phase for the preparation and review of a prisoner for release – with adjustments for recall or short tariff cases.

23. The Rules are comprised of 7 separate Parts and two Schedules. The substantive parts of the Rules are **Part 2** which provides the powers of the Chief and deputy Chief Commissioner; **Part 3** which provides the bulk of the process around the listing and consideration of cases. It includes representation, evidence and information, hearings, directions and decisions of Commissioners; **Parts 4 and 5** which provide for cases where particular expediency is required on the grounds of a recall (Part 4) or a prisoner who may have served his “tariff” on remand and needs a priority review; and the two Schedules. **Schedule 1** provides the material to be contained in a dossier to be submitted by the Secretary of State for a prisoner’s review. **Schedule 2** is the equivalent for a recalled prisoner. Further details of the Licences Rules and the Parole Rules are provided at Annexes C and D respectively.

Further material

24. Should it prove helpful, a copy of the Explanatory Memorandum laid before Parliament to accompany the 2008 Order is available at:

[http://www.nio.gov.uk/the_draft_criminal_justice_\(northern_ireland\)_order_2008_-_explanatory_memorandum.pdf](http://www.nio.gov.uk/the_draft_criminal_justice_(northern_ireland)_order_2008_-_explanatory_memorandum.pdf)

25. A Guidance Notes booklet on the 2008 Order as a whole is also available on the Northern Ireland Office website at:

[http://www.nio.gov.uk/criminal_justice_\(northern_ireland\)_order_2008_-_guidance_notes](http://www.nio.gov.uk/criminal_justice_(northern_ireland)_order_2008_-_guidance_notes)

26. Each of the statutory authorities:

- The Criminal Justice (NI) Order 2008 (No. 1216 N.I. 1);
- The Electronic Monitoring Requirements (Responsible Officer) Order (Northern Ireland) 2009 (No.83);
- The Criminal Justice (Sentencing) (Licence Conditions) (Northern Ireland) Rules 2009 (No. 81; and
- The Parole Commissioners’ Rules (Northern Ireland) 2009 (No. 82)

is available from the Stationery Office or accessible on the Statute Law Database (www.statutelaw.gov.uk).

Additional information

27. Assistance with any queries or questions on any of this material is available if required from:

Criminal Law Branch
Northern Ireland Office
Massey House
Stoney Road
Belfast BT4 3SX

Tel. 028 905 29122

**Northern Ireland Office
March 2009**

Criminal Justice (NI) Order 2008 Part 2 sentencing and licensing powers being commenced on 1 April 2009.

These commencements are in respect of offences committed on or after 1 April 2009 and in which immediate custodial sentences of 12 months or more are imposed

Part 2, Chapter 2 commencements

A.1 The Chapter 2 Articles being commenced are:

- Article 5 (restrictions on imposing certain custodial sentences).
- Article 6 (restrictions on imposing custodial sentences on persons not legally represented).
- Article 7 (length of custodial sentences) in so far as it is not already in operation.
- Article 8 (length of custodial period).
- Article 9 (procedural requirements for custodial sentences).
- Article 10 (additional requirements in the case of mentally disordered offenders).
- Article 11 (disclosure of pre sentence reports).

A.2 Chapter 2 contains general provisions on custodial sentences. These include restrictions on imposing custodial sentences, appropriate lengths of custodial sentences, dividing custodial sentences into custody and licence parts, and procedural requirements for imposing discretionary custodial sentences. Provisions are also made for additional requirements in the case of mentally disordered offenders and for the disclosure of pre-sentence reports. For the purposes of legislative consolidation, Chapter 2 replicates a number of provisions from the Criminal Justice (NI) Order 1996.

Part 2, Chapter 4 commencements

A.3 The Chapter 3 Articles being commenced are:

- Article 17 (duty to release certain fixed-term prisoners).
- Article 21 (duration of licences: fixed-term prisoners) in so far as it is not already in operation.
- Article 23 (power of court to recommend licence conditions for sentences of 12 months or more).
- Article 28 (recall of prisoners while on licence) in so far as it relates to a person released on licence under Article 17.
- Article 29 (further release after recall for certain fixed-term prisoners) in so far as it relates to a person released on licence under Article 17.
- Article 32 (1), (2) and (4) (concurrent terms) in so far as it is not already in operation.
- Article 33 (1), (2), (3) and (6) (consecutive terms) in so far as it is not already in operation.

