



Department of  
**Justice**

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**A DEPARTMENT OF JUSTICE CONSULTATION**

**UNDULY LENIENT SENTENCES**

**A response to the Fresh Start Panel's recommendation on  
offences linked to terrorism and organised crime groups**

**August 2018**



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## Responding to this Consultation

The DOJ invites views on the proposals in this consultation document.

The consultation will be open for eight weeks. The closing date for receipt of responses is **5pm on 2 October 2018**. Please note that it is unlikely that responses to the consultation will be accepted after this date.

An electronic version of this consultation document and response form is available to download from the Department's website <https://www.justice-ni.gov.uk/consultations>

The response form can be completed on line and should be emailed to:

[CPB@justice-ni.x.gsi.gov.uk](mailto:CPB@justice-ni.x.gsi.gov.uk)

Or you can post your response to:

Criminal Policy Branch  
Department of Justice  
Massey House  
Stoney Road  
Belfast  
BT4 3SX  
Telephone: (028) 90 169 584

## Alternative Formats

Hard copies and copies in other formats, including Braille, large print etc. can be made available on request. If it would assist you to access the document in an alternative format or language other than English please let us know and we will do our best to assist you. The contact details are provided above.

## Confidentiality of responses

The Department intends to publish a summary of responses on the DOJ website on completion of the consultation process. Any contact details that will identify a respondent as a private individual will be removed prior to publication.

All information will be handled in accordance with the General Data Protection Regulations (GDPR). Respondents should be aware that the Department's obligations under the Freedom of Information Act 2000 may require that any

responses, not subject to specific exemptions under the Act, be disclosed to other parties on request.

### **Complaints**

If you have any concerns about the way the way this consultation process has been handled, you should send them to the following address:

Standards Unit  
Department of Justice  
Knockview Buildings  
Stormont Estate  
Belfast  
BT4 3SL  
Email: [standardsunit@justice-ni.x.gsi.gov.uk](mailto:standardsunit@justice-ni.x.gsi.gov.uk)

**CHAPTER 1**  
**INTRODUCTION**





1.1 In December 2015, the Fresh Start Panel was appointed by the Northern Ireland Executive to produce a report with recommendations for a strategy to disband paramilitary groups. The Panel's Report on the Disbandment of Paramilitary Groups in Northern Ireland was published in June 2016.<sup>1</sup> It made 43 recommendations. The Executive accepted these recommendations and published an action plan setting out how it intended to take forward and implement these recommendations, recognising the need to drive forward with a new and innovative approach to tackling paramilitary activity.

1.2 One of the recommendations (A15) was:

*'The Department of Justice should ensure that an appropriate mechanism is in place to enable the Director of Public Prosecutions to refer sentences he believes to be unduly lenient, particularly to include offences linked to terrorism and organised crime groups.'*

The Panel stated that there are indications of dissatisfaction with the sentences awarded to those responsible for paramilitary attacks, terrorism offences or other criminality. They noted that a recent review of the law on unduly lenient sentences resulted in a number of additional offences being included in the Unduly Lenient Sentences scheme and that, as a result, the Director of Public Prosecutions is now able to refer sentences which he considers are unduly lenient in respect of those offences to the Court of Appeal. The Panel believed there may be scope to go further. **(The text of the recommendation is given in Annex A.)**

1.3 On 9 June 2016, Claire Sugden MLA, then Justice Minister, announced a separate exercise to review sentencing policy. The purpose of the review was to consider the extent to which current sentencing arrangements meet the objectives of an effective sentencing guidelines mechanism, and to consider the appropriateness and effectiveness of the current legislative framework governing, amongst other things, the referral of sentences for review on the grounds of undue leniency. This commitment involved a wider strategic review of the ULS arrangements, including consideration of more fundamental changes to the underlying scope of these

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<sup>1</sup> [The Fresh Start Panel Report on the Disbandment of Paramilitary Groups in Northern Ireland](#)

provisions. Such change could not be achieved within existing primary legislative provision. That review is ongoing.

1.4 In the Action Plan, published by the Executive, in July 2016, to respond to the Fresh Start Panel report, the Department of Justice made a commitment to consider the recommendation on unduly lenient sentences within the scope of the recently announced Sentencing Policy Review. However, the Department also committed to prioritise this element of the review and to seek to bring proposals for consultation as soon as possible, which included the possibility, in the shorter term, of adding further offences linked to organised crime and terrorism to the statutory list by secondary legislation.

