

DETERMINATE CUSTODIAL SENTENCES (Pre-April 2009 Offences)

Criminal Justice (NI) Order 1996

<u>Description</u>	<u>Minimum Requirements</u>	<u>Permissible Duration/Conditions</u>	<u>Cases</u>	<u>Notes</u>
<p>A fixed term of imprisonment (only for offences committed before 1 April 2009).</p>	<p>A custodial sentence shall not be passed unless the court is satisfied: Art.19(2)(a) - that the offence, or the combination of the offence and one or more offences associated with it, was so serious that only such a sentence can be justified for the offence; or Art.19(2)(b) - where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him.</p> <p>OR</p> <p>Art.19(3) - The offender has failed to express his willingness to comply with a proposed requirement in a probation order, supervision order, drug and rehabilitation order, a drug test or a youth conference order.</p>	<p>Art.20(2) - A custodial sentence shall be:</p> <p>(a) for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence or the combination of the offence and one or more offences associated with it (a 'Commensurate Sentence'); or</p> <p>(b) where the offence is a violent or sexual offence, for such longer term (not exceeding the maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender (a 'Protective Sentence').</p>	<p><i>R (McCann) v Belfast JJ</i> [1978] NI 153 - Legal Aid</p> <p><i>R v Baker</i> [1998] NI 130 - Procedural requirements</p> <p><i>R v D</i> [2002] NICA 10 - Procedural Requirements</p> <p><i>R v McColgan</i> [2006] NICA 41 - Protective Sentences</p> <p><i>R v McArdle</i> [2008] NICA 29 - Protective Sentences</p>	<p>A custodial sentence can not be imposed unless D has either applied for legal aid and been refused or he has refused to exercise his right to apply for legal aid [Art.18(1)].</p>
<p align="center"><u>Textbooks</u></p> <p>Valentine (Feb 2010), Folder 7, Pg.33-37.</p> <p>Allen & McAleenan, 2.06-2.20, 2.50-2.53, 2.64-2.65, 2.151-2.155</p>	<p>Art.21(4) & Art.37 – The Court’s consideration of the ‘seriousness’ of the offence(s).</p> <p>(In a case falling within (a) or (b) above, the court must state in open court that it is of the opinion that either or both conditions apply and why it is of that opinion [Art.19(4)(a)]. In all cases the court must explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him [Art.19(4)(b)].</p> <p>If D is under 21 and the term of imprisonment does not exceed 4 years, the Court shall impose an order of detention in the YOC and not a term of imprisonment. [Art.1 & 5 of the Treatment of Offenders (NI) Order 1968]</p>	<p>Where the court forms a view that a custodial sentence of 12months or more should be imposed, it must consider whether a ‘Custody-Probation Order’ would be appropriate. [Art.24(1)]</p> <p>Art. 26(1) – Where the custodial sentence is imposed for a ‘sexual offence’ the court may order D to be subject to a licence for the period during which he is released on remission.</p> <p>A court can impose a determinate custodial sentence after having deferred sentencing [Art.3(11)].</p> <p>A determinate custodial sentence can be suspended [s.18 of the Treatment of Offender Act (NI) 1968].</p> <p>Where the court passes a Protective Sentences it must state in open court that it is of the opinion that Art.20(2)(b) applies and why it is of that opinion; and explain to the offender in open court and in ordinary language why the sentence is for such a term.</p> <p>A determinate custodial sentence can be imposed simultaneously with, inter alia, an order for costs, compensation, restitution, forfeiture, confiscation and disqualification. However, it is wrong in principle to impose it simultaneously with a suspended sentence, a probation order, a community service order or a fine. [Art.20(3)]</p>	<p><i>R v Brown</i> [2002] NICA 45 -Requirement for a PSR</p> <p><i>AG’s Ref (1 of 2004)(Pearson)</i> [2004] NICA 6 - Requirement for a PSR</p> <p><i>R v Larmour</i> [2001] NICA 29 - Release on licence for sexual offences.</p> <p><i>Re Cranston</i> [2002] NI 1 - Deferred Sentence</p> <p><i>R v Sapiano</i> (1968) 52 Cr App R 674 - Simultaneous custodial sentence and suspended sentence.</p> <p><i>R v Emmett</i> (1969) 53 Cr App R 203 - Simultaneous custodial sentence and probation order.</p> <p><i>R v Armstrong</i> [2001] NICA 33 - Simultaneous custodial sentence and fine.</p>	<p>The court must obtain and consider a PSR [Art.21(1)] unless, in the circumstances of the case, it is of the opinion that a PSR is unnecessary. Where the court does not obtain a PSR, it shall state in open court that it is of that opinion and what the circumstances are [Art.21(2)]. NB. Difference if D under 18 [Art.21(3)].</p> <p>Art.23 – Procedural requirements where D appears to suffer from a ‘mental disorder’.</p> <p>If D is under the age of 21 at the date of sentencing, the court can not impose a determinate custodial sentence unless it is for more than 4 years [s.1 of the Treatment of Offenders Act (NI) 1968].</p> <p>NB: Minimum custodial sentences to be imposed by virtue of Article 70(2) of the Firearms (NI) Order 2004 or paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006.</p>