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Department of Justice,  
Home Affairs and Migration

# Policy Review of Criminal Justice (Community Sanctions) Bill 2014

## Working Group Review

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# 1 Background

The Department of Justice, Home Affairs and Migration works across Government to drive reform and further its core vision of achieving a safe, fair and inclusive Ireland.

The completion and publication of this review fulfils Action 1.1 of the *Review of Policy Options for Prison and Penal Reform 2022-2024*, approved by Government in August 2022.

To achieve this action, in December 2020, the Department and the Probation Service established a working group (WG) comprising of staff from the Department's Criminal Justice Policy Function and the Probation Service Business Support and Development Directorate to conduct a review of the General Scheme of the Criminal Justice (Community Sanctions) Bill 2014.

The WG group met continuously during the first three quarters of 2021 and examined each Part of the 2014 General Scheme for consistency with current policy approach and necessary updates. Consultation with the Irish Prison Service also took place in the third quarter of 2021. Subsequent meetings took place throughout 2022 to discuss further matters relating to the review and reach final agreement.

## 2 Executive Summary

The purpose of the proposed Criminal Justice (Community Sanctions) Bill 2014 was to update the Probation of Offenders Act 1907 with modern provisions dealing with community sanctions and the role of the Probation Service in the criminal justice system. It aimed to facilitate the effective and efficient use of community sanctions by the courts and to ensure that the courts have a wide range of appropriate options for dealing with persons who have committed minor offences. The draft legislation also takes account of the interests of victims of crime by making it a statutory requirement for the courts to have regard to the interests of victims when making decisions about community sanctions.

This policy review, which seeks to present necessary updates to the 2014 General Scheme, and offer important additions in places, is an action of, and informed by the guiding principles of, the *Review of Policy Options for Prison and Penal Reform 2022-2024*, approved by Government in August 2022.

This review advocates the use of community sanctions in their own right as opposed to simply an alternative to a custodial sanction and seeks to strengthen the suite of options before the court. In this context, **Part 1** of this review recommends the introduction on a legislative basis of a hierarchy of sanctions to be provided for in the Bill.

In doing so, this review recognises that prison is most appropriate and proportionate for people who have committed the most serious offences and harmful crimes, and who cannot be managed safely in the community. However, it also reflects the evidence-based merit in taking a sparing approach to criminal conviction and imprisonment where appropriate with regards to the rehabilitation of individuals. The sanctions where a conviction follows a judicial decision are identified in order to highlight the discretion which can be applied by the presiding Judge in light of all the facts of the case before him or her. This is also to afford a person every opportunity to avoid a criminal conviction while accepting responsibility for his or her harmful behaviour. However, this review acknowledges that providing for a hierarchy of sanctions may need to be developed in a separate sentencing bill, due to its complexity.

The review also proposes to add the possibility of including a condition of community service of between 30 and a maximum of 100 hours in a Probation Supervision Order, thereby extending the range of community sanctions available to the Court that do not result in a conviction.

This review recommends that **Part 2** of the Bill provides for clarity in relation to Discharge Orders by separating and distinguishing them by their intent and effects to become Absolute Discharge Orders and Conditional Discharge Orders. The making of these Orders by the Judge does not result in a conviction (in the case of a conditional discharge no conviction follows so long as the person complies with those conditions). It is the first step in a progressive penal policy approach that seeks to address offending behaviour for the benefit of society but not necessarily punish the person concerned unless it is considered necessary by the Judge in the individual case.

There has, historically, been a degree of confusion regarding the fact that such Orders are not convictions and so the aim of this policy review is to bring clarity to this situation both in the renaming of the Orders and the defining of them.

The policy review proposes that **Part 3** of the draft Bill shall provide for an expansion of the provision of assessment reports. The intention is that the relevant Head will permit the Court, having found the facts proven and before delivering its decision, to request an assessment report in order to consider the information therein and the appropriate action to take in sentencing the case. Where the facts of an offence are proven, the Court shall request an assessment report where it considers supervision of the person by the Probation Service may be appropriate, either as part of the sentence or post release from custody. In respect of the content of the assessment reports and their relevance to the case, the working group was guided by the European Probation Rules 2010.

On the presumption of an alternative sanction for sentences of 12 months or less, the working group and this policy review concludes that the presumption against short sentences needs a separate policy case and more detailed examination, and cannot be readily assumed in practice.

The policy review proposes that **Part 4** of the Bill should provide for matters relating to community sanctions supervised by the Probation Service, so as to set out a clear suite of options before the Court, thereby following the principle of penal moderation.

In conducting this review, the working group took note of the then Programme for Government commitment to “work with all criminal justice agencies to build capacity to deliver restorative justice, safely and effectively”. Restorative justice should be available at every stage in the sentencing hierarchy, and sometimes as part of sentencing, in a period of supervision. To this end, an additional head is proposed (Head 23A) to enable a Court to request a Victim Mediation process, a Reparation Panel hearing or other restorative justice intervention and receive a report of the outcome before making a sentencing decision.

Penal moderation does not mean ignoring the harm done to victims and society. While every chance is given to a person before the Courts for an offence, the wilful ignoring or disregarding of the opportunity being provided to avoid a prison sentence, redress the harm caused by their offending behaviour, and address that behaviour, can result in a revocation of the Order for non-compliance with the conditions imposed in a Probation Supervision Order provided for in Part 4. Mindful of the reduced use of prison, and not wanting to increase the numbers in prison for such non-compliance, the penalties available to the Court will include the full range of sanctions, including community measures.

**Part 5** of the 2014 General Scheme provides for Reparation Orders. In considering this Part, the working group concluded that, in the absence of a viable alternative, these provisions should be retained, including the provision discontinuing the use of the Court Poor Box. However, the working group also noted that consideration should be given to conducting a review of the reparation fund at a determined period of time after the commencement of the Bill.

**Part 6** of the General Scheme addresses the Probation Service. The policy review recommends the insertion of a description of the Probation Service to assist clarity surrounding its structure and role, and related inclusions for further clarity as required.

**Part 7** provides for the appointment by the Minister of a designated person or persons to carry out the probation inspection functions and provides for these functions. The working group considered this to be an important addition to the accountability and transparency of probation practice. It also meets the obligation in the Council of Europe Probation Rules 2010 that Probation Services are subject to independent inspection.

It is important that procedural fairness is visible in order to maintain confidence in community supervision. While the working group agrees with the intention of the existing Heads of Bill, it feels that it might also be beneficial to examine the Criminal Justice Inspection of NI report on the Inspection of Probation Practice for a more appropriate description and alignment. In this context, while the principle of designating an appropriate person is supported in this review, it is acknowledged that further examination of related matters may be required before introducing the legislative basis for this designation.

**Part 8** of the 2014 General Scheme provides for the amendment of enactments. The policy review identifies certain minor revisions to this list, to reflect legislative developments since 2014.