1.5 Consequently, in order to reflect the priority the Department attaches to addressing the Fresh Start Panel's recommendation, this paper excludes any examination beyond the scope of the Panel's objective and is confined to proposals which, if accepted, could be implemented within the existing primary legislative framework.

**CHAPTER 2**  
**CURRENT ARRANGEMENTS**



## **Offence Categories**

2.1 The court in which a case is heard is determined primarily by the seriousness of the offence. Some offences, by statute, must always be tried summarily. These are the least serious offences which are tried in the Magistrates' Court by a District Judge (formerly known as a Resident Magistrate) and involve no jury. In Magistrates' Courts sitting as Youth Courts, the case is heard by a District Judge and two Lay Magistrates.

2.2 The most serious crimes, (e.g. murder, manslaughter, rape, robbery) are, by statute, tried only on indictment in the Crown Court by a judge, and before a jury, unless the defendant has pleaded guilty.

2.3 There is a third category of offence – usually those which can cover a range of seriousness in the offending behaviour, which are triable either summarily or on indictment. These can be tried either in a Magistrates' Court or the Crown Court under one of three sets of circumstances:

- in the majority of cases the legislation which creates an offence of this nature expressly states that it can be tried summarily or on indictment. It is for the PPS to decide, based on the seriousness of the offending behaviour, whether it is heard in the Crown Court or Magistrates' Court. These offences are known as 'hybrid' offences.
- some offences normally tried summarily can be tried on indictment if the offence is one for which a person, if convicted, can be sent to prison for more than 6 months; and the defendant chooses to be tried on indictment;
- some offences normally tried on indictment can be tried summarily if the District Judge considers it expedient to deal with the offence summarily, and the defendant and the Public Prosecution Service (PPS) both agree to a summary trial.

## **Determination of Sentence**

2.4 On conviction, the selection of the appropriate sentence in the individual case and its duration (within the maximum term set in law) is for the trial Judge to decide, taking into account all relevant considerations, including: the nature of the offence;

the history and circumstances of the offender; any aggravating or mitigating circumstances (e.g. age, remorse, level of violence used); and the impact of the crime on the victim.

2.5 In making sentencing decisions the judiciary are guided by sentencing guideline judgments from the Court of Appeal where they relate to the sentence imposed for a similar offence. For cases heard in the Magistrates' Court, the judiciary is also guided by sentencing guidelines developed by the Lord Chief Justice's Sentencing Group. These guidelines, and Court of Appeal judgments, may provide starting points for sentences where the circumstances of the case differ, or identify a range of sentences that may be appropriate depending on the seriousness of the offence. They may also set out the aggravating or mitigating factors to be taken into account in particular cases. Guidelines are used to help the sentencing process be more transparent and consistent.

## **Appeals**

2.6 A person convicted of an offence in the Magistrates' Court or the Crown Court has the right to appeal against conviction, sentence or both. Appeals against Magistrates' Court convictions are heard by the County Court. Appeals against Crown Court conviction or sentence are heard by the Court of Appeal. The Court of Appeal hears cases from the Magistrates' Courts only where there is a disputed point of law.

2.7 The Director of Public Prosecutions (DPP) has no right of appeal except for certain offences where the case is tried on indictment and he considers that the sentence is unduly lenient. In such cases, and where statute allows, he can refer the case to the Court of Appeal for possible reconsideration of sentence. The following paragraphs explain how these statutory arrangements operate.

## **ULS Referrals**

2.8 The power for the DPP to refer an unduly lenient sentence to the Court of Appeal is provided in sections 35 and 36 of the Criminal Justice Act 1988 (the 1988 Act) and applies only in respect of sentences *imposed in the Crown Court* for certain offences. These are:

- offences that are triable only on indictment, i.e. those which can only be dealt with in the Crown Court;
- certain 'hybrid' offences which are triable either on indictment in the Crown Court or by summary trial in the Magistrates' Court and which are tried in the Crown Court and which are specified by Statutory Order.

2.9 Hybrid offences can be added to the referral mechanism under section 35(4) of the 1988 Act. This gives the DOJ the power to specify particular offences by Statutory Order<sup>2</sup>, which is then laid in the Assembly for agreement by negative resolution. **Annex B** shows the hybrid offences which are currently listed for referral.

### **Meaning of Unduly Lenient**

2.10 Section 36(2) of the 1988 Act provides that undue leniency occurs if it appears to the DPP that the judge in a case erred in law as to his powers of sentencing or failed to impose certain mandatory sentences as required by law.

2.11 The DPP has the power only to seek leave to the Court of Appeal to have a sentence reconsidered which he considers to be *unduly* lenient, not sentences which may appear lenient, and not necessarily sentences which are perceived by the victim or the public as 'not long enough' to reflect the severity or impact of the crime.

