

# What Exactly is a Community Service Order in Ireland?

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**Summary:** This article examines the Irish Community Service Order (CSO), from its origins to its present-day operation. It outlines how the Irish CSO differs from community service sanctions in other jurisdictions and highlights why it is important that there is clarity about what the CSO currently is in Ireland. While the legislation that introduced the CSO in Ireland was almost identical to the corresponding legislation in England and Wales, there were substantial differences between the English and Irish CSO. The author seeks to identify the limits and boundaries of the CSO in law and in practice in Ireland. He considers how far the use of the CSO could be expanded without net-widening or it being imposed on offenders for whom it is not appropriate. With the decline in CSO numbers in recent years and increasing knowledge on offenders' problems and needs, the author asks whether the CSO can or should adopt a rehabilitative purpose and approach.

**Keywords:** Community Service, imprisonment, sentencing, alternatives, community sanctions, rehabilitation.

## Introduction

Many jurisdictions around the world now operate some form of community service (unpaid work) sanction. The international experience and the many variations of community service that now exist can create a degree of uncertainty and confusion when the Irish Community Service Order (CSO) is discussed. This article seeks to provide clarity as to what exactly the CSO is in Ireland.

Understanding this is vital in order to allow for the accurate assessment of the Irish CSO's effectiveness and of its limitations and boundaries. This, in turn, is necessary to provide a solid base for future discussions

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about the CSO and the potential role it can play in reducing the number of people sentenced to prison each year in Ireland.

To provide this clarity, the article begins with an exploration of the origins of community service as a penal sanction and sets out the original concept of the CSO. It then examines the introduction of the CSO in Ireland. Previous commentary has suggested that the CSO as introduced in Ireland was almost identical to the original concept and to the CSO operating in other jurisdictions at that time.

It is argued that if one focuses solely on the legislation, this does appear to be the case. However, if one examines how the sanction was implemented in practice in Ireland, important differences become apparent.

The article examines the subsequent changes and development over the years to set out what the CSO has now become. It concludes by highlighting how the Irish CSO differs from community service sanctions in other jurisdictions and by outlining why it is important that there is a clear understanding of the CSO that is currently operating in Ireland.

### **The origins of community service as a penal sanction**

It is necessary, before exploring the original concept of the CSO, to identify when and where the sanction originated. This has given rise to academic debate over the years (Kilcommins, 2014: 488). In short, many argued (Young, 1979; Pease, 1981; Vass, 1984) that the origins of the CSO could be traced back through work-based penal sanctions such as slavery, transportation, penal servitude and impressment.

Kilcommins (2014: 489) strongly disputed this, claiming that tracing continuities and affinities in this way is ahistorical and ‘distorts the contemporary significance and character of CSOs whilst also obscuring the contextual usage of past penal practices’. He contends that when exploring the origins of the CSO, one need not look beyond the jurisdiction that first introduced a community service sanction within its formal criminal justice system.

If this criterion is used, then two jurisdictions come to the forefront: Tasmania, and England and Wales. Both passed legislation in 1972 that provided judges with a new option to sentence offenders to perform unpaid work in the community. In deciding in which of these jurisdictions to begin examining CSOs, another factor must be considered. This article seeks to explore the origins of community service from an Irish perspective.

England and Wales is therefore the most logical and beneficial starting point, as the Irish CSO has undeniably strong roots in the English and Welsh CSO. The same cannot be said of the Tasmanian sanction.

### **The CSO in England and Wales – ‘the original concept’**

The CSO emerged in England and Wales at a time when there was widespread disillusionment with imprisonment. The prison population was growing rapidly (House of Commons, 2016: 25); there was overcrowding in prisons (Home Office, 1969); and there was a growing awareness of the degrading conditions prisoners were being forced to live in (Young, 1979: 4–6). These issues were becoming a concern for policy makers, from both a financial and a humanitarian standpoint.

It was pressing, therefore, that a way be found to halt the expansion of the prison population. With crime rates rising, there was also a growing realisation that the causes of crime were far more complex than previously thought. This was creating doubt that the existing range of non-custodial measures would be appropriate in every situation in which a non-custodial option might be contemplated (Young, 1979: 9).