### 3 Introduction

There are some guiding principles that inform all aspects of penal policy, from diversion through to sentencing, serving a sanction, rehabilitation and exit from sanction, whether community based or custodial. They underpin penal policy and practice, as approved in the Review of Policy Options for Prison and Penal Reform 2022-2024, as approved by Government in August 2022, and provide the rationale for the progression of this review. These include:

- There should be a sparing approach to the use of imprisonment. Imprisonment should be used as a sanction for those who commit the most serious offences and harm and cannot be managed safely in the community.
- All criminal sanctions should uphold human rights and respect the dignity of those affected by criminality – including the victim and all those affected by offending and the harm caused, to individuals and the wider society.
- A penalty, particularly in criminal sanctions and measures, should be fair, feasible, proportionate and assist in the sanctioned person's rehabilitation and reintegration.
- Where possible, opportunity for the sanctioned person to make good and repair the harm caused by offending should be promoted, facilitated and realised.
- Rehabilitation and reintegration of sanctioned persons must be supported and promoted by a range of relevant and appropriate services. Collaboration, co-operation and co-ordination across the justice sector as well as the involvement of the non-criminal justice agencies and other State and community interests sector in addressing offending and assisting people who have offended in maintaining crime free lifestyles is key in achieving positives outcomes for everyone.
- Constructive and appropriate community sanctions and measures, operating with and without Probation Service supervision, provide an effective and accountable response to offending. Their value, at all stages in the penal system, should be fully recognised, as should the value of fairness, equality, proportionality and parsimony in sentencing.

- Penal policy and practice that is evidence informed and data driven is essential to be effective, and necessary for the support and confidence of victims, offenders and the wider community.

For most people in trouble with the law, there are frequently contributory risk factors and personal circumstances at play. There is need for support, guidance and hope, especially when they have failed, even when failure is repeated. Reoffending research, for example, the Probation Service/CSO Reoffending studies show that offending can be diminished over time and therefore the importance of the concept of desistance when working within the criminal justice system should be recognised and promoted. Furthermore, the latest CSO statistics on reoffending in Ireland, published under reservation, found that 45% of those sentenced to a period in custody re-offended within a one-year period<sup>12</sup> compared to 25% for those sentenced to sanctions in the community<sup>3</sup>. It should be noted that these figures do not fully account for differences in the cohorts.

In relation to future trends and associated economic aspects, the IPS has contributed to a broader piece of work on scenario modelling in terms of addressing the courts backlog. However, these are not projections, so have not been included in this review. These were based on hypothetical scenarios modelled by the Courts Service, as opposed to any proposed action on addressing the courts backlog. However, any action taken to increase the Courts Service Clearance rate will have downstream impacts on the IPS in terms of increasing the daily average number of people in custody, the number of people held on remand and prison escorts.

There is also a limit to what the current prison estate can accommodate. To date, the Government has provided significant capital funding to enhance the existing prison infrastructure, with net capacity having been increased by 501 spaces between 2016 and 2025. Recent projects have included adding 96 spaces to the Training Unit in Mountjoy Prison in 2022, increasing capacity in Limerick prison by 22 spaces for women and 90 for men in 2023,

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<sup>1</sup> Please note that, as of 13 February 2025, the CSO's Prison Re-offending Statistics 2019 remain *under reservation*, which may affect the quality of this data. For further information, please consult the CSO website at: [cso.ie/en/releasesandpublications/ep/p-pros/prisonre-offendingstatistics2019/prisonre-offendingfrequentlyaskedquestions](https://cso.ie/en/releasesandpublications/ep/p-pros/prisonre-offendingstatistics2019/prisonre-offendingfrequentlyaskedquestions).

<sup>2</sup> Central Statistics Office. (2022) 'Prison Re-offending Statistics 2019'. CSO.ie (online), 21 June 2022. Available at: [cso.ie/en/releasesandpublications/ep/p-pros/prisonre-offendingstatistics2019](https://cso.ie/en/releasesandpublications/ep/p-pros/prisonre-offendingstatistics2019) [accessed on: 12 February 2025].

<sup>3</sup> Central Statistics Office. (2023) 'Probation Re-offending Statistics 2019'. CSO.ie (online), 18 December 2023. Available at: [cso.ie/en/releasesandpublications/ep/p-prs/probationre-offendingstatistics2019](https://cso.ie/en/releasesandpublications/ep/p-prs/probationre-offendingstatistics2019) [accessed on: 12 February 2025].

and the addition or refurbishment of 126 spaces across several men's open and closed prisons in 2024. In light of the continually increasing prison population numbers, the resulting overcrowding issues and significant numbers sleeping on mattresses on cell floors, a record capital investment of €527 million has been secured for IPS over the next 5 years, following the 2025 review of the NDP, of which €495 million will be invested in building projects to further increase capacity. This will provide for the largest investment in the prison estate in the history of the State. It is anticipated that this will be invested in building projects to deliver on the 2025 Programme for Government commitment to build 1,500 prison spaces by 2031, including:

- A large extension to the existing Cork Prison, due to be developed on the site of the old decommissioned prison building there;
- A new block in Wheatfield;
- An additional block extension at Midlands Prison;
- Additional spaces at Castlerea, Limerick and the Dóchas Centre;
- And it will also fund planning and commencement of the construction of a new prison at the Thornton Hall site in North County Dublin.

There are evident economic savings in using community sanctions compared to the cost of incarceration in this country. We should therefore be slow to spend more on incarceration when investment of resources elsewhere provides greater outcomes.

Irish and international desistance studies have shown that reduction in reoffending and desistance can be prompted, supported and speeded up, over time through supervision in the community, appropriate support and access to services.

For very short sentences, less than three months, the key factors in the argument against their use is not the impact on prison numbers, but the impact on the lives of the individuals, the administrative overhead for IPS, and the impact on the orderly management of prison services to have a constant movement of short stay residents.

For all offence sentence levels, property crime is the key offence group and the consistent use of non-custodial sentences for these offences would have a significant impact on prison numbers. For very short sentences (under 3 months), the key offences are public order and related offences. In the middling bracket of 3-6 months, the most significant area is road traffic offences, and a move away from custodial approaches for cases in which there has been no injury would significantly reduce the rate of committal for road traffic offences.

The arguments for moving away from these sentences include wider policy and rehabilitation concerns, and not just the potential to reduce crowding in prisons. Very short sentences are of particular concern. The very fact of committal is disruptive to the life of the individual, removes them from family support and can close off access to work and accommodation – all key factors in reducing the risk of recidivism. The absence of family support, employment or accommodation on release are all factors which make homelessness more likely and also increase the risk of further crimes being committed. Admission of a person to prison is resource intensive, as is release, and frequent changes to cell and landing population disrupt the structure and order of those on longer sentences, including access to rehabilitative interventions.