2.12 The legislation gives no further interpretation of 'unduly lenient' but, in their consideration of the application of the legislation, the courts have concluded that a sentence is *unduly* lenient where it falls outside the range of sentences which the judge, in consideration of all the relevant factors 'could reasonably consider appropriate'.

2.13 This long standing principle was first set out in 1989 in a judgment of the Court of Appeal in England in Attorney General's Reference (No.4 of 1989) which stated:

*'It cannot, we are confident, have been the intention of Parliament to subject defendants to the risk of having their sentences increased – with all the anxiety that that naturally gave rise to – merely because in the opinion of the court the sentence was less than this court would have imposed. A sentence*

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<sup>2</sup> A Statutory Order, also referred to as secondary or subordinate legislation, is a form of legislation which allows the provisions of an Act to be altered without the need for primary legislation.

*is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate.*

*In that connection, regard must of course be had to reported cases and in particular to guidance given .....in guideline cases.'*

2.14 This approach was adopted in Northern Ireland in Attorney General's Reference (No.1 of 1989) NI 245 and has been re-stated in a number of subsequent judgments of unduly lenient references to the Court of Appeal.

## **Process**

2.15 Anyone can ask the DPP to review a sentence. Victims, their families, or members of the public can contact the DPP directly, or through a public or legal representative, about a sentence and their concerns.

2.16 Once a concern is raised, it is given initial consideration by senior prosecutors in the PPS. If it appears that it might fall within the unduly lenient category, opinion is sought from Counsel and interim papers are sought, together with a recording of the sentencing procedure in the case. The papers, together with a recommendation, are then elevated to the DPP.

2.17 Where the DPP considers that the sentence is unduly lenient, the case is referred to the Court of Appeal seeking leave to appeal. An application to the Court of Appeal for leave to review a sentence can only proceed if it is brought within 28 days of the day the sentence was imposed.

2.18 Where leave is granted, the Court of Appeal has wide discretion in deciding what to do and will not intervene unless the sentence is *significantly* below the sentence that the judge should have passed. Where the Court concludes that the sentence was unduly lenient, it may increase the sentence. It can also decide, where there are exceptional circumstances, not to interfere with the sentence. The Court may also conclude that the sentence was appropriate and dismiss the appeal. (**Annex C** provides details of outcomes of DPP referrals over recent years.)

2.19 **On average**, 52% of cases heard in the Crown Court are capable of referral to the Court of Appeal under the current arrangements. The table below shows the



breakdown of cases which would have been eligible for referral on grounds of undue leniency over the last five years.

**Table 1: Indictable and referable hybrid convictions in the Crown Court based on principal offence and number of referrals to the Court of Appeal 2013-2017**

	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Total convictions	2,080	1,745	1,127	1,623*	1,332
Indictable only**	562 (27%)	496 (28%)	284 (25%)	350(22%)	336 (25%)
Referable Hybrid**	542 (26%)	434 (25%)	367 (33%)	443(27%)	300(23%)
<b>Total currently referable**</b>	<b>1104(53%)</b>	<b>930 (53%)</b>	<b>651 (58%)</b>	<b>793 (49%)</b>	<b>636 48%</b>
Referrals to the Court of Appeal***	27(2%)	8(0.9%)	8(1%)	3(0.4%)	7 (1%)
<b>Leave granted***</b>	<b>15 (1%)</b>	<b>6(0.6%)</b>	<b>7(1%)</b>	<b>3(0.4%)</b>	<b>7 (1%)</b>

\*The introduction of new rules in May 2015 in relation to legal aid remuneration resulted in Counsel and a number of solicitors withdrawing their representation from a range of Crown Court cases. This affected defendants' access to legally aided representation in 2015 and the increase in the number of defendants disposed of in 2016 was mainly due to the attempts to clear the backlog of cases created by the legal aid dispute.

\*\* The figure in brackets denotes the percentage of total convictions

\*\*\* The figure in brackets denotes the percentage of total referable convictions



**CHAPTER 3**  
**CONSIDERATION OF RESPONSE**



3.1 The Fresh Start Panel's Report on the Disbandment of Paramilitary Groups in Northern Ireland recommended:

*'The Department of Justice should ensure that an appropriate mechanism is in place to enable the Director of Public Prosecutions to refer sentences he believes to be unduly lenient, particularly to include offences linked to terrorism and organised crime groups.'*

3.2 The Report also stated that in a society where some alleged criminals are regarded by many as 'untouchable' and where organised crime by current or former paramilitaries is regarded as prolific, delivering successful justice outcomes was crucial to public confidence in the rule of law. In the view of the Panel, achieving this would require the criminal justice system 'to be able to deliver successful prosecutions and effective sentences'.

