

**REVIEW OF THE SENTENCING FRAMEWORK
IN
NORTHERN IRELAND**

A CONSULTATION DOCUMENT

NORTHERN IRELAND OFFICE

CONSULTATION ON THE REVIEW OF THE SENTENCING FRAMEWORK

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SENTENCING FRAMEWORK IN NORTHERN IRELAND

1. INTRODUCTION

1.1 This consultation paper seeks views on possible changes to the sentencing framework in Northern Ireland.

1.2 The sentencing framework, i.e. the types of sentence available to the courts, is a key element of any criminal justice system. The purpose of this consultation is to seek views on the range of sentences available within the Northern Ireland jurisdiction.

1.3 **This consultation does not look at the sentences available for specific offences or the sentences given in individual cases.** In relation to individual cases, that is entirely a matter for the judiciary, taking into account the individual circumstances of each case. Other sentencing matters are being considered through other means such as the review of homicide, the development of prosecutorial fines, and the recent consultation on minimum tariffs for mandatory life sentences. **The purpose of this consultation is to ensure that sentencers have a sufficient array of sentence types available so that the severity of the sentence is consistent with the seriousness of the offence.**

1.4 This consultation focuses primarily on sentences for adult offenders, not children. The Justice (Northern Ireland) Act 2002 made a number of changes to the sentencing arrangements for children and also provided for a system of restorative and reparative youth conferencing which is currently being rolled out across Northern Ireland.

1.5 The impetus to consult on the Northern Ireland sentencing framework comes from two main sources:

- ◆ The **Criminal Justice Act 2003** made a number of changes to the sentencing framework for England and Wales. These stemmed from recommendations of the Halliday report, ***Making Punishments Work***, published in July 2001. Northern Ireland Ministers recognised that equivalent issues would require to be addressed in Northern Ireland;

◆ **The Review of the Criminal Justice System in Northern Ireland (the Criminal Justice Review)**, published in March 2000 said relatively little about sentencing. Nevertheless it recommended:

- (i) that the courts' sentencing powers be reviewed to facilitate the possibility of restorative interventions, including the formal payment of compensation before sentence is finally passed (Recommendation 167);
- (ii) that the sentencing framework in Northern Ireland be reviewed to establish whether it could accommodate restorative interventions for adults or, if not, what changes might be necessary to enable it to do so (Recommendation 207);
- (iii) having said that a case had not been made for the compulsory supervision of prisoners following release, it noted the benefit of aftercare and the need to develop support packages with the recommendation that these be evaluated with a view to considering compulsory supervision (Recommendation 208).

1.6 This consultative paper describes current sentencing arrangements in Northern Ireland, looks at the purposes and principles of sentencing as they relate to the sentencing framework in Northern Ireland, and considers and asks questions about a number of specific issues relating to sentences and sentencing.

1.7 The Government welcomes responses from organisations and individuals to the consultation. These should be sent to:

Sentencing Framework Consultation,
Criminal Justice Policy Branch
Northern Ireland Office
Massey House
Stoney Road
BELFAST BT4 3SX
Fax: 02890 527507
E-mail: cjpb@nio.gsi.gov.uk

1.8 The closing date for replies is **31 May 2005**. Unless confidentiality is requested, it will be assumed that your response can be made available to others.

2. SENTENCES IN NORTHERN IRELAND

2.1 The sentencing framework in Northern Ireland differs in some respects from that in England and Wales, notably in relation to imprisonment and its aftermath. In England and Wales, with the exception of short sentences, time spent in prison is linked to a period spent in the community under supervision and with conditions attached. In addition, sentences of four or more years are subject to discretionary release on the decision of the Parole Board. However, the Criminal Justice Act 2003 in England and Wales changes that position as described later in this document. In Northern Ireland the supervision of released offenders is limited. Also, there is no discretionary release of determinate (i.e. fixed term) sentence prisoners. As a result (because of automatic remission) prisoners in Northern Ireland effectively serve only half of the prison sentence that is pronounced. This has implications not only for public confidence but also on the ability to work with offenders both inside and outside prison for purposes of rehabilitation and to prevent reoffending.

2.2 A list of the types of sentences available in Northern Ireland is set out in Annex A.

2.3 The Home Office has outlined some factors which it believes have contributed to a reduction in the rate of reoffending in England and Wales, namely:

- ◆ a renewed focus on “what works” with offenders;
- ◆ the impact of specific activities attached to community penalties;
- ◆ improved National Standards and tougher enforcement procedures for those under the supervision of the National Probation Directorate;
- ◆ the use of accredited offending behaviour programmes by the Prison Service;
- ◆ improved sentence planning while in prison and better arrangements for post release supervision.

Some of these developments have been mirrored in Northern Ireland, but there remains a significant difference in relation to the supervision of offenders.

3. THE PURPOSE AND PRINCIPLES OF SENTENCING

The Purpose of Sentencing

3.1 It is widely accepted that sentencing within the criminal justice system serves a number of related purposes. First it serves to **punish** offenders. It does this by depriving offenders of:

- ◆ liberty (for example through imprisonment),
- ◆ property (for example through fines or compensation orders), or
- ◆ other rights and freedoms (for example through a requirement to undertake certain actions while in the community).

3.2 Second, sentencing serves to **reduce crime**. It does this through:

- ◆ deterrence – either the specific deterrence of the individual sentenced for a crime or the general deterrence of others who are discouraged from crime by what they see happening to offenders;
- ◆ incapacitation – while in prison or in the community under restrictions there will be less opportunity to commit further offences;
- ◆ reform and rehabilitation – measures forming part of a sentence may help to change the way offenders behave and to reduce the risk of them reoffending.

3.3 Third, sentencing may allow **reparation** to the victim of an offence or those otherwise harmed by an offence. Reparation may be direct to a victim (for example the payment of financial compensation) or it may be indirect (for example unpaid work undertaken for the wider community).

3.4 Finally, sentencing serves to maintain **public confidence** in the rule of law. It does so not only when it meets the three purposes already described but through the symbolism of sentencing when it is seen to mark appropriately the seriousness of an offence.

3.5 In England and Wales the Criminal Justice Act 2003 sets out in statute the purposes of sentencing. It requires any court when sentencing to have regard to the following purposes of sentencing:

- (i) the punishment of offenders;
- (ii) the reduction of crime including its reduction by deterrence;
- (iii) the reform and rehabilitation of offenders;
- (iv) the protection of the public; and
- (v) the making of reparation by offenders to persons affected by their offences.¹

(There are some exceptions, for example where the offender is under the age of 18 or in relation to an offence for which the sentence is fixed by law, for example murder.)

Questions:

Should the purposes of sentencing be set out in Northern Ireland law?

Are the purposes defined in the Criminal Justice Act 2003 for England and Wales suitable for Northern Ireland?

Principles of Sentencing

3.6 The Halliday report considered the principles of sentencing. It concluded that sentencing is required to be:

- ◆ proportionate;
- ◆ consistent;
- ◆ free from improper discrimination;
- ◆ compliant with human rights;
- ◆ transparent.

¹ Criminal Justice Act 2003, section 142 (1)

Halliday also considered that sentencing needs to show efficiency, effectiveness and economy.

3.7 In Northern Ireland, with two exceptions, the principles of sentencing are not set out in statute. These exceptions are the Criminal Justice Order (NI) 1996 which introduced the concept that the sentence should be commensurate with the seriousness of the offence (or associated offences) but which also allowed longer sentences in relation to violent or sexual offences where it was considered necessary to protect the public from serious harm, and the Criminal Justice (No.2) (Northern Ireland) Order 2004 which provides for statutory aggravation of penalties for offences motivated by hatred based on race, religion, gender or disability.