A.4 Along with Article 8 of Chapter 2, the overall effect of Chapter 4 is to create new release and recall arrangements for offenders. The automatic 50% remission regime for determinate sentenced prisoners is removed and replaced with a custodial part – up to half the sentence - followed by a period of supervision in the community. Chapter 4 creates these revised arrangements for prisoners' release on licence; the setting of licence conditions; the recall to prison following breach of licence conditions; and further re-release. On release from prison, all offenders will be placed under supervision. For prison sentences of 12 months or more, the standard conditions are required along with any conditions made by the court.

Part 6 commencements

A.5 Part 6 commencements are;

- Article 102(1) (amendments) to the extent necessary to bring into operation the amendments specified in paragraph 18.
- Article 102(2) (repeals) to the extent necessary to bring into operation the repeals specified in paragraph 19.

A.6 The main features are around repeals from the Criminal Justice (NI) Order 1996. Such repeals arise through the adjustment, re-enactment and consolidation of sentencing principles and procedural arrangements around custodial sentences into the 2008 Order (Articles 5-7 and 9-11 above).

A.7 The repeals also provide for the existing custody probation order and sex offender licence disposal to be replaced with the new form of imprisonment and release on licence without remission in respect of offences committed after 1st April 2009. Both the custody probation order and sex offender order will continue to exist for earlier offences. The sex offender order will also continue to exist for future offences where the sentence is less than 12 months.

A.8 Also repealed for offences committed after 1st April 2009 is a power under Article 20(2)(b) of the 1996 Order to make a sentence longer where the offence is violent or sexual. The sentencing powers in the 2008 Order provide the court with replacement package.

Schedule commencements

A.9 These are largely technical and consequential adjustments.

In Schedule 5 (amendments) –

- (a) Paragraph 4(1) (Repatriation of Prisoners Act 1984 (a)) in so far as it relates to release on licence under Article 17 of the 2008 Order;
- (b) Paragraph 7 (6), (8) and (9) (the 1996 Order).

A.10 In Schedule 6 (Repeals) Part 1 the entries in respect of —

- (a) the 1996 Order in so far as it repeals Articles 18 to 22 and 24 to 26;
- (b) the Crime (Sentences) Act 1997(b);
- (c) the Criminal Justice (Children) (Northern Ireland) Order 1998(c);

- (d) the Justice (Northern Ireland) Act 2002(d) in so far as it relates to Schedule 11 paragraph 12;
- (e) the Criminal Justice Act 2003(e);
- (f) the Criminal Justice (Northern Ireland) Order 2003(f);
- (g) the Firearms (Northern Ireland) Order 2004(g);
- (h) the Criminal Justice (Northern Ireland) Order 2005(h).

A.11 Descriptions of the content of individual Articles are available in the Guidance Notes booklet on the 2008 Order at:

[http://www.nio.gov.uk/criminal_justice_\(northern_ireland\)_order_2008_-_guidance_notes](http://www.nio.gov.uk/criminal_justice_(northern_ireland)_order_2008_-_guidance_notes)

Curfew and Electronic monitoring powers being commenced on 1 April 2009

Chapter 5 commencements

B.1 Chapter 5 commencements are:

- Article 35 Powers to impose curfew or electronic monitoring requirements
- Article 36 Power of court to impose curfew or electronic monitoring requirement on making juvenile justice centre order
- Article 37 Curfew requirement
- Article 38 Requirement to avoid conflict with religious beliefs
- Article 39 Arrangements for establishing systems of electronic monitoring
- Article 40 Electronic monitoring requirement
- Article 41 Availability of electronic monitoring arrangements
- Article 42 Provision of copies of electronic monitoring requirement
- Article 43 Release of child on bail: curfew and electronic monitoring arrangements
- Article 44 Rules

B.2 These powers allow for the establishment of electronic monitoring (EM) facilities and requirements in Northern Ireland and define the circumstances in which a curfew with an electronic monitoring requirement can be applied. They can be applied by the court as a condition of bail. They can be part of a licence condition (set by the court or the Secretary of State as appropriate) for, a life or “SoSP” sentence; or can be attached to the new licences for dangerous offenders and standard determinate sentences. They can also be a requirement of a community disposal (a probation order, custody probation order, combination order, a youth conference order). The powers also allow the court, at the point of sentencing, to impose a curfew or tag as a supervision requirement of a juvenile justice centre order.

