

SUSPENDED SENTENCES (Activation)

Treatment of Offenders Act (NI) 1968

<u>Description</u>	<u>Minimum Requirements</u>	<u>Permissible Duration/Conditions</u>	<u>Cases</u>	<u>Notes</u>
<p>An order bringing into immediate effect a previous custodial sentence, or order of detention in the YOC, which had been suspended.</p>	<p>D must be convicted of a subsequent offence punishable with imprisonment which was committed during the suspension period of the suspended sentence.</p> <p>1. Where the suspended sentence was imposed by a Magistrates' Court, then any Magistrates' Court or the Crown Court can activate the sentence. [s.20(1)]</p> <p>2. Where the suspended sentence was imposed by the Crown Court:</p> <p>(a) the Crown Court may activate the sentence; or</p> <p>(b) any Magistrates' Court may commit D either in custody or on bail to appear before the Crown Court in order for the Crown Court to determine if the sentence should be activated. [s.20(3)]</p> <p><i>R v Hughes</i> [2003] NICA 17 – Quaere: County Court on appeal can NOT activate a suspended sentence which was not activated at first instance.</p>	<p>The court may:</p> <p>(a) order that the suspended sentence shall take effect with the original term unaltered;</p> <p>(b) order that the suspended sentence shall take effect with the substitution of a lesser term for the original term;</p> <p>(c) vary the original order by extending the suspension period:</p> <p style="padding-left: 20px;">(i) where the original offence was a <u>Non-Serious Offence</u>, by not more than 3 years from the date of the variation;</p> <p style="padding-left: 20px;">(ii) where the original offence was a <u>Serious Offence</u>, by not more than 5 years from the date of the variation; or</p> <p>(d) make no order with respect to the suspended sentence; [s.19(1)]</p> <p>The court shall make an order under (a) above unless the it is of opinion that it would be unjust to do so in view of all the circumstances, including the facts of the subsequent offence. Where the court does not make an order under (a) above, it shall state its reasons. [s.19(1)]</p> <p>A “serious offence” is an offence for which a person aged 21 years or over may, on conviction on indictment, be sentenced to imprisonment for 5 years or more. [s.18(1B)]</p>	<p><i>R v McQuade</i> [1974] Feb/March NIJB 2 - General Principles</p> <p><i>R v Hughes</i> [2003] NICA 17 – General principles</p> <p><i>R v Henderson</i> [1997] 2 BNIL 90 – Principle of totality</p> <p><i>R v Price</i> [1997] 9 BNIL 85 - Time on remand does not count if suspended sentence activated.</p> <p><i>R v Melbourne</i> (1980) Cr App R(S) 116 - Where subsequent offence is punishable with imprisonment on indictment but not on summary conviction.</p> <p><i>R v Moore</i> [1995] 4 All ER 843 - Where subsequent offence is dealt with by absolute/conditional discharge.</p> <p><i>R v Salmon</i> (1973) 57 Cr App R 953 - Where subsequent offence is dealt with by deferred sentence.</p> <p><i>R v Brooks</i> (1991) Cr App R(S) 756 - Where subsequent offence does not warrant custodial sentence.</p>	<p>The court may order the activated sentence to run concurrently or consecutively to any other sentence. [s.19(2)]</p> <p>Where the suspended sentence is one of detention in YOC, and since the date of imposition D has attained the age of 21, the court may order that the order for detention shall be treated as a sentence of imprisonment. [s.19(3)]</p> <p>Where the suspended sentence was imposed by the Crown Court and the Magistrates' Court does not commit D to appear before the Crown Court to determine if the sentence should be activated, then the Magistrates' Court must furnish written notice of the conviction to the appropriate officer of the court by which the suspended sentence was passed (in order to allow the Crown Court to issue a summons if appropriate). [s.20(3)]</p>
<p><u>Textbooks</u></p> <p>Blackstone (2010), E6.8-6.9</p> <p>Valentine, Folder 7, Pg.15-16</p> <p>Allen & McAleenan, 2.112-2.128</p>				