3.3 Although certain terrorist offences which can only be tried on indictment already fall within the ULS provisions, no hybrid offence specifically related to terrorism currently falls within the scope of the ULS arrangements. There are also offences potentially related to organised crime which are not currently referable.

3.4 To meet this recommendation, we propose that all hybrid offences specifically related to terrorism (for example, section 11 of the Terrorism Act 2000 – membership of a proscribed organisation) and other offences which could be committed by members of organised crime groups linked to para-militarism are brought within the scope of the ULS provisions by listing them in statute. No other change would be made.

3.5 Hybrid terrorist offences specifically related to terrorism are easily identifiable and contained in a limited number of Acts of the UK Parliament. Westminster has recently legislated to bring 28 terror-related offences within the ULS provisions for England and Wales. It would seem appropriate to include these offences in the ULS arrangements in NI and these are listed under 'Terrorism Offences' at the end of **Annex E**.

3.6 Other offences which could be linked to organised crime and para-militarism are less easily definable. However, the Organised Crime Task Force (OCTF) produces annual reports and threat assessments which assess the scale and extent

of organised crime in Northern Ireland. The 2017 report<sup>3</sup> details the following as the key threats to Northern Ireland from organised crime:

- Cyber enabled crime – fraud, drug supply, child sexual exploitation, human trafficking, organised prostitution and blackmail.
- Cyber dependent crime – installation of malicious software; email interceptions; distributed denial of service; network intrusions.
- Drugs – cannabis; fentanyl; heroin; cocaine; new psychoactive substances; prescription drugs.
- Modern Slavery and Human Trafficking – labour and sexual exploitation.
- Organised Immigration Crime - immigration offenders and those who facilitate immigration crime.
- Border Crime – movement of drugs, weapons and cash; illicit goods; illegal immigrants.
- Criminal Finance – money laundering; computer software service fraud; holiday fraud; ATM fraud; vehicle fraud; mass marketing mail scams; social security benefit fraud.
- Intellectual Property Crime – counterfeiting: the manufacture, importation, distribution and sale of products which falsely carry the trade mark of a genuine brand without permission. There has been a shift from the sale of counterfeit goods in local markets to online sales.
- Armed Robbery and Extortion – cash-in-transit attacks; ATM attacks; tiger kidnaps; extortion, particularly the racketeering of small businesses and building sites; illegal money lending/loan sharking; individuals being extorted as a result of an activity they have engaged in via social media, webcam or chat platforms.
- Public Sector Fraud – excise and tax fraud on fuel and alcohol and tobacco.

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<sup>3</sup> Organised Crime Task Force Annual Report and Threat Assessment 2017 [OCTF Annual Report 2017](#) Cross Border Organised Crime Threat Assessment 2017

- Environmental/Waste Crime – illegal dumping; misclassification of waste.

3.7 Many offences relating to the crimes detailed above are already referable: some are indictable-only offences; others are hybrid offences already listed in statute as referable.

3.8 The Department has carried out an analysis of cases (where the principal offence is a hybrid offence) heard in the Crown Court over the last five years (2013-2017) and identified hybrid offences related to the types of crime detailed in OCTF reports. The legislative framework was also examined for other relevant related offences. In this context, it should be noted that there was little variation over the years in the types of cases appearing before the courts. The rationale for the analysis of impact on workload is attached at **Annex D**.

3.9 Based on this analysis, the Department has produced a list of relevant offences. The maximum penalties available for these offences, where they are heard in the Crown Court, range from 12 months to life imprisonment. The list of relevant offences is attached at **Annex E**.

#### *Relevant Offences*

3.10 While the Fresh Start recommendation refers to offences linked to terrorism and organised crime groups, the background discussion in the report refers to general criminality; sectarian and racial intimidation; and anti-social activity. The report also states that there needs to be a strategic shift in approach to what is currently described as 'paramilitary activity'. The Panel believes that, with the exception of any ongoing terrorist activity, the focus should now be on any and all criminality inflicted on communities by paramilitary linked groups or individuals.

