Criminal Justice (Northern Ireland) Order 2008

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Summary: One of the most important and far-reaching pieces of Northern Ireland criminal justice legislation was given Royal Assent on 7 May 2008. The Criminal Justice (Northern Ireland) Order 2008 puts in place significant changes to the sentencing framework, providing courts with a range of powers that are designed to address public protection and safety in the community and to improve the criminal justice system. The legislation provides sentencers with the opportunity to pass indeterminate sentences for potentially dangerous offenders. It poses a challenge to the Northern Ireland Prison Service and the Probation Board for Northern Ireland (PBNI) to assess risk, address dangerousness and supervise offenders for lengthy periods.

Keywords: Legislation, sentencing framework, public protection.

The Criminal Justice (Northern Ireland) Order 2008 removes the 50% remission in relation to prison sentences. This arrangement, which had arisen as a result of the Troubles, was criticised by the Northern Ireland public, particularly after the murder of Attracta Harron by Trevor Hamilton within months of his release under 50% remission. Prison sentences will now be served as stated by the court, in full. They will have two components: a period in custody, followed by a period of post-release supervision. For offenders who commit a specified sexual or violent offence and who are assessed as ‘dangerous’, release from custody will be dependent upon the reduction of risk.

The legislation defines ‘dangerousness’ as ‘significant risk to a member of the public of serious harm occasioned by the commission by the offender of further specified offences’. ‘Serious harm’ is defined as ‘death or serious personal injury, whether physical or psychological’. Dangerous offenders may be dealt with by one of two new sentences: an

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indeterminate custodial sentence (ICS), where release is subject to licence which could potentially last for life; or an extended custodial sentence (ECS), where an extended licence period is served which may last for a maximum of eight years for a sexual offence, and a maximum of five years for a violent offence. A new body, to be known as the Parole Commissioners, will make decisions on release.

The PBNI will take the lead in assessments, both at court stage and at tariff expiry stage. It must therefore ensure that assessment instruments are fit for purpose and that staff are trained to a sufficient level as the principle of defensible decision making will be paramount. The Prison Service must ensure that offenders have the opportunity to undertake appropriate programmes to address risk issues identified at the time of sentence. Participation in itself will not be sufficient to indicate reduction of risk; instead, offenders must demonstrate that they do not pose a risk to the public before they are considered for release.

All offenders serving a sentence of imprisonment will have licence conditions on release, and consent is not a requirement. Where there is lack of compliance, recall to prison will be executed through an Executive Recall Unit, with a review of all recalls by the Parole Commissioners. Supervision of offenders in the community is also strengthened. The legislation brings in the power to use electronic monitoring of curfews, not just as a licence condition but also for use in community orders, such as probation orders, and as a condition of bail.

Public protection is also being addressed in the new legislation through the placing of the existing multi-agency risk-management arrangements for sex offenders on a statutory footing. The agencies that are required to co-operate are listed in the legislation, and the arrangements are extended to include violent offenders.

Prison is to be reserved for those who merit it. To help reduce the numbers in custody as a result of their non-payment of a fine, a supervised activity order is to be introduced as a default mechanism. This will be a reparative order where hours of unpaid work will have equivalence to the amount of money owed.

Other matters dealt with in the new legislation include: new powers in relation to knife crime, and to road traffic laws; measures to deal with the sale of alcohol to minors, and test purchase powers in relation to off-licences; increased sentences for driving while disqualified or without insurance; and sentencing by live link will be possible with consent.
In summary, the new legislation contains measures to deal with dangerous sexual and violent offenders, ensuring that they will only be released when their risk to others is reduced. The removal of 50% remission, along with the introduction of compulsory post-release supervision, will support a seamless sentence through custody and beyond to help reduce reoffending. Community supervision is also strengthened, and additional measures are being introduced which seek to improve the criminal justice system in Northern Ireland.

The legislation has implications for the PBN1 in terms of increased responsibility and workload. The government has made provision for the associated staffing and other resources required to keep pace with the phased implementation of the new order. The PBN1 will be central to the criminal justice arrangements in Northern Ireland; a significant challenge, but one that the organisation faces with confidence and determination.