These factors would have contributed greatly to the thinking of the Home Secretary, Roy Jenkins, in 1966 when he asked the Advisory Council on the Penal System (ACPS) to consider what changes and additions could be made to the existing range of non-custodial penalties (Home Office, 1970: 1). The Council appointed a non-custodial and semi-custodial penalties subcommittee, chaired by social reformer Lady Barbara Wootton, to carry out this task.

Its report (the Wootton Report: Home Office, 1970) recommended the development of a new sanction that would require offenders, in appropriate cases, to engage in some form of part-time service to the community. Within 18 months, the committee’s recommendation had become a Bill and this quickly made its way through Parliament. It received widespread support from both sides of the House and the Criminal Justice Act 1972 was signed into law. Section 15 of the Act provided for the introduction of a new sanction: the CSO.

So what exactly was the original concept of the CSO as set out by the Wootton Committee and brought into existence by the Criminal Justice Act 1972? The CSO was presented as a sanction with the overarching goal of diverting offenders from custodial sentences and ultimately reducing the prison population (and with it the cost of operating the

prison system). This was a key selling point of the new sanction and was widely accepted and welcomed by parliamentarians across the political spectrum. It should be noted, however, that while the CSO was referred to in the Wootton Report (Home Office, 1970: 13) and regularly spoken about during the parliamentary debates as an alternative to prison, the legislation did not limit the use of Community Service to such cases. It allowed the CSO to be used in circumstances where an offender had been convicted of any offence *punishable* by imprisonment. This meant that a CSO could be imposed on offenders who would otherwise not have received a prison sentence, as there are many imprisonable offences that seldom result in offenders being sentenced to imprisonment.

While the overarching goal of the sanction was to reduce the use of imprisonment and assist in addressing the prison crisis, the CSO itself was put forward as a sanction that could, on an individual basis, achieve a range of penal purposes or functions.

Firstly, the CSO was to be capable of punishing offenders. This could be achieved by requiring offenders to give up their spare time to perform unpaid work in the community. The punitive element of the CSO was not in the work carried out, but rather in the deprivation of the offender's leisure time.

Secondly, the CSO was to have a rehabilitative function. Kilcommins (2002: 359–402; 2014: 493–502) identifies a number of social, political and cultural factors that existed in England and Wales at the time that are key to understanding the rehabilitative design of the sanction. Two in particular are worth noting here – the rise in the ideology of the community and the growth of voluntary service.

Central to the rehabilitative function of CSOs was improving offenders' self-worth, self-esteem and self-confidence. This could be achieved by offenders performing work in the 'community' of benefit to the community and/or to persons in need. It was hoped that by doing so, offenders would develop a sense of social responsibility and that their outlook and their role in society would change.

The type of work offenders performed was also important to the CSO's rehabilitative function. It was believed that by being engaged in meaningful work, offenders would find 'an alternative and legitimate source of achievement and status' (West, 1976: 74). It was further stressed in the Wootton Report (Home Office, 1970) that, where possible, community service tasks should be performed alongside other workers or non-offender volunteers. As well as benefiting from the work they

were performing, it was thought that offenders would benefit from the 'wholesome influence' of those voluntarily engaging in community service and from the additional support of working within a group.

Finally, CSOs were to be capable of being reparative. This would be achieved by offenders performing work that was of benefit to the 'community' and hence 'repairing' damage they had caused to the community/society by their offending behaviour. It would not involve reparation to individual victims or groups, so the reparative element of the CSO was symbolic.

The multitude of penal functions meant that the CSO could be all things to all people, regardless of their penal philosophy. Whether one favoured punishment, deterrence, rehabilitation, reparation or just reducing the cost of operating the criminal justice system, the CSO offered something.

CSOs were introduced as a pilot scheme in 1973 before being rolled out nationwide in 1974. Early evaluation studies showed modest results, at best (Pease, 1975; Pease *et al.*, 1977). A reconviction study found no evidence of a reduction in reconviction rates among offenders sentenced to a CSO and it was suggested that only 45%–50% of offenders who were sentenced to a CSO would otherwise have been sentenced to imprisonment (Pease *et al.*, 1977).