3.11 To include only offences which people might generally perceive as paramilitary crime raises a number of issues:

- Would a paramilitary link have to be proven? This could be problematic. The courts can only convict and sentence on facts proved or admitted. As stated in **NICC 14 [2015] R v Thomas Ashe Mellon**

*'The often quoted phrase that the proverbial dogs on the street may have reached certain conclusions in relation to matters is of no*

*relevance. This court does not rely on canine intuition, but rather on hard evidence.'*

- Is there a risk that it would sustain a certain legitimacy to the paramilitaries? Crimes are committed by criminals. This shift in focus is already evident in the PSNI approach to certain offences, for example, there is a move to stop references to punishment beatings. Referring to assaults in this way indicates that the victim somehow deserved the beating and the perpetrator had the right to judge the victim and to decide the punishment. PSNI have more recently referred to assaults on youths as 'child abuse'.

3.12 In an attempt to minimise the risk of excluding an offence which may have a link to organised crime, the list compiled by the Department is wide ranging and covers a broad spectrum of offending behaviour. This is reflected in the range of maximum penalties available for some of the offences included in the list.

3.13 This comprehensive approach fully meets the recommendations of the Fresh Start Panel report, particularly where the objective is to deliver successful justice outcomes and build confidence in the rule of law.

3.14 However, the Department has some reservations about the inclusion of offences with low maximum sentences available, as it may be that a referral mechanism in such cases is unlikely to be merited. To guard against adding unnecessarily, and with little added benefit, to an increased workload for PPS and the Courts, the Department has considered the exclusion of offences with a maximum penalty of two years or less from the list of relevant offences.

#### *Exclusion of offences with maximum penalty of two years or less*

3.15 A relevant factor to take into consideration is that, in application of the legislation, the Court of Appeal will not interfere with a sentence unless it is found to be *significantly* below the sentence that the judge should have passed. Where the maximum sentence available for an offence is two years imprisonment or less, it has to be questioned whether any sentence handed down for such an offence could be considered *significantly* below what would have been appropriate.



3.16 However, without knowing the full circumstances of the individual case it is difficult to make assumptions on sentences based entirely on the maximum penalty available. In this context it should be noted that, in cases that have featured in the media and which have appeared to have had a significant impact on public confidence, the award of suspended, rather than immediate, custody feature regularly, even where the maximum penalty available may be relatively modest.

### *Impact*

3.17 Based on available statistics, on average 52% of cases heard in the Crown Court are currently referable. It is anticipated that the addition of the offences at Annex E to the statutory list of referable offences would result in an average of 86% of cases heard in the Crown Court being capable of referral to the Court of Appeal. If offences with a maximum penalty of two years or less are excluded, this would result in 81% of cases heard in the Crown Court being capable of referral. See Table 2 below.

3.18 While this is a significant increase in the number of *potential* cases, either with or without the two year cap, it should be noted that, on average, only 2% of Crown Court cases currently referable on the grounds of undue leniency (i.e. all indictable only offences and hybrid offences listed at Annex B) are brought to the attention of the DPP, either by victims or their families, members of the public unconnected to the offence, or prosecutors. Of these, on average, 1% of cases are referred to the Court of Appeal for leave to appeal and less than 1% are considered by the Court of Appeal.

3.19 Based on the current levels of referrals to the DPP and, of those, the number which result in referrals to the Court of Appeal, it is projected that:

➤ the **proposal to include all relevant offences, irrespective of the maximum penalty available**, would represent **an average per year of:**

- 51 cases for initial consideration by the PPS (currently 34)
- 31 cases for consideration by the DPP (currently 19)
- 15 cases per year referred by the DPP to the Court of Appeal (currently 12)
- 11 cases per year considered by the Court of Appeal (currently 8)

➤ the proposal to **exclude offences with a maximum penalty of two years and under** would represent **an average per year of:**

- 48 cases for initial consideration by the PPS (currently 34)
- 29 cases for consideration by the DPP (currently 19)
- 13 cases per year referred by DPP to the Court of Appeal (currently 12)
- 10 cases per year considered by the Court of Appeal (currently 8)

(**Table 3** below refers)

3.20 Our projections show that the exclusion of offences with a maximum penalty of two years has the potential for one less case being considered by the Court of Appeal and for a slight decrease (6%) in the number of cases referred to the PPS.

3.21 Sentences with a two year maximum period of imprisonment include offences for:

- assaulting, resisting, obstructing or impeding police (s.66 Police (NI) Act 1998). Over four years, there have been an average of 18 convictions per year for this offence; and
- common assault offences (s.47 Offences against the Person Act 1861). Over four years, there have been an average of 44 convictions per year for this offence.

3.22 The level of potential reduction in the number of cases to be made referable is small and the exclusion of such offences (21 relevant offences are highlighted in the list at Annex E with maximum sentences of two years or less), could be seen as falling short of the requirements of the Fresh Start Panel recommendations and contrary to the ethos of promoting confidence in, and support for, the rule of law.