Proportionate

3.8 In general, in Northern Ireland, in making the sentencing decision, the sentencer is given a significant level of discretion within an overall maximum set by law. There are some other limiting features set in law: for certain offences, like murder, the sentence is fixed in law; most offences have a maximum sentence which limits how far a court may go; there are limits on the powers of courts (for example the magistrates' court cannot as a general rule sentence beyond 12 months for a single offence); and younger offenders may get a lesser sentence than adult equivalents.

3.9 A court will take into account the seriousness of the offence, and whether there are aggravating or mitigating factors which are generally not set out in legislation. Aggravating factors pointing to a longer sentence include: relevant previous convictions; whether the offence was committed while on bail; whether excessive violence was used; whether the victim was engaged in public service or was old or vulnerable. Mitigating factors pointing to a shorter sentence include: young age at the time of the offence; the past character of the offender; the degree of provocation; and whether the defendant pleaded guilty.

Consistent

3.10 Clearly the sentence in any particular case will depend on the individual circumstances and it is therefore difficult to compare cases without being aware of the background facts. In Northern Ireland sentencers are assisted by guideline cases from the Court of Appeal which help to ensure consistency in decision taking.

Sentencers are also assisted by the programme of training organised by the Judicial Studies Board.

Discrimination and Human Rights

3.11 Mechanisms to ensure consistency also help to ensure that there is no improper discrimination. Whilst ensuring that judicial independence is not compromised, Government is committed to developing a strategy for equity monitoring as proposed by the Criminal Justice Review.² Research is currently underway to inform the introduction of such a system.

3.12 In terms of sentencing it is recognised that the consistent application of sentences may lead to unacceptable outcomes. For example, as noted above, it is an established principle underpinned by international conventions that young offenders should be treated less severely than adults. It is also the case that, when sentencing, a court may take into account the effect of different sentences on the welfare of dependants, although not to the exclusion of other factors.

Transparent

3.13 As Halliday noted, sentencing needs not only to be fair but to be seen to be fair. This means not only that the convicted offender, the victim and the public should know what the sentence means in practical terms but also that the reason for it is clear. The Criminal Justice Review³ recommended that judges should explain in simple terms the impact of the sentence. It also recommended the development of arrangements so that the victims of offenders could be informed, for example, about the timing of an offender's release from prison.

² Review of the Criminal Justice System in Northern Ireland, 2000

³ Review of the Criminal Justice System in Northern Ireland, 2000

4. POST-RELEASE SUPERVISION

4.1 Within the Northern Ireland sentencing framework there are three circumstances where there can be compulsory supervision of prisoners released from custody:

- ◆ life sentence prisoners may be supervised as a condition of their licence imposed at the time of release;
- ◆ sex offences, where release on licence may be imposed on the offender by the sentencing court; and
- ◆ custody probation orders, where offenders agree to a period of probation supervision (in return for a reduced period in custody).

Life sentences and sex offender licences are relatively rare. Custody probation orders are increasingly common and, in 2001, 14 percent were in relation to sexual offences. In 2001 over 200 custody probation orders were made, representing 13 percent of all sentences of immediate imprisonment and 49 percent of all eligible cases, i.e. those given sentences of twelve months or more. There are reasons why the proportion of custody probation orders is not higher. A court may decide that a straight prison sentence is a sufficient deterrent. Or, offenders may not consent to an order which, although it may result in a shorter period in prison, carries with it the requirement to be supervised.

4.2 The question arises whether post-release supervision should be more widely used in Northern Ireland and, in particular, whether it should form a compulsory adjunct to custodial sentences generally. The potential advantages of wider use of post-release supervision linked to special conditions are: a reduction in reoffending by steering and monitoring the behaviour and resettlement of offenders following release from prison; enabling offending behaviour programmes to be delivered in the community; and for programmes to be delivered seamlessly in a custodial and then a non-custodial environment.

4.3 There would be costs involved in a system of compulsory supervision. The supervision of a released prisoner would cost about £2,000 a year and there would be additional costs involved in developing and running new programmes or treatments provided in the community. There would also be the costs involved in

enforcement; for example, if offenders were returned to prison for breaches of their conditions. However, when considering these costs it should be noted that the average cost per prisoner is £86,000 per year.

4.4 In considering post-release supervision, the Halliday report drew a distinction between sentences of more than 12 months and those of less than 12 months. In relation to the former, the report recommended that the period of supervision should extend to the end of the sentence as pronounced, so that long sentences would comprise a period in custody followed by a period in the community when the offender is subject to supervision and conditions. As legislated for in the Criminal Justice Act 2003, most offenders will be released automatically on licence at the half-way point of the sentence. Upon release, the second half of the sentence will be subject to standard licence conditions. These sentences will therefore be served in full and licence conditions may be imposed right up to the end of the sentence.

4.5 In relation to short sentences, the Halliday report argued that they served only the needs of punishment (because there was little opportunity in prison to address the factors underlying criminality) but that persistent offenders were unlikely to be deterred by short sentences. The Halliday report recommended therefore that short sentences should generally comprise a custodial element of up to three months with a supervisory element of up to six months, an arrangement referred to as “custody plus”. (The report did recognise, however, that a short period in custody on its own might be appropriate for certain offenders.) This has carried over to the Criminal Justice Act.

4.6 In Northern Ireland, as noted above, the custody probation order already allows a court to order a period of community supervision following a period of custody. If Northern Ireland were to adopt a system of compulsory supervision on release for most sentences, it could be argued that the custody probation order would no longer be relevant. However, it could be beneficial to retain one of the features of the custody probation order which allows the court to determine the precise proportion of the sentence to be served in prison and under supervision. There may be circumstances where a court would wish to balance a relatively short custodial element with a longer supervisory element, for example if the offender would benefit from a community programme of long duration. On the other hand, a custody probation order can only be imposed with the consent of the offender and, under the law, the total length of the custody and probation elements of the

combined sentence should be no longer than the total custodial sentence that would otherwise be given. If courts were entirely free to set the length of custody and compulsory supervision (within the overall maximum for the offence), there could be issues about how to assess consistency in sentencing.

4.7 It may also be worth considering a change in the process of enforcement in post release supervision. Currently breach applications in respect of Crown Court Orders are required to be made at a magistrates' court, before being remitted to the relevant Crown Court. This inevitably causes delay, and for serious offenders there may be implications for public protection. (See section 6 on dangerous offenders). It may therefore be more appropriate to have such applications made directly to the Crown Court.

Questions:

Is there support for the wider use of compulsory supervision following custody in Northern Ireland?

Is there support for a distinction between short and long sentences as recommended by Halliday and included in the Criminal Justice Act 2003?

Should sentencers be allowed to vary the relative lengths of the custodial and supervisory elements of a sentence?

Should Crown Court breach applications go directly to the Crown Court?

5. DISCRETIONARY RELEASE

5.1 Offenders given fixed sentences of imprisonment in Northern Ireland are released from prison automatically when they have served half of their sentence as pronounced in court.⁴ And, as described above, currently compulsory post-release supervision is limited. Recent European Court of Human Rights judgements mean that loss of remission is only available as part of criminal proceedings and not as part of prison disciplinary proceedings.

5.2 The Northern Ireland rate of remission at 50 percent was introduced in 1976 in the Treatment of Offenders (Northern Ireland) Order to coincide with the introduction in England and Wales of discretionary release linked to the supervision of released prisoners. In some cases in England and Wales, serving prisoners could be released by the independent Parole Board as early as the one-third point of sentence. At that time in Northern Ireland there were concerns about the threat from terrorists to those who might have been involved in decisions about release or who would have been responsible for supervising offenders in the community.

5.3 There are two main areas where a system of discretionary release here might have advantages. In the current absence of a system for the loss of remission for disciplinary infractions, this might be seen as filling a significant gap. While each establishment already operates a progressive regime which rewards constructive behaviour, a system of discretionary release might give prisoners an incentive to behave better in prison and to take steps to address their offending behaviour.