While this indicates that CSOs were having some positive impact, proponents of the sanction would have wanted these figures to be much higher. Two Home Office studies (Pease, 1975; Pease *et al.*, 1977) concluded, however, that the modest results from their evaluations could be explained by the fact that the CSO was in its early stage of development. They believed that the results would likely improve as practical difficulties were ironed out. There seemed to be a general acceptance among politicians, academics and the media that the idea was good, and the focus should be on improving the operation of the CSO to allow it to fulfil its potential.

As other jurisdictions around the world began to experience the same conditions that had led to the emergence of the CSO in England and Wales (rising prison population and crime rates), many looked to the experience of England and Wales and to the concept of the CSO. While evaluation studies in England and Wales were not producing overwhelmingly positive results, the concept was viewed as promising.

Many jurisdictions around the world in the late 1970s/early 1980s introduced sanctions closely modelled on the design of the English/Welsh

CSO (Scotland in 1978; Ontario, Canada in 1978; New Zealand in 1980; all the states in Australia by 1982), while many more were in the process of doing so. It was within this landscape that Ireland began to explore the possibility of introducing a community service sanction of its own.

### **The introduction of the CSO in Ireland**

In the late 1970s/early 1980s Ireland was experiencing a prison numbers crisis. Between 1960 and 1982 there was a 200% increase in the prison population (MacBride, 1982: 9). Prisons became overcrowded (Kilcommins *et al.*, 2004: 237). Conditions began to deteriorate, giving rise to humanitarian concerns (Report on Prisons and Places of Detention, 1984, 33). There was growing scepticism about the effectiveness of imprisonment in rehabilitating offenders (Jennings, 1990: 110–112) and the cost of operating the prison system began to rise at an unsustainable rate (NESC, 1984: 213). Crime rates were also on the rise, and this fuelled the crisis by ensuring an increasing flow of offenders entering the criminal justice system (*Report on Crime*, 1977: 3; 1981: 3).

At the time, there was a well-established practice of legislative transference from Britain to Ireland, particularly in the criminal justice system. So, in seeking a solution to the prison crisis and the rising crime rate, politicians in Ireland did as their predecessors had done many times before, and looked to England and Wales. What they found was the CSO.

As referred to above, while reviews of the CSO were modest, there was a high degree of positivity surrounding the sanction (Pease, 1975; Pease *et al.*, 1977; Young, 1979) and it had found favour at the Council of Europe (Jennings, 1990: 120). Encouraged by this, policy-makers in Ireland, following a brief consultation process, drafted the Criminal Justice (Community Service) Bill 1983, which was introduced in Dáil Éireann<sup>1</sup> on 12 April 1983.

The Bill was almost identical to the legislation introduced in England and Wales a decade earlier: so much so that it led one member, Professor John M. Kelly, to say that it was ‘simply one more example in the ignominious parade of legislation masquerading under an Irish title ... which is a British legislative idea taken over here and given a green outfit with silver buttons to make it look native’ (Dáil Debate, Vol. 342, Col. 169, 3 May 1983).

<sup>1</sup> Dáil Éireann is the lower house and principal chamber of the Oireachtas, the Irish Parliament. [www.oireachtas.ie](http://www.oireachtas.ie)

The Minister for Justice, Michael Noonan, in commending the Bill to the Dáil, acknowledged and accepted that it ‘coincides, to some extent, with the relevant British legislation’ but said that ‘the opportunity has been taken to improve where possible, in the light of British experience on the corresponding British legislation’ (Dáil Debates, Vol. 341, Col. 1331, 20 April 1983).

The ‘improvement’ the Minister was referring to, and the only major difference between the two pieces of legislation, was that in the Irish bill a CSO could be imposed only as an alternative to a sentence of imprisonment.

A Home Office Study (Pease *et al.*, 1977) had reported that over half of the CSOs in England and Wales were imposed as an alternative to other non-custodial sanctions, limiting the sanction’s impact on the prison population. It was clear that in Ireland the primary reason for introducing the CSO was to reduce the number of people sent to prison. To limit the potential for net-widening and increase the impact that the CSO would have on the expanding prison population, a requirement was added to the Irish legislation that allowed a CSO to be used only as an alternative to imprisonment and not as a sanction in its own right.