3.23 However, there is also the need to consider that, in the current challenging financial climate, any proposal for change should be both proportionate and effective, while not placing unnecessary strain on finite resources. We are, therefore, asking whether hybrid offences carrying a maximum sentence of two years or less should be excluded from the referral arrangements.

**Table 2: Crown Court Indictable and Hybrid Convictions in the Crown Court based on principal offence 2013-2017: Projected referable cases**

	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<b>Total convictions</b>	<b>2,080</b>	<b>1,745</b>	<b>1,127</b>	<b>1,623</b>	<b>1,332</b>
Indictable only	562 (27%)	496 (28%)	284 (25%)	350 (22%)	336(25%)
Referable Hybrid	542 (26%)	434 (25%)	367 (33%)	443 (27%)	300 (23%)
Non-referable hybrid	911 (44%)	758 (43%)	454 (40%)	801 (49%)	655 (49%)
<b>Total currently referable</b>	<b>1104 (53%)</b>	<b>930 (53%)</b>	<b>651 (58%)</b>	<b>793 (49%)</b>	<b>636 (48%)</b>
<i>Projected referable - All relevant offences listed in Annex E</i>	1,817(87%)	1,515(87%)	1015(90%)	1,382(85%)	1036 (78%)
<i>Projected referable – relevant offences listed in Annex E excluding those with a maximum sentence of two years.</i>	1,735(83%)	1,438(82%)	961(85%)	1,302(80%)	975 (73%)

**Table 3: Projected Impact of proposals\***

	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<b>Total Currently Referable</b>	<b>1,104</b>	<b>930</b>	<b>651</b>	<b>793</b>	<b>636</b>
<b>Referrals on grounds of undue leniency – cases currently referable</b>					
Initial consideration	45 (4%)	32 (3%)	29 (4%)	29(4%)	25(4%)**
DPP consideration	29 (3%)	15 (2%)	13 (2%)	19 (2%)	13 (2%)**
Referrals to Court of Appeal	27 (2%)	8 (0.9%)	8 (1%)	3(0.4%)	7(1%)
Leave granted	15 (1%)	6(0.6%)	7 (1%)	3(0.4%)	7(1%)
<b>Projected referral of cases – all offences on Fresh Start list Annex E</b>					
Projected referable	1,817	1,515	1015	1,382	1036
Initial consideration	73	45	41	55	41
DPP consideration	55	30	20	28	21
Referrals to Court of Appeal	36	14	10	6	10
Leave granted	18	9	10	6	10
<b>Projected Referral of Cases – exclusion of offences with maximum sentence of 2 years or less</b>					
Projected referable	1,735	1,438	961	1,302	975
Initial consideration	69	43	38	52	39
DPP Consideration	52	29	19	26	20
Referrals to Court of Appeal	35	13	10	5	10
Leave granted	17	9	10	5	10

\*Figures in brackets denote % of total cases currently referable

\*\*Numbers based on % of referrals over previous years

## **CHAPTER 4**

## **PROPOSALS**



4.1 The Department is publishing this consultation paper as a response to the recommendation from the Fresh Start Panel on the addition of terrorist/organised crime offences to the ULS provisions.

4.2 The Department also intends to continue with a wider strategic review of the ULS provisions which will seek to address the policy basis for the current arrangements. The findings of any further review will be subject to public consultation and, should this result in proposals to change the underlying scope of the scheme, this would require primary legislation – a lengthier and more protracted process.

4.3 This consultation, however, seeks views on a proposal which recognises the importance of being able to respond to the Fresh Start recommendation in the shorter term and within the existing legislative framework: no primary legislation is required. The proposal recommends that relevant offences are brought within the scope of the ULS provisions by means of a statutory order listing the offences at Annex E. Such an order can be made by the Department and is then subject to the negative resolution process.