5.4 The second advantage is that it would permit prisoners who have not made progress in prison to be kept away from the public for a longer period of time. This would be particularly relevant in relation to dangerous offenders, i.e. those offenders who present a high risk of reoffending linked to the risk of serious harm resulting from their actions. However, consideration must be given to the effectiveness of discretionary release for such offenders used without other mechanisms, such as those discussed below in the section dealing with dangerous offenders.

5.5 A system of discretionary release would require a mechanism to be put in place. Whether this would be an effective use of resources would depend, in part at

⁴ Most are released on remission. Certain terrorist offenders, however, have only one-third remission but are released automatically on unsupervised licence at the half way point of their sentence.

least, on the degree to which the period in custody could be varied. Too great a variation might raise questions about consistency of treatment and the power of such a process compared to that of the courts. It might also result in less certainty about the period that a prisoner would spend in prison which might impact on public confidence. Too little a variation would call into question the need for such a mechanism.

Questions:

Is there support for a system of discretionary release of fixed sentenced prisoners?

If so, in which circumstances would it be appropriate to use discretionary release?

How far is it considered that a system of discretionary release would directly impact upon the risk of reoffending?

6. DANGEROUS OFFENDERS

6.1 The Criminal Justice Act 2003 makes new provision for offenders in England and Wales who have been assessed as dangerous and who have committed certain violent or sexual offences.

6.2 Under the new scheme, dangerous offenders who have been convicted of a trigger sexual or violent offence for which the maximum penalty is between two and ten years and who have been assessed by the court as posing a significant risk to the public will be given an extended sentence. This sentence will be a determinate sentence served in custody to the half way point. Release during the whole of the second half of the sentence will be on recommendation of the Parole Board. In addition, extended supervision periods of up to five years for violent offenders and eight years for sexual offenders must be added to the sentence (although the total term of the extended sentence must not be more than the maximum penalty available for the offence in question).

6.3 Dangerous offenders convicted of a trigger sexual or violent offence for which the maximum penalty is ten years or more and who have been assessed by the court as posing a significant risk to the public will receive either a sentence of imprisonment for public protection or a discretionary life sentence. The court must consider the seriousness of the offence when deciding upon which sentence to impose. For both sentences the court will specify a minimum term which the offender is required to serve in custody. After this point, the offender will remain in prison until the Parole Board is satisfied that their risk has sufficiently diminished for them to be released and supervised in the community. Following release, those serving a sentence of imprisonment for public protection would be able to apply to the Parole Board to have their licence rescinded after ten years. Offenders serving a discretionary life sentence would be on licence for the rest of their lives.

6.4 The Act makes similar provisions for juveniles, enabling the sentence of detention for public protection and the extended sentence to be passed for offenders aged under 18 who have committed a specified sexual or violent offence and have been assessed by the courts as dangerous.

6.5 The Northern Ireland law (the Criminal Justice (NI) Order 1996) allows a court to give a longer sentence than the seriousness of the offence would require where

the offence was a violent or sexual offence and where it is considered necessary to protect the public from harm.⁵ The 1996 Order also introduced a system of licences for offenders convicted of sexual offences.⁶ Under this mechanism, offenders who are released automatically as if on remission are subject to conditions and supervision until the date that they would have been released had they served the whole of their sentence.

Management of Risk Posed by Released Dangerous Offenders

6.6 This part is about the procedures in place whereby the key criminal justice agencies work together to manage the risk posed by released dangerous offenders. It is not directly about the sentencing or post-release supervision of those offenders, but how agencies best combine resources and expertise to protect the public by assessing and managing the risks posed by certain individuals. In England and Wales the Criminal Justice Act, building on earlier provision, placed a statutory duty on police, probation and prisons to operate multi-agency public protection arrangements to assess and manage the risks posed by sexual and other dangerous offenders. In Northern Ireland, there is a similar mechanism in place, involving police, probation, prisons and social services, which assesses and manages the risk posed by sex offenders in the community. This is a non-statutory arrangement which does not deal with violent offenders who are not also sexual offenders.

6.7 The relevance of including this subject in a review of sentencing is, apart from the contribution it makes to overall confidence in public protection terms, to highlight the importance of post-release aspects of sentencing provisions as they apply to dangerous offenders. Multi-agency public protection arrangements, either statute-based as in England and Wales or administrative in Northern Ireland, are not designed to *require* individual offenders to comply with risk management arrangements set up by the criminal justice agencies. Rather, the statutory requirement is on the criminal justice agencies to co-operate to protect the public. In order to maximise the effectiveness of those public protection arrangements, consideration needs to be given to the place of post-release supervision as part of overall sentencing.

⁵ Criminal Justice (NI) Order 1996, Article 20 (2)(b)

⁶ Criminal Justice (NI) Order 1996, Article 26

6.8 It is also important in a sentencing context not to confuse the notification requirements of the Sexual Offences Act 2003, and formerly, the provisions of the Sex Offenders Act 1997, with a requirement on an individual to co-operate with the statutory agencies involved in managing the risk posed by convicted sex offenders. This legislation, although in the main impacting on the same group of offenders, is designed to ensure that the police are provided with specific information as to the whereabouts and other personal details of convicted sex offenders. It does not impose a requirement on such an offender to co-operate with *other* statutory agencies or any requirement to co-operate with risk management arrangements.

6.9 Two major issues have been raised about these arrangements. Should they be statutory, and should they, like England and Wales, include the management of risk posed by serious violent offenders? In a recent inspection of the sex offender management arrangements (known as MASRAM), the Criminal Justice Inspection Northern Ireland (CJINI) recommended that they should.⁷ These recommendations, amongst others, are currently under consideration and a response to the inspection report will be published at a later date.

Future Mechanisms for Dangerous Offenders

6.10 As noted above in the section on discretionary release, a mechanism which allowed release decisions to be made in individual cases would allow dangerous offenders who had not made progress while in prison to be kept away from the public for a longer period of time. However, such a mechanism on its own has limitations, especially when dealing with offenders who must be released at some point. Two other possible measures, in addition to the sex offender management arrangements described above, would contribute to the effectiveness of discretionary release, particularly when dealing with dangerous fixed sentence offenders:

- ◆ a means to secure the rapid recall to prison of a released offender who causes actual harm, or who shows evidence of the likelihood of causing significant harm. This could be administered through a parole board type organisation or, alternatively, a “fast track” court;

⁷ The Management of Sex Offenders in Northern Ireland - an inspection of the MASRAM process and its potential for development - March 2005.

- ◆ a mechanism allowing the period of post-release supervision to be extended to match any extension of the period in prison. A dangerous offender who has had to be kept longer in prison should not expect, as a result, a shorter period of supervision in the community.

Questions:

Should a system of discretionary release be brought in to ensure that dangerous offenders are not released until their risk is such that they can be safely supervised in the community, and, if they have to be detained longer in prison, should the period of supervision be extended?

How can rapid recall to prison of a released offender who either causes harm or evidences the likelihood that he will cause harm be best administered?

7. INTERMITTENT CUSTODY

7.1 Intermittent custody is a concept recommended in the Halliday report and now part of the Criminal Justice Act 2003. Intermittent custody is currently being piloted in England and Wales.

7.2 As the name of this disposal implies, it is a sentence served intermittently in custody. If the sentencing court deems it appropriate and the offender consents, the custodial part of a short sentence of up to 90 days can be served intermittently in short blocks of a few days at a time, either during the week or at weekends. The offender would be on licence between the custody blocks and, possibly, after the end of custody.

7.3 The advantage of intermittent custody is that it would enable offenders to obtain or maintain jobs or education and to maintain family ties, all of which have been shown to play a part in reducing re-offending. It would be appropriate where an offence is serious enough to require custody but where full time custody is not regarded as essential. Home Office research has suggested that intermittent custody, at least initially, might be an appropriate disposal for offences of theft and handling stolen goods and driving offences.