The Criminal Justice (Community Service) Bill 1983 quickly made its way through the Houses of the Oireachtas, receiving support from all the major parties. As in England and Wales, the CSO was put forward as a sanction that could achieve a range of penal functions and give rise to many benefits. With crime rates rising and crime becoming a public concern, the government did not want to be seen as introducing a measure that would give offenders the option of avoiding imprisonment simply to reduce prison numbers and save money.

Opposition politicians also did not want to be seen supporting such a move. There was, therefore, a strong focus throughout the Oireachtas Debates on the many benefits of the CSO and the many penal functions it could achieve (punishment, rehabilitation, reparation). In Ireland, unlike England and Wales, the relevant bill was passed without in-depth analysis of the CSO’s core concepts or how it was going to achieve its touted functions and benefits. It was simply accepted that it would be capable of doing so.

On 13 June 1983, the Criminal Justice (Community Service) Act 1983 was signed into law. It gave judges the power to sentence offenders to perform between 40 and 240 hours’ community service as an alternative to a sentence of imprisonment. The Act, with the supplementary Rules and Regulations, set the parameters within which the CSO would operate.

Reading the Act, it appears that Ireland had introduced a sanction very similar to that operating in England and Wales. However, if one delves a little deeper and examines how the Irish legislation was actually implemented, it becomes clear that there are fundamental differences between the two sanctions.

### **The Implementation of the Criminal Justice (Community Service) Act 1983**

In the Criminal Justice (Community Service) Act 1983, the Probation and Welfare Service was given responsibility for the management and operation of the CSO. After the Act was signed into law, systems had to be put in place to enable the new sanction to operate.

A group of senior Probation and Welfare Service officials were tasked with drafting a document to set out how the new sanction would be implemented. This document, entitled *The Management of the Community Service Order* (Probation and Welfare Service, 1984), provided guidance to Probation Officers on how they should perform the new duties given to them by the Act.

At the beginning of the document, under the heading 'Objectives of Community Service' (Probation and Welfare Service, 1984: 2), three objectives are identified:

- (a) to provide a method of dealing with offenders who would otherwise be sentenced to imprisonment
- (b) to provide offenders with the opportunity to make general reparation for their offending
- (c) to further the notion of community responsibility for offending and involvement of the community with offenders.

From the Probation and Welfare Service's perspective, the CSO was an alternative to imprisonment that would punish offenders and allow them to make general reparations. While the Service itself had a strong rehabilitative ethos, it is clear from this document that it did not believe rehabilitation to be a primary objective of the CSO.

Probation and Welfare Officers were not expected to actively seek to identify an offender's criminogenic needs or attempt to address them, nor did the sanction appear to incorporate any of the rehabilitative concepts and assumptions inherent in the English CSO. As already noted, key to



the rehabilitative design in England and Wales was that offenders would perform meaningful work and, where possible, this would be performed alongside non-offending volunteers. In Ireland, there was not the same focus (in the Oireachtas Debates or in the *Management of the Community Service Order* document) on the type of work that would be performed and the role it could play in rehabilitating offenders. This was not a key element of the Irish sanction. This differentiates the Irish CSO significantly from the CSO in England and Wales. While the CSO had previously been proposed during the Oireachtas Debates as a sanction that could achieve a range of penal functions including rehabilitation, as actually introduced in Ireland it was much more basic.

At its core, the CSO introduced in Ireland was three things.

1. *It was an alternative to imprisonment.* A CSO could be imposed only on offenders who would otherwise have been sentenced to imprisonment.
2. *It was a punishment.* It punished offenders by requiring them to carry out unpaid work in their spare time.
3. *It was reparative.* It allowed offenders to make general reparation by carrying out work in the community that would otherwise not have been done.

While it was hoped that offenders would develop a work ethos from a CSO that would assist them in living a more industrious life, the Irish sanction was not designed to rehabilitate offenders. Rehabilitation was a potential beneficial side-effect of the sanction rather than a primary objective.