4.4 It is proposed that we can either:

- **Include all paramilitary/terrorist/organised crime-linked offences identified at Annex E within the scope of the unduly lenient sentence provisions;**

**OR**

- **Exclude from this list all paramilitary/terrorist/organised crime-linked offences identified at Annex E which have a maximum penalty of 2 years and under.**

**We would welcome your views on the Department's proposal. In particular whether:**

**(i) the list of paramilitary/organised crime offences in Annex E reflects properly the type of offending behaviour that was envisaged by the recommendation in the Fresh Start report and;**

**(ii) whether we should exclude the hybrid offences which have a maximum penalty of two years, given the likelihood that sentences of this level are unlikely to be referred as unduly lenient.**



**EXTRACT FROM THE FRESH START PANEL REPORT ON THE DISBANDMENT OF PARAMILITARY GROUPS IN NORTHERN IRELAND**

**Recommendation A15**

There are indications of dissatisfaction with the sentences awarded to those responsible for paramilitary attacks, terrorism offences or other criminality. We note that a recent review of the law on unduly lenient sentences resulted in a number of additional offences being included in the Unduly Lenient Sentences scheme. As a result the Director of Public Prosecutions is now able to refer sentences which he considers are unduly lenient in respect of those offences to the Court of Appeal. We believe there may be scope to go further. **The Department of Justice should ensure that an appropriate mechanism is in place to enable the Director of Public Prosecutions to refer sentences he believes to be unduly lenient, particularly to include offences linked to terrorism and organised crime groups.**



## ANNEX B

**HYBRID OFFENCES REFERABLE UNDER S.35(4) CRIMINAL JUSTICE ACT 1988; CURRENT CONSOLIDATED LIST FOR NORTHERN IRELAND AS AT JULY 2018**

<b>Violent offences</b>	<b>Legislation</b>	<b>Notes</b>
Threats to kill	s.16 Offences Against the Person Act 1861	Max 10 years
Cruelty to persons under 16	s.20 Children and Young Persons Act (NI) 1968	Max 10 years
Inflicting bodily injury	s.20 Offences Against the Person Act 1861	Max 7 years
<b>Sexual Offences</b>		
Defilement of a girl between 14 and 17	s.5(1) Criminal Law Amendment Act 1885	Repealed 2008
Indecent assault on a female	s.52 Offences Against the Person Act 1861	Repealed 2008
Indecent assault on a male	Art 21 Criminal Justice (NI) Order 2003	Repealed 2008
Indecent conduct with a child	s.22 Children and Young Persons Act (NI) 1968	Repealed 2008
Inciting a girl under 16 to have incestuous sexual intercourse	Art 9 Criminal Justice (NI) Order 1980	Repealed 2008
Prohibition/restriction on importation/exportation of an article prohibited by virtue of section 42 of the Customs Consolidation Act 1876 insofar as it relates to or depicts a person under the age of 16	s.50(2) or (3), s.68(2) or s.170(1) or (2) Customs and Excise Management Act 1979	Max 7 years
Meeting a child following sexual grooming	s.15 Sexual Offences Act 2003	Repealed 2008
Paying for sexual services of a child	s.47 Sexual Offences Act 2003	Repealed 2008
Causing child prostitution or pornography	s.48 Sexual Offences Act 2003	Repealed 2008
Controlling a child in prostitution etc	s.49 Sexual Offences Act	Repealed

	2003	2008
Arranging or facilitating above	s.50 Sexual Offences Act 2003	Repealed 2008
Causing or inciting prostitution for gain	s.52 Sexual Offences Act 2003	Repealed 2008
Trafficking into the UK for sexual exploitation	s.57 Sexual Offences Act 2003	Repealed 2015
Trafficking within the UK etc	s.58 Sexual Offences Act 2003	Repealed 2015
Trafficking out of the UK etc	s.59 Sexual Offences Act 2003	Repealed 2015
Sexual assault	Art 7 Sexual Offences (NI) Order 2008	Max 10 years
Causing a person to engage in sexual activity without consent	Art 8 Sexual Offences (NI) Order 2008	Max 10 years
Sexual assault of a child under 13	Art 14 Sexual Offences (NI) Order 2008	Max 14 years
Causing or inciting a child under 13 to engage in sexual activity	Art 15 Sexual Offences (NI) Order 2008	Max 14 years
Sexual activity with a child	Art 16 Sexual Offences (NI) Order 2008	Max 14 years
Causing or inciting a child to engage in sexual activity	Art 17 Sexual Offences (NI) Order 2008	Max 14 years
Engaging in sexual activity in the presence of a child	Art 18 Sexual Offences (NI) Order 2008	Max 10 years
Causing a child to watch a sexual act	Art 19 Sexual Offences (NI) Order 2008	Max 10 years
Arranging or facilitating commission of a child sex offence	Art 21 Sexual Offences (NI) Order 2008	Max 14 years
Meeting a child following sexual grooming etc	Art 22 Sexual Offences (NI) Order 2008	Max 10 years
Sexual activity with a child family member	Art 32 Sexual Offences (NI) Order 2008	Max 14 years