7.4 The period spent in prison would be determined by a court and the fact that the prisoner had some choice about timing would not make it any less of a punishment.

7.5 If such a disposal were introduced, it would require an adjustment to the Northern Ireland prison estate and to the way it is managed. Intermittent custody might result in inefficiencies in the management of prisons, for example, keeping prison cells available for intermittent use and the costs involved in booking in and booking out prisoners. There could also be management difficulties if the numbers of prisoners involved was small or variable. Equally, it would not necessarily be beneficial if intermittent custody resulted in the imprisonment of people who previously would have been punished properly outside prison. Clearly, it will be helpful to see the outcome of pilots in England and Wales.

Questions:

Is there support for the development of intermittent custody in Northern Ireland?

Should it be aimed at particular types of offences?

8. ELECTRONIC MONITORING

8.1 Electronic monitoring is a system of using electronic devices to determine where an individual is. Typically an offender will wear a small electronic transmitter on wrist or ankle.

8.2 Strictly speaking, electronic monitoring is not a sentence nor a direct means of ensuring compliance and control. Instead, it is a mechanism which allows the rigorous monitoring of conditions that have been imposed on the person wearing the tag. In England and Wales it is used for a variety of purposes including: for those on remand; for early release (the Home Detention Curfew); and to aid in supervising offenders on intensive programmes.

8.3 The Criminal Justice Review considered the case for electronic monitoring, noting its benefits particularly in circumstances where it would allow alternatives to imprisonment. However, the review group noted that there might be human rights issues, particularly in Northern Ireland. For example, wearing an electronic tagging device might put the wearer at risk of abuse or attack. There is also the concern that electronic monitoring might indirectly impose hardship on the family of the tagged individual, if, for example, it were used to enforce a form of house arrest. In the end, the review group recommended that electronic monitoring be kept under review in the light of developments in England and Wales.

8.4 Experience of electronic monitoring in England and Wales, where it has been available since 1999 following a series of pilots, is generally good. While recognising that electronic monitoring cannot **prevent** breaches of conditions occurring, the fact that certain breaches will be spotted immediately would not only act as a deterrent, but would also allow the authorities to take immediate action when a breach had taken place. In some circumstances, this will give the authorities sufficient reassurance that a non-custodial option is appropriate. As such, electronic monitoring could be a useful adjunct to existing sentences which involve periods under restriction in the community, or to schemes which allow the temporary release of prisoners. As a related consideration, electronic monitoring might also be useful in bail cases.

8.5 One option for Northern Ireland would be to take an enabling power in legislation that would allow electronic monitoring to be introduced as a means of monitoring relevant conditions on a pilot basis in the first instance.

Questions:

Is electronic monitoring a mechanism that should be adopted in Northern Ireland?

Are there particular circumstances where electronic monitoring should not be used?

9. SUSPENDING SENTENCE AND DEFERRING SENTENCING

9.1 There have been concerns in Northern Ireland about the use of suspended sentences, and about deferring sentencing, which may be seen by some as soft options. However, both mechanisms give courts an important degree of flexibility in dealing with offenders. Furthermore, use of these mechanisms may be consistent with aims of restoration and reparation.

Suspended Sentences

9.2 A suspended sentence is a sentence which does not take effect unless the offender commits a further imprisonable offence. A custodial sentence of two years or less may be suspended, and the period of suspension may be one to three years, although in serious offences, sentence may be suspended for up to five years. They are available only where a court considers that imprisonment, rather than a community sanction, is appropriate.

9.3 There is a view that in certain cases they represent an unduly lenient approach to serious offending. They signal that an offence was sufficiently serious to merit the punishment of imprisonment but, unless a further offence is committed, the offender is not punished at all. On the other hand, there may be circumstances, for example if a serious offence is considered to be a one-off, where it is appropriate for the court to mark the gravity of the offence, while at the same time allowing the offender to mend his ways and remain a productive member of society.

9.4 The Halliday report noted that suspended sentences in England and Wales were anomalous in that they attracted no form of supervision even where that might be helpful to the offender or might give reassurance to the court. The report suggested that suspension might, in certain circumstances, be made conditional upon supervision or upon undertaking particular programmes.

9.5 In England and Wales, the Criminal Justice Act 2003 replaces the existing suspended sentence with an amended version. The key change is that the court may suspend a short custodial sentence for between six months and two years, on condition that the offender undertakes activities in the community. If the offender breaches the terms of the suspension, the suspended sentence will be activated. Committal of a further offence during the entire length of suspension will also count

as breach, and the offender's existing suspended sentence will be engaged at the time the court sentences him for the new offence.

Questions:

Should Northern Ireland introduce a system of suspended sentences which requires the offender to undertake activities in the community?

Should courts have the freedom to suspend sentences with requiring activities to be undertaken?

Deferral of Sentencing

9.6 Deferral of sentencing is another option for the court where there has been an offence but a possibility that the offender will mend his ways. In essence, the court postpones sentencing to allow time for an offender to demonstrate better behaviour. It is available regardless of whether the court might otherwise make a custodial or community disposal. In Northern Ireland a court can defer passing sentence for up to six months. A deferred sentence can often be used to provide time for payment of restitution.

9.7 There are a number of perceived problems. The current deferral period is six months and this may be a relatively short period in which to gauge whether progress has been made. Also, there is no power to set conditions. Moreover, although an offender can be returned to court for immediate sentence if a further offence is committed, there is no other power to move to sentence immediately even if it were to become apparent that deferment is no longer warranted. There are also concerns about the sort of sentence that would be appropriate if the court decides to go ahead with sentencing. For example, although progress during the period of deferment may result in the sentencing being mitigated, failure and a breach of trust should not result in a sentence that is more severe than was warranted by the original offence.

9.8 The Criminal Justice Act 2003 made a number of changes to arrangements for deferment of sentencing in England and Wales. As at present, the new provisions allow the court to defer sentencing for the purpose of enabling the court to have regard to the conduct of the offender and any change in his circumstances. However, the power to defer passing sentence is only exercisable if the offender undertakes to comply with any requirements as to his conduct that the court

considers it appropriate to impose. These requirements may include activity in the community such as reparative activity. The offender's compliance with the requirements will be monitored, and failure to comply with a requirement will result in the offender being brought back to court early for sentence.

Questions:

Should deferment of sentencing be made conditional on actions to be undertaken by the offender?

Would longer periods of deferment than six months be appropriate to allow a greater range of activities to be undertaken?

10. RESTORATIVE INTERVENTIONS

10.1 A number of sentences in Northern Ireland may contain elements of restoration and reparation. Those most explicitly aimed at restoration and reparation are sentences for young people. These are:

- ◆ reparation orders - introduced by the Justice (NI) Act 2002 - enable a child to make reparation, either directly to the victim (with their consent), or indirectly to the community, for a period not exceeding 24 hours;
- ◆ youth conference plans and orders – plans and orders arising from youth conferences - introduced by the Justice (NI) Act 2002 - may include reparation to be made either directly to the victim (with their consent) or to the community.

Other sentences may have an indirect restorative and reparative element, for example, community service which consists of unpaid work in the community.

10.2 One of the specific aims of the new provision in the Criminal Justice Act 2003 which allows for the deferment of sentence (see paragraph 9.8), is to facilitate reparation. A court will be able to make reparative activity a condition of the deferment and, if the activity is not carried out, the court could move to sentence.

10.3 There would appear to be two possible approaches to the greater use of restorative elements in sentencing. The first is to delay formal sentencing to see whether a restorative activity has been carried out. This would be possible in Northern Ireland under current arrangements for the deferment of sentencing. However, the weakness in Northern Ireland is that if no restorative activity takes place, the court cannot move to sentence immediately. The arrangement introduced in the Criminal Justice Act 2003, therefore, would seem to have considerable advantages.