In Ireland, the implementation of the Criminal Justice (Community Service) (Amendment) Act 2011 had an immediate impact on custodial sentences of twelve months or less, with an average year-on-year decrease of short sentences (excluding sentences imposed for non-payment of fines) between 2011 and 2016. Notwithstanding the impact of Covid-19 in 2020, and the emergency temporary release measures that needed to be undertaken within the prison estate, the impact of this legislation has been gradually reducing since 2016.

Finding alternatives to short prison sentences, particularly those of less than three months, may be an effective pathway to explore; it offers the greatest reduction of disruption for individuals and for the prison service. It can also be said with some confidence that such short sentences are given for the least serious offences, and so there is less risk to community safety in replacing them with a community sanction. In his 2020 report on recidivism, *An Evidence Review of Recidivism and Policy Responses*, Professor Ian O'Donnell<sup>4</sup> noted that short-term imprisonment was not effective. Core to the review is therefore an approach that seeks to reduce the number of short-term prison sentences and provide the Courts with effective and sustainable alternatives.

Non-custodial penalties, particularly supervised community sanctions, play a significant and vital role in addressing criminality, reducing reoffending and providing a degree of protection to the public. Such disposals not only hold an individual accountable for their behaviour but also offer them a path back to social inclusion and a pro-social lifestyle, which can serve to reduce the damage on their families and their communities. Community disposals also assist in

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<sup>4</sup> Research commissioned by the Department of Justice and published in 2020. Available at: [assets.gov.ie/static/documents/an-evidence-review-of-recidivism-and-policy-responses-may-2020.pdf](https://assets.gov.ie/static/documents/an-evidence-review-of-recidivism-and-policy-responses-may-2020.pdf)

keeping victim issues to the fore in the individual's mind as well as allowing for some restorative justice interventions with the victim's participation when such a disposal is appropriate.

In concentrating on reducing offending behaviour and promoting desistance from crime, this review seeks to increase community safety, thereby reducing the number of people who find themselves a victim of a crime and experience the harm that it brings. That said, it cannot be eliminated and despite successful prosecutions resulting in conviction and punishment (including imprisonment), many victims find this process alone cannot undo the harm they have experienced. Restorative justice is a criminal justice process, which has been shown to help victims recover from crime, reduce reoffending and save public resources.<sup>5</sup>

It is now widely accepted that restorative justice is compatible with the traditional criminal justice systems of both common law and civil law jurisdictions.

Supervision and support on transition from custody to the community, as provided for through temporary release, parole orders and post-custodial supervision orders, can also be a particularly effective system in supporting rehabilitation and integration of former prisoners as can be seen in the strongly positive results from the Community Return Programme.

The key principle underpinning the review of the Criminal Justice (Community Sanctions) Bill 2014 therefore is penal moderation<sup>6</sup> and the review sets out the proposed policy updates for a revised General Scheme reflecting this.

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<sup>5</sup> See, for example, Shapland, J., Robinson, G. & Sorsby, A. (2011). *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders*. Oxford: Routledge; Strang, H. et al. (2013). *Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review*, Oslo: The Campbell Collaboration; Sherman, L. et al. (2015). Twelve experiments in restorative justice: The Jerry Lee program of randomized trials of restorative justice conferences. *Journal of Experimental Criminology*, 11(4), pp. 501-540.

<sup>6</sup> Penal Moderation is a public philosophy focused on the limits rather than the purposes of punishment. Penal Moderation aims to cultivate in public life more responsible speech about punishment and seeks to minimise the resort to penal measures in general and prisons in particular. For more information, please see the works of Professor Ian Loader, Centre for Criminology Oxford University.

## 4 Policy Review

### 4.1 Part 1 (Heads 1-7)

The Policy Review recommends that an appropriate place towards the beginning of the Bill should be utilised to foreground the need to take a proportionate approach to sentencing in order to underscore the rehabilitative intention of penal policy for adult offenders, similar to the approach already taken in respect of juvenile offenders in the Children Act 2001.

The intention is to highlight the value of imposing community-based disposals, where possible, for people who have offended and communities, and provide for consideration to be given to the interests of the victims in sentencing. The working group also considers that, when the Court is imposing a custodial sentence, it should explain in ordinary language why it is doing so.

In order to assist the Court in applying this principle, the working group considered, as an example, the hierarchy of sentences and orders as set out in Section 10A of the New Zealand Sentencing Amendment Act 2007, and suggests that a similar provision should be adopted in this jurisdiction, adapted to reflect the community-based sanctions in Ireland.

For this purpose, the working group includes below a proposed indicative hierarchy of sentences and orders, from the least restrictive (a) to the most restrictive (j), but also providing for post-release supervision (k). ***(However, this review acknowledges that a hierarchy of sanctions may need to be developed in a separate sentencing bill, due to its complexity.)***

#### **(a) Absolute Discharge Orders**

The facts in this case are proven to the satisfaction of the court and/or the person has admitted the offence. There is no conviction or criminal record. (Replaces DPOA, S. 1 (1)(i)) 1907)

#### **(b) Conditional Discharge Orders**

The facts in this case are proven to the satisfaction of the court and/or the person has admitted the offence. It is an unsupervised discharge with conditions to keep the peace and be of good behaviour for a specified period.

While not resulting in a conviction or criminal record, it should be cited in Court if the person is convicted of an offence that breaches the 'keep the peace' and 'be of good

behaviour' conditions of the order. (Replaces Binding Over for a period to Keep the Peace)

**(c) Deferred Sentence Supervision Order**

This is an interim order deferring the sentencing of a person by the Court with specific conditions and supervision by the Probation Service for a maximum period of 6 months. It can be used only once in a case. It provides the person with an opportunity to prove to the Court their intention to lead a pro-social lifestyle. While the facts in this case are proven to the satisfaction of the court and/or the person has admitted the offence, there is no conviction or otherwise in the matter until decided by the sentencing Court on the return date when the full range of sentencing will still be available at this final point. The person's behaviour and co-operation is a critical element in the sentencing decision.

**(d) Probation Supervision Order**

This is an order supervised by the Probation Service with appropriate conditions made in the District Court for a maximum period of 18 months with an option to discharge early by application to the Court by the person or the Probation Service. It is not a conviction or criminal record matter. (Replaces S. 1(1) (ii) 1907).

When a breach of the Probation Supervision Order occurs and is proven in Court, the Court can proceed to conviction on the original matter and the person is subject to resentencing for the original offence, as provided for in the Probation of Offenders Act 1907. This could mean a conviction for the individual at that point.

The working group has added the possibility of including a condition of community service of between 30 and a maximum of 100 hours in a Probation Supervision Order, thereby extending the range of community sanctions available to the Court that do not result in a conviction.