## **Developments to the CSO in Ireland**

The developments in the CSO since its introduction in Ireland can be broadly categorised in two groups: operational changes within the Probation and Welfare Service (now the Probation Service and hereafter referred to as such), and legislative changes that sought to expand the use of the CSO.

### *Operational changes*

We will first look at the operational changes within the Probation Service. These generally stem from research and evaluation studies. During the early years of the CSO, there was a distinct lack of criminal justice research conducted in Ireland (Kilcommins *et al.*, 2004). This meant that it was

extremely difficult to identify which parts of the CSO were working well and which were not. The net effect of this was that the CSO remained static and saw little or no development for the best part of two decades.

Between 1999 and 2009, reviews and research studies were conducted (Walsh and Sexton, 1999; Comptroller and Auditor General, 2004; Department of Justice, Equality and Law Reform, 2009; Riordan, 2009). These began to provide some insight into how the CSO was operating in Ireland. They enabled identification of aspects of the scheme not working well and discussions, supported by data, on how the CSO could be improved.

The Walsh and Sexton Report (1999), for example, highlighted that a lack of state-provided insurance cover was a major obstacle for Probation Officers in sourcing suitable community service projects. This led to a solution whereby any injury or damage caused by offenders in the course of a CSO would be covered through the state indemnity and dealt with through the State Claims Agency (Comptroller and Auditor General, 2004: 59).

It was not until the Value for Money and Policy Review of the Community Service Scheme (Department of Justice, Equality and Law Reform, 2009), however, that major operational changes were made. The review identified a number of shortcomings in how the CSO was operating and made recommendations on how the CSO Scheme could be improved.

This led to the Probation Service developing a ‘new model’ of community service. The ‘new model’ was introduced as a pilot in the Dublin area in January 2010 as a first step to introducing it nationwide. It involved the establishment of a dedicated community service unit with enhanced administrative supports and new processes. Same-day CSO assessment at the Criminal Courts of Justice (CCJ) was introduced and a more efficient and speedy return to court of offenders who did not cooperate with the Probation Service while serving a CSO was implemented (Probation Service, 2011: 9).

In 2011, the Probation Service set about expanding aspects of the ‘new model’ of community service to other parts of the country. Same-day assessments were implemented permanently in the CCJ in Dublin and, following that, at Court sittings around the country where there were a sufficient number of referrals to the Service and where facilities were in place for a Probation Officer to compile same-day assessment reports (Probation Service, 2012: 8).

As the CSO became the focus of research studies, improvements began to be made to the sanction. It is important to highlight, however, that while these changes may have improved the operation of the CSO, they did not alter or change the core structures of the CSO. After the changes were implemented, the CSO was still the same sanction introduced in 1983, albeit a possibly more operationally efficient version.

### *Legislative changes*

The second category of developments are legislative changes made in an attempt to expand the use of the CSO. Two are worth noting here: the Criminal Justice (Community Service) (Amendment) Act 2011 and the Fines (Payment and Recovery) Act 2014.

Following the global financial crisis in 2008 and the fall of the Irish economy into severe recession, the government urgently needed to find ways to cut costs and reduce public spending. From the Department of Justice's perspective the prison system was a major expense, increasing year after year. The number of people sentenced to prison each year had grown substantially over the previous 20 years.

In 1991, there were 4435 committals to prison under sentence (O'Mahony, 2002: 597). By 2010 this had risen to 12,487 (Irish Prison Service, 2011). The average daily prison population rose from 2108 in 1990 (O'Donnell *et al.*, 2005) to 4290 in 2010 (Irish Prison Service, 2011: 13). Furthermore, studies commissioned by the Department of Justice to predict the prison population into the future showed this upward trend was likely to continue (Schweppe and Saunders, 2009).