10.4 The second approach is to make the restorative activity part of the sentence. This is the approach adopted in Northern Ireland in relation to reparation orders. It is also the approach that has been adopted in relation to youth conferences, which follow a finding of guilt in court. The plan arising out of the youth conferencing may contain restorative elements which may in turn become the order of the court.

10.5 With either of these two approaches, if the reparative activity does not take place or is inadequate, remedial action can be taken by the court. The second approach though, has the advantage that reparative activity can be part of a wider sentence. This could be appropriate for example, where other actions were needed by the offender to address offending behaviour or where the offence was so serious that reparative activity alone would be insufficient punishment.

10.6 A possible solution for Northern Ireland would be to use both approaches. That is, to sharpen deferment of sentence so that it can be made conditional on reparative activity taking place **and** to develop a flexible reparation order that can be used by a court either on its own or more probably as part of a sentencing package.

10.7 The question is how a court should be informed what reparative activity is appropriate and would be welcomed by the victim (if a victim were identifiable). What sort of structures would be necessary?

10.8 In Northern Ireland, the method being used in the juvenile justice system is youth conferencing. A youth conference is a meeting at which the offender, the offender's family and others with an interest meet to decide what action should be taken in relation to an offence. The victim may attend and can have an important role to play in developing a plan of action arising from the conference. However, the plan need not include any restorative activity, nor indeed will there always be an identifiable victim.

10.9 In relation to adult offending, a rather different sort of conference might be necessary. There may also be questions of fairness, if similar offences are dealt with differently by the courts depending on whether there is an identifiable victim or whether the victim wants to take part in the conference.

10.10 Greater use of restorative activity would need to be linked to the further development of structures that would allow offender and victim to engage with each other.

10.11 The Anti-social Behaviour etc (Scotland) Act 2004 is introducing a community reparation order (CRO) for those who are convicted of a summary offence where there is an element of anti-social behaviour (i.e. behaviour which causes or is likely to cause harassment, alarm or distress to others). This is a low-level tariff which requires the offender to undertake between 10 and 100 hours of unpaid work to

make reparation to the community. Non-compliance with the order can lead to the offender being dealt with as they would otherwise have been for the original offence.

Questions:

Should the opportunity to make reparation be built in as part of deferment of sentence?

How useful would a separate sentence to enable reparation (similar to a reparation order for young people) be?

What mechanism should be used to inform the court of both the availability and appropriateness of reparative activity, and whether it would be welcomed by the victim (if there is an identifiable one)?

Could the model of the Scottish community reparation order be adapted for use in Northern Ireland?

11. FINE DEFAULT

11.1 Currently the penalty for default of a fine is custody. This is an ineffective use of prison resources. The period of custody is so short that there is no opportunity to address the offending behaviour and it does not act as a deterrent to the core group of fine defaulters. In 2003 there were 1453 receptions of fine defaulters who served an average period of four days. This accounted for 25% of all prison receptions for that year.

11.2 In Scotland fine defaulters can be given a supervised attendance order where they are required to carry out constructive activity over a 10-100 hour period. This activity is determined by social services and may consist of social education, financial management, or unpaid work in the community. This is a cheaper option than custody, offers useful work to the offender and the community, with a decrease in offending by those who completed these orders.

Question:

Is there relevance in considering a disposal akin to a supervised attendance order in place of custody for fine defaulters?

SENTENCES AVAILABLE TO THE COURTS IN NORTHERN IRELAND

1. Custodial Sentences

Life sentences - are mandatory for murder and discretionary for a number of other offences like manslaughter and rape where they are the maximum sentence available. A minimum period of imprisonment (the “tariff”) is set by the court after which release on licence is with the approval of the Life Sentence Review Commissioners who consider issues of risk. Prisoners released are on life licence and subject to recall to prison for life.

Imprisonment in a Young Offenders Centre - this is for persons under 21. The maximum term of imprisonment is four years. A stipulated sentence of four years or over at the Secretary of State’s pleasure is equivalent of the life sentence for someone under the age of 18 at the time of the offence.

Suspended sentence of imprisonment - this does not take effect unless the offender commits another imprisonable offence. The sentence of imprisonment may be for two years or under. Suspension may be one to three years, although in serious offences sentence may be suspended for up to five years.

Custody Probation Order – legislated for in the Criminal Justice (Northern Ireland) Order 1996. This is a period in prison custody followed by a period under supervision in the community. They are only available where a period in custody of over 12 months would otherwise be justified. The period under supervision must be more than 12 months and less than three years but there is no limit on the period of time that must be spent in custody. The usual conditions of remission apply to the custodial part of the sentence. The consent of the offender is needed for the making of a custody probation order.

Juvenile Justice Centre Order - brought in under the Criminal Justice (Children’s) (Northern Ireland) Order 1998. This replaces the Training School Order. It can last between six months and two years. Half of the sentence is served in the community under supervision. This disposal applies to those under the age of 17.

2. Community Sentences

Probation Order - this involves restriction of the offender's liberty and is a punishment. Offender consent is required. An Order may be made for any length of time between six months and three years. It may have extra requirements, for example, treatment for alcohol, or anger management. Breach will result if there is failure to carry out the Order.

Community Service Order – this can be ordered for someone convicted of an imprisonable offence and consists of unpaid work in the community. It is appropriate for individuals aged over 16. Individuals must be deemed suitable by the Probation Board and consent of the individual is required. An Order can last for any length of time between 40 hours and 240 hours and must be completed within a year. The offender can be breached if he or she fails to comply with the Order.

Combination Order - this is a combination of community service and probation supervision. The community service part of the Order can last between 40 hours and 100 hours and the supervisory part between 12 months and three years. Breach action will be taken if there is default on either component by the offender.

Attendance Centre Order - this requires a young offender to attend an Attendance Centre for a specified number of hours, usually on a Saturday morning, thereby depriving him or her of leisure time.

Youth Conferencing and Youth Conference Order - introduced by the Justice (Northern Ireland) Act 2002 brought into being a statutory system of youth conferencing based on restorative justice principles. Conferences may be court ordered or diversionary (referred by the prosecutor). The result of the conference may be a plan of action which may consist of an apology, reparation, payment in compensation, supervision, work or service in the community, participation in programmes and restrictions on conduct. In the case of conferences ordered by the courts, the action plan may become an Order of the court. Youth conferencing will be available for young people under the age of 18 at the time the offence was committed.

Reparation Order - introduced by the Justice (Northern Ireland) Act 2002. This order enables a child to make reparation, either directly to the victim (with their consent), or indirectly to the community, for a period not exceeding 24 hours. Before

making such an Order the court must obtain and consider a written report. The reparation must be carried out within six months

Community Responsibility Order - introduced by the Justice (Northern Ireland) Act 2002 this requires a juvenile offender to attend a course of instruction in citizenship, and to carry out associated practical activities for a specified number of hours - between 20 and 40. The Order should be completed within six months.

3. Fines

A maximum is set for each offence although this is unlimited in the Crown Court. The court must enquire into the financial circumstances of the offender. Time is allowed to pay and there can be imprisonment in default of a fine.

4. Conditional Discharge

This is the lowest level of the sentencing pyramid and the condition is that no other offence is committed within a specified period which can be up to three years. If there is a further offence the defendant may be sentenced for the original offence.

5. Other Disposals

Deferred sentencing - sentencing can be deferred up to six months after which sentence is passed when the court has noted any changes which have taken place. A deferred sentence can often be used to provide time for payment of restitution.

Absolute Discharge - the offender is released unconditionally and punishment is not seen as appropriate

Binding Over - recognisance, usually termed "binding over" is an undertaking whereby a person binds himself to, for example, be of good behaviour, and in the event of breach of that undertaking acknowledges his indebtedness to pay a sum to the Crown. In addition to an offender binding himself over, sureties or guarantors may be sought who will likewise enter into and bond to a certain sum, for the performance of the obligation undertaken by the offender.