Where the Court is not considering a custodial sanction, it may use this provision to impose community service as a condition of the order. Where the Court is minded to impose a custodial sentence but is required to consider Community Service as an alternative, it shall continue to use the provisions of the 1983 Act as amended.

**(e) Court Ordered Fine**

A financial penalty imposed by a Court in sentencing. This results in a conviction and is recorded in the criminal record of the person.

**(f) A Compensation Order**

This is an order provided for in the Criminal Justice Act 1993. Following conviction for an offence, the Court may make an order requiring the person to pay compensation in respect of any personal injury or loss resulting from that offence (or any other offence that is taken into consideration by the court in determining sentence) to any person (referred to as the “injured party”) who has suffered such injury or loss. The Court may impose a Compensation Order in addition to or instead of utilising any other sanction unless it sees reason to the contrary.

**(g) A Restriction On Movement Order (Section 101 Criminal Justice Act 2006)**

Section 101 of the Criminal Justice Act 2006 provides that where a person is convicted of a public order offence or a non-fatal offence against the person (specified in Schedule 3 of the Act), and the Court considers it appropriate to impose a custodial sentence of 3 months or more it may, as an alternative, impose a Restriction of Movement Order (RMO) on the person. An RMO may be in place for a maximum of six months and the person shall keep the peace and be of good behaviour. Conditions may be specified in the order to assist the person to achieve this.

**(h) A Community Service Order**

This is an order provided for in the Criminal Justice (Community Service) Act 1983, as amended, as an alternative to a stated custodial sentence. It is supervised by the Probation Service requiring the person to complete a number of hours of unpaid work in lieu of a specified custodial sentence. It is a recorded conviction for criminal record purposes. If a person fails to comply with such an Order, the matter is returned to Court. Where non-compliance is proven, the Court can then deal with the substantive matter that was originally dealt with by way of the Community Service Order. At this point, the Court can consider imposing the specified custodial sentence or make any other order that would have been available to the Court at the time of originally sentencing the individual.

**(i) Partially or fully suspended custodial sentence**

A partially or fully suspended sentence means the sentencing court makes an order suspending the execution of the sentence of imprisonment in part, subject to the person entering into a recognisance (Bond) to comply with the conditions of, or imposed in relation to, the Order.

Two mandatory conditions attach to the Order - the person must keep the peace and be of good behaviour during the period of imprisonment and the period of the suspended sentence concerned. A Court has wide discretion to impose other conditions including supervision by the Probation Service. It is a recorded conviction for criminal record purposes.

**(j) A sentence of imprisonment**

A sentence of imprisonment can be imposed where provided for in statute and where a Court is satisfied that none of the penalties or sanctions above are appropriate to ensure the safety of the community, the rehabilitation of the person or the other purposes in sentencing.

**(k) Post-Release Supervision Order**

A Court that is imposing a custodial sentence on a person convicted of a scheduled sexual offence under the Sex Offender Act 2001 is obliged to consider whether to impose a sentence involving post-release supervision. In making this determination, it must consider the need for the person's rehabilitation, public protection, and the likelihood of further offences being committed after release. The post release supervision provided by the Probation Service is a community sanction that comes into effect after the person has completed the custodial part of their sentence. The post release supervision order is part of the sentence of the Court, which is a conviction for criminal record purposes. Any breach of conditions of the post release supervision period of the sentence (an Order under Section 29) which has been proven in Court (a Section 29 Order) can result in the imposition of a fine and/or a custodial sentence of up to 12 months. The period spent in custody serves to place a hold on the period of supervision originally imposed and must be completed upon the individual's release from custody.

**(l) Restorative Justice**

Restorative justice can be utilised with any of the sentences and orders above.

Noting that legislative provisions regarding sentencing are complex, it is a policy recommendation that such a hierarchy of sanctions be put on a statutory footing possibly in a separate sentencing bill, subject to the details being addressed in the drafting process.

## **4.2 Part 2 (Heads 8-15)**

The working group considered that there is a need to provide for clarity in relation to Discharge Orders by separating and distinguishing them by their intent and effects to become Absolute Discharge Orders and Conditional Discharge Orders. The making of these Orders by the Judge does not result in a conviction (in the case of a conditional discharge no conviction follows so long as the person complies with those conditions). It is the first step in a progressive penal policy approach that seeks to address offending behaviour for the benefit of society but not necessarily punish the person concerned.

There has, historically, been a degree of confusion regarding the fact that such Orders are not convictions and so the aim is to bring clarity to this situation both in the renaming of the Orders and the defining of them.

The matters to which a Court may have regard to, for the purposes of discharging a person absolutely or on conditions, should be clearly set out. It is proposed that, in addition to the factors to which the Court may have regard to in relation to the circumstances relating to the person, a specific reference to the interests of any victim of the offence should be included.

The period for which a conditional discharge shall be in place should not exceed 2 years.

It is intended that a person before the Court should have an understanding of the implications and consequences of having a matter disposed of by way of a conditional discharge. Before making an order for conditional discharge, the Court should, in ordinary language, explain to the person that no conviction has been recorded against them and the opportunity and consequences of the Order.

Where an individual commits another offence during the life of a conditional discharge, and is convicted of the new offence, the original conditional discharge is technically breached and becomes an aggravating factor in the sentencing for the new offence. This is to ensure that persons who offend repeatedly do not have a string of conditional discharge orders in existence while continuing to commit offences. The conditional discharge order is intended to give a person a chance to avoid a criminal conviction, return to society and lead a pro-social lifestyle.

The Absolute and Conditional Discharge Order reflect the first steps in a suite of measures available to the Court which can result in no conviction.

### **4.2.1 Removal of Binding Over Orders**

Binding Over Orders are a civil disposal available in the Criminal Courts in common law jurisdictions that have been used as a means of dealing with low-level offending. Binding Over Orders derive originally from the Justices of the Peace Act 1361, which provided Courts with the power to bind over people who offend to keep the peace. More usually, Binding Over Orders in practice, are simple common law orders available at the discretion of the sitting Judge and sometimes used as an alternative to Section 1(1)(i) or unsupervised orders 1(1)(ii) of the Probation of Offenders Act 1907. In this Community Sanctions Bill, the working group proposes to simplify and clarify the available sanctions by providing for Absolute and Conditional Discharge Orders and discontinue reference and provision for Binding Over Orders.

## **4.3 Part 3 (Heads 16-22)**

### ***Head 16: Probation Assessment Reports***

The working group considered that it was not in keeping with the principle of penal moderation if a Judge can only request an assessment report after a person has been convicted. This precludes judges from requesting a report in cases where they may have a dismissal under the Probation of Offenders Act (DPOA) type sentence or other non-conviction disposal in mind.

A step needs to be inserted whereby the Court, having found the facts proven may, before delivering its decision, request an assessment report in order to consider the information therein and the appropriate action to take in sentencing in the case.