By 2011, when Alan Shatter became Minister for Justice, reducing prison numbers was a top priority. He, like his predecessor in 1983, saw the CSO as a sanction capable of diverting substantial numbers of offenders away from costly prison sentences (Dáil Debates, Vol. 729, Col. 588, 7 April 2011; Seanad Debates, Vol. 209, Col. 926, 26 July 2011). The problem was that many judges appeared reluctant to use the CSO. Since its introduction in 1983, use of the sanction had remained relatively low. To increase the use of the CSO, the Minister introduced the Criminal Justice (Community Service) (Amendment) Act 2011.

As set out in that Act's explanatory memorandum, this increase was to be achieved by amending Section 3 of the 1983 Act to include a requirement that judges consider imposing a CSO in all cases where they would otherwise have imposed a prison sentence of 12 months or less. This was to be the key change to the 1983 Act. It could be argued,

however, that this amendment changed very little, if anything. Essentially all it did was require judges to consider a sanction that already existed and was already available to them. It is difficult to see how this would alter judges' use of the sanction. If a judge was reluctant to impose a CSO prior to the implementation of the Act – because they did not believe a certain type of offender was suitable for a CSO, or they did not believe there were suitable projects in their area for community service, or for any other reason – what did the Act change? It did not address why judges were not imposing CSOs or make any changes to the sanction itself.

The other legislative development affecting the CSO arose in 2016 with the commencement of the Fines (Payment and Recovery) Act 2014, which was introduced to reduce the number of fine defaulters who were being imprisoned each year. Section 19 of that Act gives judges the power to impose a CSO as an alternative to a term of imprisonment for persons failing to pay a fine. Prior to this, when a person defaulted on a fine, judges had no option but to impose a prison sentence. While this is likely to result in a reduction in prison committals for fine defaulters and an increase in the number of CSOs imposed, it has been highlighted that it could also have some unintended negative consequences (Guilfoyle, 2016).

One such consequence is the devaluation of the CSO. Under the Criminal Justice (Community Service) Act 1983, as amended by the Criminal Justice (Community Service) (Amendment) Act 2011, 240 hours' community service is benchmarked against 12 months' imprisonment. Under the Fines (Payment and Recovery) Act 2014, however, when a person is sentenced for failing to pay a fine imposed summarily in the District Court, where the vast majority of fines are imposed, 100 hours' community service is benchmarked against 30 days' imprisonment.

In these cases, the Fines (Payment and Recovery) Act 2014 allows a judge to impose a prison sentence not exceeding 30 days or a CSO of up to 100 hours. If judges are regularly valuing the CSO in accordance with that Act, could this affect how they value and use the CSO when sentencing an offender in the wider criminal justice system?

The concern is that while there may be an increase in the use of the CSO, the category of offender receiving it will change. It can be anticipated that there will be an increase in the use of CSOs in fine default cases and possibly for other low-level offenders, but might there be a reduction over

time in its use as an alternative to prison sentences that are approaching 12 months or beyond?<sup>2</sup>

Both legislative changes were introduced to expand the use of the CSO. The Criminal Justice (Community Service) (Amendment) Act 2011 targeted higher level offenders: those receiving prison sentences of up to 12 months as well as those receiving prison sentences of more than 12 months. The Fines (Payment and Recovery) Act 2014 targeted the very lowest level of offenders – fine defaulters. Again, what is important to note here is that while both sought to expand the use of the CSO, neither of them changed the CSO itself.

Since the CSO was first introduced in Ireland, some developments and changes have been made to the sanction, within the Probation Service or by way of legislation. These changes, however, have not altered the core elements of the sanction. They have not changed what a CSO is in Ireland.

It is important to highlight this for a number of reasons. This experience in Ireland is very different to that in other jurisdictions around the world, especially neighbouring jurisdictions. England and Wales, Scotland and Northern Ireland, for example, have seen fundamental changes to their community service sanctions in recent years, whereby community service can now be combined with a wide range of requirements (drug treatment, counselling, training, etc.), depending on the nature of the crime committed and underlying issues that need to be addressed in order to stop the offending behaviour. There can be a strong rehabilitative focus to these sanctions if a judge so wishes.