Road traffic offences - there are specific penalties associated with road traffic offences. These are penalty points, endorsements and disqualification.



Northern
Ireland
Office

**REVIEW OF THE SENTENCING
FRAMEWORK
IN
NORTHERN IRELAND**

**SUMMARY OF RESPONSES
TO A
CONSULTATION PAPER**

Criminal Justice Policy Branch
Massey House
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August 2017

INTRODUCTION

1 In March 2005 the Northern Ireland Office published a consultation paper on the review of the sentencing framework in Northern Ireland.

2 The impetus for the review came mainly from the Criminal Justice Act 2003 which made a number of changes to the sentencing framework in England and Wales. The focus of the review is on the range of disposals available to the courts, not on the sentences available for specific offences.

3 The areas under consideration in the review are:

- The Purposes of Sentencing
- Post release supervision
- Discretionary release
- Dangerous offenders
- Intermittent custody
- Electronic monitoring
- Suspending and deferring sentencing
- Restorative interventions
- Fine default

4 The consultation focused primarily on the sentencing framework for adult offenders, not children. It did not make proposals, but asked questions and sought views on a number of specific issues related to sentences and sentencing.

5 The consultation document was sent to over 220 interested and representative organisations, key stake-holders and individuals. The consultation document was also made available on the NIO website.

6 The consultation period was initially to close on 31 May 2005. In response to requests to allow for late submission of responses, the closing date was extended to 11 July.

7 A total of 19 responses were received. Not all responses were substantive. A list of those who responded can be seen at Annex A. Not all respondents were content for their responses to be made public. Comments detailed in the summary of responses have not been attributed to any organisation, stake-holder or individual.

8 We are grateful for all responses received. This paper tries to reflect the views offered, but it is not possible to describe all the responses in detail. We apologise in advance for any inadvertent errors.

9 You can obtain copies of this report and the consultation document from www.nio.gov.uk or from:

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SUMMARY OF VIEWS EXPRESSED ON SPECIFIC QUESTIONS AND RELATED ISSUES

The consultation paper asked a number of specific questions on nine areas of sentences and sentencing. The responses to these are summarized as follows:

1 THE PURPOSES OF SENTENCING

1.1 Should the purposes of sentencing be set out in Northern Ireland law?

1.1.1 This issue was addressed by 11 respondents. All agreed that the purposes of sentencing should be set out in Northern Ireland law.

1.2 Are the purposes of sentencing set out in the Criminal Justice Act 2003 (listed below) suitable for Northern Ireland?

- **the punishment of offenders**
- **the reduction of crime including its reduction by deterrence**
- **the reform and rehabilitation of offenders**
- **the protection of the public**
- **the making of reparation by offenders to persons affected by their offences.**

1.2.1 The majority of respondents thought these purposes were suitable for Northern Ireland.

1.2.2 However, two respondents saw the list of purposes as contradictory, as both retributive and restorative at the same time, something viewed as neither credible nor effective. Two quite similar recommendations were made:

- that the purposes be reshaped and prioritised as follows:
 - the protection of the public
 - reinforcing the accountability of the offender for their actions
 - the reduction of crime including its reduction by deterrence
 - the reform and rehabilitation of offenders
 - reparation and other restorative practices.

- that the purposes should reflect the more restorative approach to criminal justice evidenced in the Criminal Justice Review¹, recommending an approach where the interests of victims, communities and the offender are met by a system based on accountability; recognition of the harm caused; rehabilitation and restoration and; protection of the public, where possible through a restorative approach.

¹ Review of the Criminal Justice System in Northern Ireland, March 2000

2. POST RELEASE SUPERVISION

2.1 Is there support for the wider use of compulsory supervision following custody in Northern Ireland? (Offender would be released after 50% of sentence is served in custody and then supervised in the community until the end of the sentence)

2.1.1 10 respondents commented on this issue. Nine were generally supportive of the wider use of compulsory supervision and one was opposed.

2.1.2 The general view was that compulsory supervision would further enhance the process of partnership working between the statutory and non-statutory agencies in the Criminal Justice system and would ensure that offenders are provided with the support mechanisms necessary to ensure proper and safe reintegration into the community. In this context, many responses referred to the existing, and increasing use in Northern Ireland, of custody probation orders, where supervision is given, with the offender's consent, in lieu of a longer period of imprisonment. Some respondents commented on its effectiveness in reducing re-conviction and referred to recently published re-conviction rates² which showed that 42% of prisoners are re-convicted within 2 years as compared to 30% of those on a custody probation order. A comment was made however, that further research was needed on the effectiveness of increased post custody supervision.

² Research and Statistical Bulletin 7/2005, 'Predicting Reconviction Rates in Northern Ireland'

- 2.1.3 Two respondents, while recognising the effectiveness of custody probation orders, were anxious to stress that compulsory supervision should be in addition to, not in lieu of, a period of imprisonment.
- 2.1.4 It was recognised that any increase in the wider use of compulsory supervision would have resource impacts for the Northern Ireland Probation Board and that the associated enforcement process could lead to more returns to custody with resultant resource impacts for the Police and Prison Services. It was noted that effectiveness depended on appropriate and sufficient investment.
- 2.1.5 One respondent organisation viewed post release supervision as an important source of support for people on release from custody, but was opposed to it being made compulsory, cautioning that consideration must be given to its impact on private and family life. It commented that post release supervision would be more effective if targeted, on a voluntary basis, at those offenders assessed as potentially benefiting most from its application.

2.2 Is there support for a distinction between short and long sentences as included in the Criminal Justice Act 2003?

- 2.2.1 Respondents (9) to this question concentrated mainly on the ‘custody plus’ disposal legislated for in the Criminal Justice Act 2003.³
- 2.2.2 Views were mixed. Only 2 respondents were supportive, **without reservation**, of its introduction. 3 respondents were opposed.

³ The Criminal Justice Act 2003 introduces Custody Plus for sentences of less than 12 months. It comprises a total sentence of not less than 28 weeks and not more than 51 weeks. The sentence has two parts. The custodial part must be for at least 2 weeks and not more than 13 weeks. The second part, under supervision in the community, must be at least 26 weeks in length. Courts will set the length of the two parts of the sentence.

2.2.3 Among the remaining respondents there was an acceptance that short prison sentences of less than 12 months lack purpose other than punishment and that a period in custody, without supervision on release, gave little opportunity for an offender to undertake programmes aimed at addressing offending behaviour. It was felt that serving the greater part of a sentence in the community would be more likely to impact positively on re-offending. However, a concern was expressed that attaching a supervisory element to sentences of less than 12 months might result in the increased use of imprisonment.

2.2.4 The suggestion was made that the existing custody probation order be extended to sentences of less than 12 months (currently in Northern Ireland these apply only to sentences of over 12 months). This was seen as an effective alternative to custody plus.

2.2.5 It was also suggested that the short prison sentence, without supervision, should be retained as a disposal for those offenders for whom it might have a deterrent effect.

2.2.6 The three respondents who were opposed, expressed concerns that such a disposal would:

- reduce further public confidence in the Criminal Justice system. Respondents pointed to the Community Attitudes Survey 2004 which reported that 77% of the Northern Ireland public believed that sentences were too lenient.
- have little impact on addressing reoffending behaviour of persistent offenders
- lead to more minor cases going to the Crown Court.

2.3 Should sentencers be allowed to vary the relative lengths of the custodial and supervisory elements of a sentence?

2.3.1 8 respondents commented on this issue. There was some confusion about this question, with respondents puzzled as to how such a system could operate in parallel with a system of compulsory supervision.

2.3.2 Only two were specifically supportive. The majority felt that offenders should not be released before serving half of their sentence and that they should remain on licence for the remainder of the sentence

2.4 Should Crown Court breach applications go directly to the Crown Court?

2.4.1 Those who responded (7) agreed that breach applications should go directly to the Crown Court. The general view was that this would reduce delay, particularly important where an offender poses a risk of harm to others.