Where the facts of an offence are proven, the Court shall request an assessment report where it considers supervision of the person by the Probation Service may be appropriate either as part of the sentence or post release from custody.

In respect of the content of the assessment reports and their relevance to the case, the working group was guided by the Council of Europe Probation Rules 2010, specifically rules 42-45. Reports should be as up-to-date and accurate as possible and written in respect of specific offences. Old reports that may have been retained on file, in accordance with GDPR should not normally be submitted again.

In keeping with the Council of Europe Probation Rules, the preparation and presentation of pre-sentence reports must fully respect the procedural rights and safeguards provided by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which affirms the presumption of innocence.

The principal purpose of a pre-sentence report is to provide relevant information to assist the Court in its decision on the appropriate sentence. A pre-sentence report is neither a plea of mitigation, nor part of the prosecution case. It offers independent information and professional opinion. It should be fair and impartial, in the sense that all relevant information shall be included, whether to the advantage of the person or not.

The current subhead (3) is in direct contravention of this approach. Subheads (6) to (8) are also rendered unnecessary.

#### ***Head 18: Time limit for preparation of the report***

The working group noted that this Head is based on the Community Service Acts and the Children Act 2001. This is not comparing like with like. Assessing a person's suitability for Community Service and preparing a suitable report for the Court to assist in the decision requires different resources to a full Probation Report for the purposes of supervision and appropriate interventions. The Children Act has specific needs in dealing with children.

Specifying timelines can cause frustration for the Courts when they are not met as well as problems for report writers where deadlines are too short or restrict necessary enquiries.

The working group consider it unnecessary to include specific timelines in primary legislation for the preparation of assessment reports.

It may be necessary for a Probation Officer to make an application in Court for an extension of time when a Judge orders a report. If the application is not made at the time of requesting, it will require a completely separate process to bring an application for an extension of time before the Courts and notify the parties of the extension. Providing for an application to be made at the time of adjournment prior to sentencing simplifies the process.

#### ***Head 20: Access to reports***

The working group notes that this Head is based on section 103 of the Children Act 2001. The group therefore understands that the inclusion of "or other proper officer of the Court" may have been necessary in cases involving child offenders. The working group suggests that the correct procedure in respect of adult offenders is that the reports be made available by the

Probation Service to the Clerk of the Court and for the Court to decide on appropriate access and distribution.

It is not the intention to restrict access to any given individual but rather it is the manner in which the information may be shared that is of concern. Each individual has certain rights to information that relates to them. Sometimes reports contain information relating to others such as statements made. Also of particular concern is any possible commentary regarding victims or third parties. There is also concern regarding uses that may be made of the report subsequent to the hearing of the case. The Probation Service, therefore, does not, in practice, make the report requested by the Court and prepared for the Court, available to anyone else except the Clerk of the Court.

In terms of fair procedure, the working group considered that the reason why someone is getting access to the report should be consistent with the needs of the case, such as being aware of the information before the Court in advance of a hearing in order to prepare a proper defence.

In considering access to reports and the use of the information they contain, the working group took particular note of the method of disclosure of information in the New Zealand jurisdiction. In general, the working group considered that the approach to the disclosure of information in Section 28 of the New Zealand Sentencing Act 2002 provides some clarity for Courts in respect of who may have access to the information contained in reports prepared for them and for what reasons, and the circumstances where information will not be disclosed in order to protect the interests of the person, victims or third parties

## **4.4 Part 4 (Heads 23-29)**

### ***Head 23: Matters to be considered by the court regarding supervised community sanctions***

The working group noted that the purpose of this Head is to set out the matters to which a Court should have regard in determining whether a supervised community sanction would be an appropriate way of dealing with a person convicted of an offence. It also noted that it is drawn from Section 96 of the Children Act, 2001 - Principles relating to exercise of criminal jurisdiction over children.

In examining the purpose of this Head, the working group considered the language used in Section 7 of the New Zealand Sentencing Amendment Act 2007 setting out the purposes and principles of sentencing. The working group also did not consider it necessary to lose all of the language of the original 1907 Probation of Offenders Act in terms of its broad application and

flexibility. To this end, the group suggests that Head 23 should provide that, in determining whether a supervised community sanction would be an appropriate way of dealing with a person in respect of whom an offence has been proven, a Court shall have regard to the following considerations:

- the protection of the public and community;
- the seriousness of the offence and the nature of the harm caused;
- the need to have due regard for the interests of any victim of the offence;
- the provision of reparation for the harm done by the offence;
- character, antecedents, age, mental health and any other relevant circumstances of the person;
- the development in the person of a sense of responsibility for, and an acknowledgment of, the harm done by the offence committed by him or her;
- the extent to which the imposition of a supervised community sanction may reduce the likelihood of the person committing further offences;
- the facilitation of the rehabilitation and reintegration of the person; and
- the human rights of all parties

#### ***Head 23A: Restorative Justice (proposed)***

In conducting this review, the working group took note of the then 2020 Programme for Government commitment to “work with all criminal justice agencies to build capacity to deliver restorative justice, safely and effectively”. Restorative justice should be available at every stage in the sentencing hierarchy, and sometimes as part of sentencing, in a period of supervision.

An additional head to enable a Court to request a Victim Mediation process, a Reparation Panel hearing or other restorative justice intervention and receive a report of the outcome before making a sentencing decision is proposed. It should probably be located before the making of supervised orders as the outcome could be an absolute discharge, a conditional discharge, a supervision order or any other available sanction.

This new head should provide that:

- A Court may request, in proceedings dealing with any criminal charge before the Court, that the Probation Service make arrangements for:
  - a Victim-Offender Mediation Process;
  - a Reparation Panel hearing;
  - any other restorative justice intervention deemed appropriate by the Court.

- The Court shall receive, at a hearing date decided by Court, a report on the outcome of the request and any intervention arranged by the Probation Service made under this Act.
- The Court decision in the criminal charges before the Court will not be bound by any intervention or report requested by the Court.

#### ***Head 24: Deferred sentence supervision order***

The provisions in this Head only allow the Court to defer sentencing once. Therefore, separate provision needs to be made, or the inclusion of an exemption for situations pertaining to problem solving Courts such as the Drug Court which make use of continuous adjournments in a step-by-step approach.

The working group suggests the use of an appropriately broad definition, rather than specifying the Drug Court, in order to future-proof the legislation. There may be for example, specialist Mental Health or Domestic Violence Courts in the future. There may be a need to include situations where a person's mental health is at issue and the Court needs to be in a position to problem solve this in respect of the additional services that are required to address the behaviours and harms that has brought the person into contact with the Criminal Justice System. This is only an enabling provision and not a recommendation to include such Courts.

The working group also considers the Head more cumbersome than is necessary for the effectiveness of the Order.