There is a danger that this international experience can create a degree of uncertainty and confusion when the CSO is discussed in Ireland. It could lead to the Irish CSO's capabilities – particularly its rehabilitative possibilities – being overstated, and some might expect the Irish CSO to achieve more than it is designed to achieve. If it does not meet expectations, the CSO could be viewed as failing, the focus being on recidivism rates while the high completion rates (Department of Justice, Equality and Law Reform, 2009) and the benefits communities are receiving from the unpaid work carried out are ignored.

<sup>2</sup> For a more detailed analysis of the potential unintended negative consequences of S19 of the Fines (Payment and Recovery) Act 2014, see Guilfoyle (2016).

## **The future**

In 2014 a comprehensive review of penal policy in Ireland by the Penal Policy Review Group was published. It recommended, among many other things, that the Probation Service should examine the feasibility of introducing, on a pilot basis, an integrated CSO where community service could be imposed with additional conditions (Penal Policy Review Group, 2014: 49). The Probation Service has taken this recommendation on board and, at the time of writing, has begun a pilot scheme that allows for up to one-third of an offender's CSO hours to be completed in education, training or treatment.

While this would appear to be a positive development, there is a lot we do not know about the 'new sanction' and how it operates. One criticism is the lack of public debate, discussion or explanation of the changes to the CSO. This makes it difficult, at the present time, to critique the changes properly and to consider and assess the benefits as well as the potential unintended negative consequences that may arise from the changes.

The Penal Policy Implementation Oversight Group has indicated that the pilot scheme should be closely monitored and an evaluation conducted upon completion. It is hoped that this will be done and results will be published to ensure that any potential issues with the new sanction can be identified, teased out and, if necessary, the sanction amended prior to being rolled out nationwide.

The question as to whether legislation would be required in order to introduce the proposed changes also needs to be addressed. The integrated CSO is seeking to incorporate rehabilitation into community service. This would significantly change the Irish CSO.

It should also be noted that, when the Criminal Justice (Community Service) Act 1983 was before Dáil Eireann, an amendment was proposed to allow for part of an offender's community service hours to be spent in education or training. This was rejected by the Minister for Justice, Michael Noonan, who stated:

I stress that [the CSO] is a penalty. I do not think it would be appropriate or desirable to include in this Bill any sanctions which do not have this effect. (Dáil Debates, Vol. 343, Col. 909, 8 June 1983)

This raises some doubts as to whether it would be appropriate to implement the 'Integrated CSO' without going through the legislative

process and allowing the Oireachtas to discuss, debate and approve these changes.

## **Conclusion**

This article began by exploring the provenance of community service as a penal sanction and by setting out the ‘original concept’ of the CSO. It was then shown that while the legislation that introduced the CSO in Ireland was almost identical to corresponding legislation in England and Wales, there were substantial differences between the English/Welsh and Irish CSOs. The Irish CSO was more basic and there was not the same focus on rehabilitation. At its core, the Irish CSO was an alternative to imprisonment that punished offenders while allowing for them to make reparation to the community.

The article then examined the developments that have been made to the sanction over the years in order to understand what it has become. It highlights changes made by the Probation Service as well as by legislation. It argues that while these may have improved the operation of the CSO and attempted to expand its use, they did not alter the core elements of the sanction. They did not change what the CSO is in Ireland.

With the use of the CSO having declined in recent years (Probation Service, 2011, 2012, 2013, 2014, 2015) and with more becoming known about the high levels of mental illness and addiction among prisoners<sup>3</sup> (Kennedy *et al.*, 2004), discussions are once again being had about what changes can be made to the Irish penal system to reduce the use of imprisonment. This article has sought to provide clarity as to what exactly a CSO currently is in Ireland.

With debate about how to reduce the use of imprisonment likely to intensify in the wake of the Penal Policy Review Group’s recommendations, and the piloting of the integrated CSO, it is hoped that this article can provide a base for discussion about the CSO and possible changes that could be made to the sanction to enhance its ability to achieve this important goal.

<sup>3</sup> Michael Donnellan, Director General of the Prison Service, speaking to the Public Accounts Committee on 2 February 2017 said that more than 70% of Irish prisoners have addiction issues. <http://www.irishtimes.com/news/crime-and-law/more-than-70-of-prisoners-have-addiction-issues-1.2961144>

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