2.4.2 A comment was made that effective sanctions should be attached to breach of supervision conditions. The importance of offender awareness of the seriousness of the supervisory element of the sentence and the consequences of breach was stressed.

3. DISCRETIONARY RELEASE

3.1 Is there support for a system of discretionary release of fixed sentenced prisoners?

3.1.1 13 respondents addressed this issue. The majority supported its use but on the basis of assessment of risk and for those offenders who continue to pose a threat to the public. The responses mainly duplicated or mirrored those given for questions in relation to dangerous offenders and have been summarised in Section 4.

3.1.2 Two respondents commented that a system of discretionary leave that allowed extended detention could be used to address disciplinary infractions in prison.

3.1.3 Only one respondent considered the issue of early release as a reward for positive achievement in custody, noting that there may be an issue of discrimination if used for adult offenders, given that children in a Juvenile Justice Centre have no possibility of discretionary release under the Criminal Justice (Children) (NI) Order 1998.

3.1.4 One respondent felt that automatic release at the halfway point of a sentence developed a lack of respect for law and order and did nothing to discourage re-offending.

3.2 In what circumstances would it be appropriate to use discretionary release?

3.2.1 Again, the majority of responses addressed this issue in the context of its use for those offenders who are assessed as posing a risk to the public. The view was that it should be used once the halfway point of the sentence has been served in custody and in conjunction with programmes aimed at addressing the prisoner's offending behaviour and resettlement needs.

3.2.2 A concern was raised that any system of discretionary release might result in prisoners on average spending longer in prison. It was cautioned that the process should be applied with consistency and equity of treatment.

3.3 How far is it considered that a system of discretionary release would directly impact on the risk of reoffending?

3.3.1 Many respondents felt that a system of discretionary release would encourage greater participation in programmes to address offending behaviour both pre and post release. It was also noted that such programmes needed to be robust, effective and well resourced.

3.3.2 Some respondents cautioned that further research was needed on the effectiveness of discretionary release in reducing reoffending and the comment was made that information on the evaluation of its operation in England and Wales would be useful.

4. DANGEROUS OFFENDERS

4.1 Should a system of discretionary release be brought in to ensure that dangerous offenders are not released until their risk is such that they can be safely supervised in the community, and, if they have to be detained longer in prison, should the period of supervision be extended?

4.1.1 Of the 12 respondents who commented on this issue, 11 were supportive and one was opposed. There was general agreement on the need to address the anomaly that there is no facility, as there is in England and Wales, to protect the public from offenders who are assessed as continuing to pose a threat to the public and that the extended and public protection sentences introduced in the Criminal Justice Act 2003 should be considered for Northern Ireland.

4.1.2 The respondent organisation which gave an opposing view, recognised the need to protect the public from dangerous offenders but believed that people should be sentenced to imprisonment only for crimes they have committed, not for crimes they may commit in the future. They were particularly concerned that juveniles and children under 18, who have committed a specified sexual or violent offence and are assessed by the courts as dangerous, might be given extended or public protection sentences.

- 4.1.3 Many respondents commented on the need for effective and adequately resourced risk assessment and management in the operation of discretionary release for dangerous offenders and pointed to the existing non-statutory Multi-Agency Sex Offender Risk Assessment and Management (MASRAM) procedures in Northern Ireland as a useful model. Respondents were, in general, supportive of the findings of the recent Criminal Justice Inspection Northern Ireland (CJINI) report which recommended that MASRAM procedures should be placed on a statutory footing and extended to include violent offenders. It was noted that without changes being made to the sentencing disposals available, these recommendations could not be implemented.
- 4.1.4 Respondents also commented on the need for Parole Board or Commission type arrangements to administer a system of discretionary release, operating within clear defensible criteria. Decisions regarding release and recall should reflect the purposes and principles of sentencing.
- 4.1.5 Two respondents suggested that sentencing provisions for dangerous offenders should include offenders convicted of scheduled offences. However, an opposing view that such cases should be treated separately was also put forward.
- 4.1.6 Particular concerns were raised about the management of dangerous offenders who are mentally ill but who may not be regarded as having a treatable mental illness. It was pointed out that such offenders are not recognised by mainstream mental health services and are having

to be managed by agencies within the Criminal Justice system.

Respondents called on this issue to be addressed in the current

Northern Ireland Mental Health and Learning Disability Review.

4.2 How can rapid recall to prison of a released offender who either causes harm or evidences the likelihood that he will cause harm be best administered?

4.2.1 8 respondents addressed this issue. Suggestions for administering rapid recall included:

- Fast track courts
- Executive recall
- Parole Board/Commission
- 24 hour conferencing group built on MASRAM model
- Enabling provisions to allow PSNI, and others in limited circumstances, to detain offenders in breach until next available court.

5. INTERMITTENT CUSTODY

5.1 Is there support for the development of Intermittent Custody in Northern Ireland?

5.1.1 10 respondents addressed this issue. All were largely supportive of the concept of Intermittent Custody, subject to evaluation of the outcomes of pilots in England, but recognised the significant resource and

management issues its introduction would pose for the Northern Ireland Prison Service.

5.1.2 However, while supportive, reservations about its use were expressed.

These included:

- an increase in the use of imprisonment might result if a sentence of intermittent custody proved attractive to sentencers
- there is a potential for re-offending to occur during the periods when the offender is not in custody
- its use might increase the opportunities for drugs to be brought into prisons

5.1.3 It was also pointed out that the introduction of Intermittent Custody would affect the payability of Social Security Benefits during any periods of actual detention – Section 113 of the Social Security Contributions & Benefits (NI) Act 1992 provides that a person shall be disqualified from receiving any benefit during the period that the person is undergoing imprisonment or detention in legal custody.

5.2 Should intermittent custody be aimed at particular types of offences?

5.2.1 While one respondent commented that the courts should decide suitability for this disposal, the general view was that intermittent

custody should be used for less serious offences only. Examples of relevant offences given included:

- Theft
- Handling stolen goods
- Driving offences of a persistent nature
- Public disorder

6. ELECTRONIC MONITORING

6.1 Is electronic monitoring a mechanism that should be adopted in Northern Ireland?

6.1.1 12 respondents addressed this issue. The majority were of the view that there could be merit in its use subject to further evidence of its effectiveness, a cost/benefit analysis and, in particular, the outcomes of pilots in England and Wales. Initial operation on a pilot basis in Northern Ireland was suggested.

6.1.2 If used as part of a package of various measures to manage risks posed, merit was seen in its use in assisting the supervision of high risk offenders, particularly sex offenders. The proviso was added that it should not replace face to face supervision at any risk level.

6.1.3 Conversely, two respondents were specifically opposed to its use in the management of high risk offenders, particularly if used as an alternative to continued detention.

6.1.4 Other suggestions for its use included monitoring offenders on post – release supervision or as a condition of bail.

- 6.1.5 One respondent organisation was opposed to the introduction of electronic monitoring if based on the model used in England and Wales, where, in the respondent's view, it was being used in an increasingly retributive and punitive justice system. The organisation pointed to models in Sweden and the Netherlands where electronic monitoring is used in conjunction with a planned treatment programme.
- 6.1.6 Another respondent saw electronic monitoring as a 'quick fix' response to public demands which has the potential to have a negative impact.

6.2 Are there particular circumstances where electronic monitoring should not be used?

- 6.2.1 One respondent was opposed to its use in the management of offenders convicted of selling drugs. Another did not feel it suitable for use on prisoners with paramilitary affiliations but recognised that this could raise issues of equity.
- 6.2.2 As already stated at 6.1.3, two respondents were specifically opposed to its use in the management of high risk offenders.
- 6.2.3 Two respondents, while recognising that the consultation document focused on sentences for adult offenders, viewed the use of electronic monitoring on children or young people as a breach of the European Convention on Human Rights and the United Nations Convention on the Rights of the Child and asked that the NIO state it would never be used on children and young people in Northern Ireland.