In Subhead (2) it should not be necessary to have to wait for an assessment report before deferring a sentence. The sentence may be deferred on conditions and supervision by the Probation Service, with a report prepared for Court in advance of any sentence being imposed.

The conditions in Subheads (3) and (4) can be simplified and aligned with the conditions in Article 4 of Framework Decision 2008/947/JHA and the Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019.

The deferred supervision order would not be eligible for transfer under Framework Decision 2008/947/JHA and the Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019 as the minimum length remaining at the time of transfer, of an order eligible for transfer, is six months, the full term of a deferred sentence order.

In Subhead 8, the working group considered the premise to be sound but the subhead to be open to interpretation. It should be possible to return the person to court for sentencing earlier if he or she is convicted of another offence. However, the working group do not wish to repeat

the operational difficulties experienced by similar provisions in Section 99 of the 2006 Criminal Justice Act (suspended sentences) where all avenues of appeal have first to be exhausted.

There are similar deferment of sentencing provisions in Section 3 (specifically subsections (4) to (6)) of the NI Criminal Justice Order 1996 that the working group thought helpful to this.

For the purposes of the Criminal Justice (Community Sanctions) Bill, it should be made clear that what is needed is a mechanism to bring a person back to Court to present information to the Court (e.g. non-compliance). It is then a matter for the Court, at that point, to decide on sentencing. Unlike Section 3 of the 1996 NI CJ Order, in Head 24 there is no conviction until the Court decides on the appropriate sentence. Care needs to be taken that the jurisdictional hierarchy of the Courts is respected. In returning a person to Court for non-compliance, a District Court should not pass sentence on a sentence that has been deferred originally in the Circuit Court.

Subhead 15(d) appears to suggest that the supervising Probation Officer will be available in court on the day. The working group see this as impractical and unnecessary. It should be enough to provide that the supervising Probation Officer will provide an updated report to the Court.

#### ***Head 25: Probation Supervision Order***

The working group notes that the explanatory note for Head 25 states that it makes provision for probation supervision orders, which will replace probation orders and conditions of recognisances under Section 2 of the 1907 Act.

Section 1(1) (ii) of the Probation of Offenders Act 1907 Act makes provision for discharging a person conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order. That recognisance may include a condition requiring supervision by a probation officer.

Such an order is made where, in accordance with Section 1(1), the charge is proved, and the Court is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, it may, without proceeding to conviction.

Section 1(2) of the Probation of Offenders Act 1907 Act makes provision for a person who has been convicted on indictment of any offence punishable with imprisonment, and the court is of opinion that; having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the person on probation. The court may, in lieu of imposing a sentence of imprisonment, make an order discharging the person conditionally on his or her entering into a recognisance, with or without sureties, to be of good behaviour and to appear for sentence when called on at any time during such period, not exceeding three years, as may be specified in the order.

The working group considers that the provisions relating to the imposition of a Probation Supervision Order in the District Court and in the Circuit Court merit a separate Head for each Court for the sake of clarity.

Following on from the Court's ability to make an absolute discharge order or a conditional discharge order, neither of which result in a conviction and neither of which involve supervision by the Probation Service, it should be possible for the Court to impose a Probation Supervision Order in the District Court which results in no conviction following successful completion. The working group deliberated on the merits of providing for Probation Supervision after conviction in the District Court and agreed that it was unnecessary and more appropriate to the Circuit Court, as provided for in the Probation of Offenders Act 1907.

The working group also considered how it could expand the range of community sanctions available to the Court where it may not be considering prison as an appropriate sanction but feels that some form of payback or public acknowledgement to the community for the harm caused is required. The working group therefore recommends the inclusion in this Head of a provision for the Court to impose a condition of Community Service of between 30 and 100 hours as part of a Probation Order.

Where the Court is considering prison but first must examine the possibility of community service as an appropriate alternative sanction as provided, then it should use the provisions of the Criminal Justice (Community Service) Act 1983 as amended.

The group also considered the fact that the Community Service Order hours available to the Circuit Courts in the Criminal Justice (Community Service) Act 1983, as amended, are set at the same limits as that for the District Court, i.e. Between 40 and 240. The group recommends increasing the range of hours for a Community Service Order imposed in the Circuit Court to

reflect the jurisdiction of that Court and enable more use of Community Service in the Circuit and Higher Courts. The suggested amendment to the Criminal Justice (Community Service) Act 1983, is to provide for Community Service Orders of between 40 and 360 hours is included in Part 8.<sup>7</sup>

The Head may also need to provide for an extension of the time allowed to complete a Community Service Order imposed in the Court above 240 hours.

### ***Subhead (2)***

The working group does not consider that it should always be necessary for a Court not to make a Probation Supervision Order in respect of a person unless it has first considered a report. There should be a preference for the Court to have a report but also to have authority to make a Probation Supervision Order without delaying for a report in exceptional circumstances.

### ***Subhead (3)***

The working group considers, as previously referred to in the deferred supervision order, that the conditions should be aligned with those set out in the Framework Decision 2008/947/JHA and the Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019. An obligation to carry out community service is included here because provision is being made for community service of between 30-100 hours being included as a condition of a probation supervision order.

### ***Subhead 3 (iv):***

The working group considers that in light of the principles of purposefulness and proportionality, the conditions set out in Subhead (3) (v)-(viii) and Subheads (6) to (9) are unduly prescriptive and unnecessary for the effective rehabilitation of people.

### ***Subheads 10 and 11***

Consent to make an order is an important element when it comes to breaching for non-compliance.

### ***Subhead 13***

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<sup>7</sup> Note that since the working group made this recommendation, it was decided to increase community service hours from 240 to 480 hours. The proposed amendments are included in the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025.

The working group considered that the timeframe provided for, while workable for the Probation Service in most circumstances, could be problematic in practice for the Courts Service and the smooth running of proceedings. It will require their detailed observations particularly around the risk and costs arising in applications for extension of time to complete assessments and enquiries.

The working group proposes the removal of specific time periods. Specific time periods in the legislation could be inflexible in practice, lead to administrative and legal problems, and would be difficult to revise or amend when circumstances change. A preferred alternative would be to propose that there could be regulations, if needed.

### ***Subhead 15***

The working group noted that this Subhead is intended to deal with cases where a person before the court is already subject to a previously imposed probation supervision order or supervised community sanction. It allows for concurrent probation supervision orders or the imposition of a probation supervision order in addition to another supervised community sanction. It also provides for overlapping or consecutive periods of supervision. To simplify this, the working group suggests that it be brought into Subhead (1) where the length of an order or any combination of orders is provided for and shall not exceed a period of 18 months in the case of summary disposal or 2 years on conviction on indictment.