B.3 Restrictions are however placed on the use of curfew and EM requirements in terms of release of a child on bail under Article 12 of the Criminal Justice (Children)(Northern Ireland) Order 1998. In such cases, curfews and electronic monitoring requirements can only be used as an alternative to the child being remanded in custody.

B.4 Restrictions are also placed on the terms and conditions placed on curfews with regard to time and place. Periods cannot be less than two hours or more than twelve hours in any one day. And the authority setting the curfew must be satisfied that the proposed place is suitable and that any other persons affected by the enforced presence of the person subject to the requirement are content with the arrangements. Restrictions are placed where practicable on making curfews to avoid any conflict with a person's religious belief and any interference with the person's work, training or education.

B.5 A person responsible for the monitoring must be identified – the Electronic Monitoring Requirements (Responsible Officer) Order (Northern Ireland) 2009 identifies this as G4 Security Services (UK) Limited. The consent of the offender is not required. The consent of a person (other than the person subject to the requirement) without whose co-operation it would not be practicable to secure the monitoring is necessary before imposing the EM requirement.

B.6 A court cannot impose an electronic monitoring requirement unless suitable arrangements are in place in the area. The court itself must also be satisfied that the necessary provision can be made under these arrangements.

B.7 The Secretary of State will shortly be issuing notice that EM will be available across Northern Ireland from 1 April 2009.

B.8 Descriptions of the content of individual Articles are available in the Guidance Notes booklet on the 2008 Order at:

[http://www.nio.gov.uk/criminal_justice_\(northern_ireland\)_order_2008_-_guidance_notes](http://www.nio.gov.uk/criminal_justice_(northern_ireland)_order_2008_-_guidance_notes)

Criminal Justice (Sentencing) (Licence Conditions) (Northern Ireland) Rules 2009

C.1 The Licence Conditions Rules contain two sets of requirements: standard conditions that apply in all licence cases; and other conditions which can be required on the basis of individual cases.

C.2 The **standard** conditions are:

- keeping in touch with the probation officer and receiving visits from him/her;
- living at an address approved by a probation officer and obtaining prior permission to change that address;
- work and voluntary work approval by a probation officer and prior permission for any change;
- not travelling outside the UK without prior permission from the probation officer;

C.3 The prisoner must not behave in a way which undermines the purposes of release on licence (which is the protection of the public, prevention of re-offending and rehabilitation; nor must he/she commit any offence.

C.4 **Other** conditions can include requirements on:

- Location of residence;
- Making or avoiding contact with particular people or groups;
- Restricting certain activities;
- Participation in programmes, activities, or testing (such as alcohol or drug testing);
- Curfew or electronic monitoring requirements or restriction on movement;
- Any other requirement relating to supervision in the community by a probation officer.

Parole Commissioners' Rules (Northern Ireland) 2009

D.1 The Parole Rules have seven Parts and two Schedules and are modelled very firmly on the current Life Sentence Commissioners Rules. The vast majority of these powers have been in successful operation for life sentence since 2001.

D.2 The main refinement to the Life Sentence Rules is the introduction of a "single Commissioner" stage to allow more effective case management and to prevent unnecessary and expensive oral hearings.

D.3 **Part 1** provides for the commencement (1 April 2009) and the various application and interpretation requirements.

D.4 **Part 2** gives the Commissioners general powers to regulate their procedures; to manage cases and, where necessary, to interview prisoners. Part 2 also allows for the new post of deputy Chief Commissioner to act as the Chief Commissioner in appropriate circumstances.

D.5 **Part 3** provides the bulk of the administrative arrangements for case reviews and requires the Commissioners to list cases and set out timetables.