7. SUSPENDING AND DEFERRING SENTENCES

7.1 Should Northern Ireland introduce a system of suspended sentences which requires the offender to undertake activities in the community? Should courts have the freedom to suspend sentences with requiring activities to be undertaken?

7.1.1 10 respondents addressed this issue. All were generally supportive of the idea, subject to appropriate monitoring and supervisory arrangements. There was a general recognition that such arrangements would have resource implications for the Probation Board.

7.1.2 One respondent welcomed its deterrent factor, in that breach would have the undisputed consequence of custody, but suggested that sentence suspension should be reserved for serious offences i.e. offences where on conviction on indictment an offender can be sentenced to imprisonment for five years or more.

7.1.3 Another respondent commented that a suspended sentence with conditions should not be an automatic disposal, but should be exercised at the discretion of the court. The introduction of partially suspended sentences was also suggested as providing additional sentencing flexibility.

7.1.4 While expressing concern at, in its view, the unduly lenient sentences given to those who commit offences against children, one respondent organisation saw benefit in suspended sentences which facilitated offenders undertaking treatment programmes.

7.2 Should deferment of sentencing be made conditional on actions to be undertaken by the offender.

7.2.1 All those who responded (10) were supportive of this disposal.

7.2.2 It was suggested that activities should be aimed at addressing offending behaviour and encouraging rehabilitation. Another comment was that such a disposal should only be used where there are clear reasons why a probation order or other community sentence is not appropriate.

7.2.3 Some concerns were expressed as to how the necessary formal supervision and reporting would be resourced.

7.3 Would longer periods of deferment than six months be appropriate to allow a greater range of activities to be undertaken?

7.3.1 Of the 7 respondents who addressed this issue, the general view was that the length of deferment should be looked at in the context of the programme or activity to be undertaken.

7.3.3 One respondent considered that deferral up to 12 months was preferable and if deferral was breached the court should move to sentence immediately.

7.3.2 One respondent was opposed, commenting that if a longer period was required to carry out appropriate activities, the Court should consider an alternative sentence.

8. RESTORATIVE INTERVENTIONS

8.1 Should the opportunity to make reparation be built in as part of deferment?

8.1.1 All 9 respondents who addressed this issue were supportive and a comment was made that restorative interventions could form an integral part of various types of probation supervision.

8.1.2 One respondent organisation caveated their support by advising caution where the nature of the offence might make its use inappropriate and referred to, in particular, sex offences. The organisation was critical of Government's approach in this area in relation to enabling legislation for youth justice conferencing.

8.2 How useful would a separate sentence to enable reparation (similar to a reparation order for young people) be?

8.2.1 Respondents were generally supportive.

8.2.2 It was pointed out that sentences of a supervisory nature already exist in which reparation can be incorporated and the Community Service Order was highlighted. The suggestion was made that the definition of community service could be expanded to include community reparation rather than creating a new community reparation order. However, a separate sentence was viewed as useful for offences such as benefit

fraud, breach of trust, criminal damage or for offences likely to be dealt with currently by a fine coupled with compensation.

8.2.3 One organisation caveated its support subject to evidence of the effectiveness of current reparative work being undertaken with young people.

8.3 What mechanism should be used to inform the court of both the availability and appropriateness of reparative activity, and whether it would be welcomed by the victim (if there is an identifiable one)?

8.3.1 Some respondents stressed the importance of victims having a say in what, and how, reparation should be made. Various suggestions for a mechanism to inform the court included:

- a victim impact statement
- report by Probation Board
- Youth Conferencing model
- Probation Victims Unit model

8.4 Could the model of the Scottish community reparation order be adapted for use in Northern Ireland?

8.4.1 Reservations were expressed about the use of this model. A comment was made that Restorative Justice advocates may see it as a punitive measure, rather than a restorative intervention where the offender and

victim agree the reparation. Another view was that it potentially duplicated the existing community service order.

8.4.2 One respondent saw it as a piecemeal approach, preferring to see a wider discussion on the possibilities for restorative justice for the whole adult system in Northern Ireland and on the contradiction of increasingly punitive sanctions coupled with an emphasis on restoration.

8.4.3 Some commented that evaluation of the Scottish system should be considered before its introduction in Northern Ireland.

9. FINE DEFAULT

9.1 Is there relevance in considering a disposal akin to a supervised attendance order in place of custody for fine defaulters.

9.1.1 Many respondents expressed strongly the view that custody should not be used for fine default, viewing it as both inappropriate, ineffective and resource intensive. In this context, reference was made to a recommendation of the 2003 Steele Report⁴. However, one respondent felt that the consultation document did not contain sufficient evidence to show that custody did not act as a deterrent to the core group of defaulters and suggested that further research should be done before reform was considered.

⁴ The Review of Safety At HMP Maghaberry, August 2003, found that fine defaulters consumed resources which could be used more beneficially and recommended that an alternative to imprisonment for fine defaulters should be sought.

9.1.2 Supervised attendance orders were seen as a useful alternative. Other alternatives suggested were:

- attachment of earning orders
- reduction in benefits
- an incremental approach with reminders being sent to defaulters and a means enquiry being instigated
- Community Service Order
- restorative work
- disqualification from driving

9.1.3 Two respondents commented on the creation of the National Enforcement Service⁵ in England and Wales but did not comment further on its application in Northern Ireland.

9.1.4 It was noted that the use of supervised attendance orders would have implications for police and court time as further court hearings might be required to decide the appropriate sentence in default.

10. OTHER COMMENTS

10.1 Many respondents provided additional comments and some of these are summarised below.

10.2 It was recommended that consideration should be given to further reductions in remand times.

⁵ The establishment of the National Enforcement Service was announced by Lord Falconer in March 2005. Enforcement Officers employed by the NES will ensure that fines are paid and that other court orders are obeyed. The NES is being piloted in a regional location from April 2006 and national rollout should be complete by April 2007.

- 10.3 It was commented that Northern Ireland conditions do not mirror England and Wales. It is therefore important to understand that transporting English solutions is not always appropriate and further consideration and analysis should be given to the Northern Ireland context.
- 10.3 In examining options for introducing sentencing disposals it was recommended that services should be streamlined so as not to duplicate delivery structures.
- 10.4 Concerns were raised as to whether custody is being used for children as 'a measure of last resort and for the shortest appropriate period of time' as is required by the UNCRC. A number of other issues relating to the detention of children and young people, particularly young women, were also raised.
- 10.5 Concern was expressed at the over-representation of care-experienced children and young people in the Criminal Justice system. It was recommended that priority should be given to seeking out more appropriate interventions which prevent and divert them away from custody.
- 10.6 It was noted that the NIO has not conducted an Equality Impact Assessment as is required by Section 75 of the Northern Ireland Act 1998. **NIO response - the Consultation Document did not make proposals but sought views. Any policy or legislative proposals will be equality screened in accordance with the NIO Equality**

Scheme. Where any potential adverse impact is identified the NIO will give consideration as to whether to subject the policy/measures to the equality assessment procedure.

LIST OF RESPONDENTS

Ards Borough Council

Ballymena Borough Council

Board of Visitors, HMP Maghaberry

Chief Constable

Children's Law Centre

Department for Social Development

Director of Public Prosecutions

Equality Commission for Northern Ireland

Include Youth

Lisburn City Council

Lord Chief Justice

National Society for the Prevention of Cruelty to Children (NSPCC)

Northern Ireland Association for the Care and Resettlement of Offenders
(NIACRO)

Northern Ireland Human Rights Commission (NIHRC)

Northern Ireland Policing Board

Northern Ireland Prison Service (NIPS)

Probation Board for Northern Ireland (PBNI)

M. Savage

Superintendents' Association of Northern Ireland