### ***Head 26: Variation or extension of probation supervision order and Head 27: Revocation of probation supervision order***

The intention behind the Heads is better served by focusing on varying an order by adding relevant, purposeful and proportionate conditions as opposed to placing a primary focus on extending the Order. It is not considered fair or reasonable that the Probation Service should be able to seek the extension of a person's sentence.

If the person is motivated to address issues and the Probation Officer wishes to assist, this can be done by voluntary arrangement. The time to complete a Community Service Order can be extended but the Probation Officer should not have the power to seek an extension to the number of hours a person has to perform which was imposed by the Judge. In a similar way, a Probation Officer should not be able to seek to extend the supervision period imposed by the Judge. Where circumstances arise, such as the funding of, or a right to remain, in accommodation that is dependent on the existence of a Supervision Order, the Probation

Service should have its own management arrangements in place to meet such requirements and issues where they arise. These can be formal or voluntary.

***Head 29: Revocation of probation supervision order where term of imprisonment imposed on offender***

This Head provides that if a custodial sentence of more than 3 months is imposed on a person while a probation supervision order is in force, the probation supervision order is deemed to be revoked and ceases to have effect from the date of commencement of the sentence, unless the court is satisfied that exceptional circumstances justify the continuation in force of the probation supervision order.

Prison is not necessarily the answer to repeat offending – prison is a sanction to be reserved for those who cannot be managed safely in the community. Head 29 is not in keeping with this principle. Allowing a Judge to revoke an existing supervision order that is deemed appropriate by another Judge, and impose a prison sentence takes away the supervision element of another sentence and therefore the opportunities and possibilities for rehabilitation upon release from custody if the Order is still in existence at that point.

The Working Group recommends that provisions supporting the presumption of an alternative sanction for sentences of 12 months or less, inclusive of safeguards in respect of domestic violence offences, should be examined to support a penal moderation approach.

In a presumption of alternatives to custodial sanctions scenario, Judges will be obliged to exhaust the suite of alternatives before it, before imposing a custodial sentence of 12 months or less, and will have to provide the reasons why a custodial sentence is deemed appropriate in the case. It will therefore be contradictory and counterproductive to provide that a Judge could impose a custodial sentence and revoke an existing supervision order.

Pending the introduction of such a measure, the provision in Head 29 should be amended to a custodial sentence of more than 12 months and the Court has the option to “pause” rather than “revoke” the supervision order.

***The presumption of an alternative sanction for sentences of 12 months or less.***

Non-custodial penalties, particularly supervised community sanctions, play a significant and vital role in addressing criminality, reducing reoffending and providing a degree of protection to the public. Such disposals not only hold an individual accountable for their behaviour but also offer them a path back to social inclusion and a pro-social lifestyle, which can serve to reduce the damage on their families. Community disposals also assist in keeping particular

victim issues to the fore of the individual's mind as well as allowing for some restorative justice interventions with the victim's participation when they wish to do so.

The January 2021 report by the Sentencing Academy found that, while there may be differences between the two offender cohorts, the re-offending rates for offenders sentenced in England and Wales to short terms of immediate imprisonment were higher than rates for offenders sentenced to either a community order or a suspended sentence order, 48% for those sentenced to a period in custody compared to about 33% for those sentenced to community orders.

The latest CSO statistics on recidivism reoffending in Ireland, published under reservation, found that 45% of those sentenced to a period in custody re-offended within a one-year period compared to 28% for those sentenced to sanctions in the community. It should be noted that these figures do not fully account for differences in the cohorts.

There are evident economic savings in using community orders compared to the cost of incarceration in this country. The average cost of an "available, staffed prison space" in 2019/2020 was €75,349. Probation Supervision is estimated to cost a tenth of this figure at €7,000 per year.

One of the most significant issues surrounding prison and probation numbers relates to the number of sentences of less than 12 months duration. In 2019, the Scottish Government, in the Presumption against Short Periods of Imprisonment (Scotland) Order 2019, extended the existing presumption from 3 to 12 months provided for in the Criminal Justice and Licensing (Scotland) Act 2010. The Order requires that a Court must not pass a sentence of imprisonment of less than 12 months unless it considers that no other sentence is appropriate. The Court must record the reasons for its sentencing decision. The proportion of all disposals accounted for by custodial sentences of 12 months or less fell from 12.8% in April 2019 to 9.5% in November 2019.

Other short-term prisoners (sentences of less than 4 years) are released at the half-way stage of their sentence unconditionally. Long term prisoners (sentences of more than four years) are released at the two thirds stage of their sentence with conditions. All sexual offenders whether short- or long-term prisoners are released under supervision. Scottish legislation allows a Court to return an offender to prison to serve what would have been the remainder of his or her sentence if he or she has committed another offence during their period of early release.

Several other countries have similar provisions in their statute or criminal code but the Scottish system is considered to be the most suitable to adapt to the Irish system. Having examined the

Scottish provisions, the working group considers that they could be mirrored here including the additional safeguards for victims in the Domestic Abuse (Scotland) Act 2018 and such measures merit a separate policy review in an Irish context. Having considered the material set out above, the working group concluded that the presumption against short sentences needs a separate policy case and more detailed examination and cannot be readily assumed in practice.

## **4.5 Part 5 (Heads 30-33)**

The Law Reform Commission, in its 2005 report *The Court Poor Box: Probation of Offenders*, recommended an end to the use of the Court Poor Box, to be replaced with the Financial Reparation Order to be used in the context of a conditional discharge. The premise for this is the avoidance of a conviction where the Court is of the mind that the offence is minor and the individual circumstances do not merit a criminal sanction but considers that some form of penalty should apply.

At the core of the Commission's report was an acceptance that some form of disposition similar to the Court Poor Box, should be available to sentencing judges. In that respect, the Commission was of the view that certain aspects of the current Court Poor Box disposition, in particular its use in appropriate cases to avoid a permanent criminal record and its consistency with the principles of restorative justice, should be preserved.

The General Scheme of the Criminal Justice (Community Sanctions) Bill 2014 sought to address the recommendation of the Commission in providing for Reparation Orders and the establishment of a Reparation Fund. This is to be a centralised fund, collected by the Courts Service, subject to updated agreement, and transmitted to the Department of Justice for appropriate distribution.

One of the essential elements of this approach for the LRC is that there must be a finding or an admission of guilt. It pointed out that the Court Poor Box disposition is often applied without formally proceeding to establish the guilt of the defendant. The General Scheme of the 2014 Bill establishes this, and recommendations made in this review relating to conditional and absolute discharge orders, and the removal of reference to binding orders, in Part 2 above, should provide further clarity on this matter.

In the absence of sufficient evidence to identify a viable alternative to the approach provided for in the 2014 draft Bill, the working group has found that provisions for the introduction of reparation orders and the establishment of a reparation fund should be retained, as should the

provision removing the Court Poor Box. However, the working group notes that the establishing of a reparation fund is not without risk, in relation to cost or reputational damage, regarding the potential failure to pay such orders and the costs incurred relating to enforcement which will far exceed the costs of the current Court Poor Box system.