D.6 Specified time intervals are required between relevant stages - for example, when a case has been listed, the dossier must be provided within 8 weeks of listing. There are then time-limits for responses, notice for hearings etc – all of which add up to around 26 weeks for consideration for release. Parts 4 and 5 (below) allow for speedier processes in certain cases such as recalls or cases where remand time has significantly reduced the time available to tariff expiry.

D.7 In terms of information requirements, the Secretary of State must prepare a dossier and provide it to the Commissioners and the prisoner. The **Schedules** to the Rules specify the contents of the dossier which include:

- Information relating to the prisoner including name, date of birth, prison, conviction and sentence details including sentencing remarks. Previous convictions, sentences, licences, release and temporary release, recalls and previous applications to PCNI.
- Reports on the prisoner: pre-trial and pre-sentence reports; current reports on the prisoner's performance and behaviour in prison including compliance with sentence planning, psychology reports and suitability for release; probation reports on the prisoner's view of his/her offending, attitude to release and supervision; home circumstances, employability, community and victim attitudes; suitability for release, risk of offending and serious harm, programme of supervision and recommendations for licence conditions.
- Where a prisoner is recalled from licence, similar material is required along with reasons for recall and performance under supervision.

D.8 Certain information in dossiers can be withheld from the prisoner on two grounds. Firstly where it would adversely affect the prisoner's or any other person's health or welfare (for example, medical information) – though it can be provided to the prisoner's legal or medical representative. Secondly, information can be withheld on confidential grounds – national security or substantial harm to public interest are two aspects. In such circumstances only a gist of the relevant information is provided to the prisoner or his representative.

D.9 If a hearing were to be held a Special Advocate would be appointed. A Special Advocate is a barrister appointed by the Attorney General who acts for the prisoner in his absence during a confidential hearing. With the Commissioners' approval he/she can seek information from the prisoner.

D.10 For the consideration of a prisoner's case, powers are created to appoint single Commissioners or panels of Commissioners to hear cases. The single Commissioner will be able to manage cases setting timings etc. and ensure dossiers and responses are assembled. He/she will consider the

case on the papers and can then provisionally direct release, non-release, or refer it to a panel. The Chief Commissioner can consider appeals of procedural matters arising from single Commissioner and Panel decisions.

D.11 A panel is required where a prisoner challenges non-release; where a single Commissioner refers the case on; and also when there is a provisional direction for release. All such provisional directions for release must be considered by a three-person panel. The intention is that a single Commissioner could consider the papers and direct programmes etc that should be completed before a prisoner is ready to be considered for release by a panel. Expensive three-person panels would only be required at the appropriate time.

D.12 In terms of prisoner representation, restrictions are placed on who cannot act for a prisoner – he/she cannot be represented by serving prisoner, a life licensee, or a person released on a sex offender licence for example without the permission of the Chief Commissioner.

D.13 Hearings will be private and will be held in prison by and large. A hearing could be held elsewhere if all parties agree and could, for example, be held in the Commissioners' offices if a prisoner were already on licence. Where a three-person panel considers the case, the decision of the majority is the decision of the panel.

D.14 **Part 4** provides accelerated arrangements in circumstances where a prisoner has been recalled to prison.

D.15 **Part 5** similarly allows for the expedition of cases whereby a short tariff that has been significantly eaten into by remand time can also be given quicker consideration where required.

D.16 It is worth noting that at this stage Part 5 provides only for the ECS sentence – it does not include life sentence or ICS disposals. This is largely for technical reasons and the difficulty of conveying in statute how remand time can (or more accurately cannot) be deducted from an indeterminate sentence. The ECS is a determinate sentence and so deductions can apply

in statute. A subsequent submission will be put to Ministers as to how to map indeterminate sentences into the Rules in this regard.

D.17 **Part 6** provides a series of procedural arrangements around the use of fax systems, correcting mistakes, and the recognition of public holidays.

D.18 **Part 7** revokes the Life Sentence Rules – though allows any prisoner's case actively being heard at commencement time to continue in that process. Subject to any such hearings concluding, all cases will then be subject to the single Commissioner procedure.