To address this risk, the working group engaged with the Courts Service and has concluded that Reparation Orders are to be made only at the time of payment. This will reproduce the immediacy offered by payments to the Court Poor Box and avoid the danger of establishing a Reparation Order as another type of fine, which would have associated drawbacks regarding non-payment and collection.

The impact of the changes brought about by the abolition of the Court Poor Box, and the functioning of the Reparation Fund, should be reviewed within a determined period of time following its legislative commencement. 5 years may prove an adequate period of time to develop an understanding of the practical implications of the running of the fund.

## **4.6 Part 6 (Heads 34-36)**

The working group recommends the insertion of a description of the Probation Service to assist in clarity surrounding its structure and role.

### ***Head 34: Role of Probation Service in relation to court proceedings***

The working group noted that the purpose of Head 34 is to provide that the Probation Service may be required to prepare reports or supervise offenders only where there is express statutory provision for the preparation of such reports or for the supervision in question. This is too restrictive. Some flexibility is needed and the addition of “where possible” as a qualifier may suffice. The working group suggests that the Head be loosened a little to enable courts to seek reports in exceptional cases where the Court deems it necessary and appropriate as part of the sentencing process.

Subhead (2) makes it clear that a Court can request the Probation Service to prepare victim impact reports for the purposes of section 5 of the Criminal Procedure Act 1993, as substituted by section 4 of the Criminal Procedure Act 2010. Given that this is provided for in Statute, the working group is of a view that its inclusion in the provision in Subhead (1) is unnecessary. However, the working group also recognises that it is reinforcing to see specific references to provisions affecting the victims of crime in the legislation.

The working group suggests the inclusion of a paragraph providing a description of the role of the Probation Service in Court proceedings.

### ***Head 35: Appointment and duties of probation officers***

The working group noted that Head 35 provides for the appointment of probation officers and their duties and proposes to replace sections 3 (Probation officers) and 4 (Duties of probation officers) of the Probation of Offenders Act 1907.

In setting out the general framework for the appointment and duties of Probation Officers, the working group felt that subhead (3) was better suited to being included in Regulations such as providing that the Minister may make Regulations from time to time determining the requirements, qualifications and skills necessary for appointment as a Probation Officer. Including specific qualifications in legislation is too fixed in time and inflexible. Its rigidity limits the Minister's and the Director's capacity to revise and update qualifications, competencies and skills as needed.

Subhead (4) is based on section 4 of the 1907 Act and section 259 (Duties of probation officers) of the Children Act 2001, which provides for the duties of probation officers in relation to children under probation supervision. It also draws from the Council of Europe's European Probation Rules (Recommendation CM/Rec(2010)1). The working group considered that these could be tightened up.

## **4.7 Part 7 (Heads 37-39)**

### ***Head 37: Designated Person***

The working group noted that Head 37 provides for the appointment by the Minister of designated person or persons to carry out the probation inspection functions provided for in Part 7 and that Head 38 provides for the functions of the designated person(s). It draws from section 31 (Functions of Inspector) of the Prisons Act 2007 and section 117 (Objective and functions) of the Garda Síochána Act 2005.

The working group considered this to be an important addition to the accountability and transparency of probation practice. It also meets the obligation in the Council of Europe Probation Rules 2010 that Probation Services are subject to independent inspection.

It is important that procedural fairness is visible in order to maintain confidence in community supervision. While the working group agrees with the intention of the existing Heads it feels

that it might also be beneficial to examine the Criminal Justice Inspection of NI report on the Inspection of Probation Practice for a more appropriate description and alignment.

The European Probation Rules 2010 also provide some guidance on this matter:

- **Rule 8:** Probation agencies, their tasks and responsibilities, as well as their relations with the public authorities and other bodies, shall be defined by national law.
- **Rule 9:** Probation shall remain the responsibility of the public authorities, even in the case when services are delivered by other agencies or volunteers.
- **Rule 15:** Probation agencies shall be subject to regular government inspection and/or independent monitoring.
- **Rule 103:** Probation agencies shall be accountable to the competent authorities and subject to regular government inspection and/or independent monitoring and shall co-operate fully with all such scrutiny. The findings of independent monitoring bodies shall be made public.

The Inspector of Prisons is required by statute to submit an annual report to the Minister. The report covers the performance of the Inspector's functions during the previous year. The report must be laid before each House of the Oireachtas and be published. The working group recommends that similar provision be made for the Inspector of Probation.

If the Minister requests a report on any matter of a prison inspection, then that report must go before the Oireachtas (Section 31 of the Prisons Act 2007). The working group considered that it would be prudent to also provide that where the Minister or Director requests a report on any matter of probation inspection than that report shall also go before the Oireachtas.

The appointment of the designated person or persons would represent a significant development in relation to independent oversight, and there may be merit in considering where this will sit in the broader oversight context with a view to ensuring suitable alignments and efficiencies where appropriate. In light of this, while the principle of designating an appropriate person is supported in this review, it is acknowledged that further examination of related matters may be required before introducing the legislative basis for this designation.

## 4.8 Part 8 (Heads 40-50)

Drafting may need to consider revising this Part to add Heads, including, but not limited to on:

- Amendment of the Criminal Justice (Mutual Recognition of Probation Judgements and Decisions) Act 2019 to include a Parole Supervision Order as provided for in the 2019 Parole Act.

- Supervision Order under the Misuse of Drugs Act 1977 Section 28(2) of the Misuse of Drugs Act 1977 (as amended) provides a supervision order for a maximum of 12 months by which the Court shall, if in its opinion, the welfare of the convicted person warrants its so doing, allow a convicted person enter in lieu of the imposition of any other penalty. It is a conviction for criminal record purposes.
- Family Law Act 1995 47(1)(a) – reports – TUSLA business
- Child abduction and custody enforcement act 1991 – reports – TUSLA business
- An amendment to the 1983 Act to provide for extended (40-360 Hours) CSOs in the Circuit and Higher Courts.

It is also expected that there is a need to make reference to the Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019 here, as orders will be transferable within the EU under this legislation. The Probation of Offenders Act 1907 is referenced in that Act. Provision for 40-360 hours Community Service Orders in the Circuit and higher Courts in an amendment to the Criminal Justice (Community Service) Act 1983

It is not clear from a policy perspective if specific provision for 30-100 hours Community Service as a condition of a supervision order (Head 25) (not an alternative to prison) in the Criminal Justice (Community Service) Act 1983 should be included here.

## 5 Next Steps

On approval of this review, the intention is for officials from the Department's Criminal Legislation function to agree a validated and revised General Scheme, which is to then be published.

-----ENDS

*23 February 2026.*