		Max 5 years (if not penetrative and offender under 18)
Paying for sexual services of a child	Art 37 Sexual Offences (NI) Order 2008	Max 14 years (under 16) Max 7 years (under 18)
Causing or inciting child prostitution or pornography	Art 38 Sexual Offences (NI) Order 2008	Max 14 years
Controlling a child prostitute or a child involved in pornography	Art 39 Sexual Offences (NI) Order 2008	Max 14 years
Arranging or facilitating child prostitution or pornography	Art 40 Sexual Offences (NI) Order 2008	Max 14 years
Causing or inciting prostitution for gain	Art 62 Sexual Offences (NI) Order 2008	Max 7 years
Administering a substance with intent	Art 65 Sexual Offences (NI) Order 2008	Max 10 years
Indecent photographs of children	Art 3 Protection of Children (NI) Order 1978	Max 10 years
Possession of indecent photographs of children	Art 15 Criminal Justice (Evidence etc) (NI) Order 1988	Max 5 years
<b>Drugs offences</b>		
Production of a controlled drug	s.4(2) Misuse of Drugs Act 1971	Max Class A Life Class B 14 years Class C 5 years
Supply of a controlled drug	s.4(3) Misuse of Drugs Act 1971	As above
Possession of a controlled drug with intent to supply	s.5(3) Misuse of Drugs Act 1971	As above
Cultivation of cannabis plant	s.6(2) Misuse of Drugs Act 1971	Max 14 years

Prohibition/restriction on importation/exportation of a controlled drug within the meaning of section 2 of the Misuse of Drugs Act 1971	Such prohibition or restriction having effect by virtue of s 3 of that Act: s50(2) or (3), s 68(2) or s170(1) or (2) of the Customs and Excise Management Act 1979	Max 7 years
<b>Fraud offences</b>		
Evasion of duty payable on hydrocarbon oil or any other fuels specified in the Hydrocarbon Oil Duties Act 1979	s.170 Customs and Excise Management Act 1979	Max 7 years
Evasion of duty on tobacco products as specified in Tobacco Products Duty Act 1979	s.170 Customs and Excise Management Act 1979	Max 7 years
<b>Environmental offences</b>		
Unauthorised or harmful deposit/disposal of waste	Art 4 Waste and Contaminated Land (NI) Order 1997	Max 5 years (special waste) Max 2 years
<b>Slavery offences</b>		
Slavery, servitude and forced labour	s.71 Coroners and Justice Act 2009	Repealed 2015
<b>Animal welfare offences</b>		
Unnecessary suffering	s.4 Welfare of Animals (NI) Act 2011	Max 5 years
Fighting etc	s.8(1) and (2) Welfare of Animals (NI) Act 2011	Max 5 years
<b>Inchoate offences</b>		
Attempting to commit or inciting the commission of any offence above		
Encouraging or assisting crime in relation to which an offence above is the offence (or one of the offences) which the person intended or believed would be committed.	Part 2 of the Serious Crime Act 2007	

ANNEX C

EXAMPLES OF DPP REFERRALS TO THE COURT OF APPEAL

	Date of Appeal Judgment	Date of Sentence	Offence	Original Sentence	Sentence on Appeal
DPP's Ref No.1 of 2016	9/1/2017	15/3/2016	Causing death by dangerous driving	7 years DCS: 3½ Custody; 3½ On Licence	Sentence considered to be unduly lenient.  9 years DCS substituted: 4½ Custody 4½ Licence
DPP's Ref Nos. 1,2,3 and 4 of 2015	7/7/2015	20/4/2015	3 Offenders  A - Possession with intent to supply Class A Drugs Possession with intent to supply Class B Drugs Possession of Class B drug  B - Possession with intent to supply Class A Drugs  C - Possession with intent to supply Class A Drugs	A – 5 years DCS 2½ years Custody 2½ years on Licence  B – 4 years DCS 1 year Custody 3 yrsLicence  C – 3 years DCS 6 months custody 30 months on licence	Sentences considered to be unduly lenient.  A - 6½ years DCS: ¾ custody; ¾ on licence  B – 5 years DCS: 2½ Custody; 2½ Licence  C – 2 years DCS: 1 year custody 1 year on licence

	<b>Date of Appeal Judgment</b>	<b>Date of Sentence</b>	<b>Offence</b>	<b>Original Sentence</b>	<b>Sentence on Appeal</b>
No DPP's Ref given. [2015] NICA76 GIL9775	24/11/15	10/11/14 -11/11/14	3 Defendants Sentenced to life imprisonment for murder	A – Minimum tariff of 10 years B – Minimum tariff of 9½ years C – Minimum tariff of 4 years	Court concluded that the tariffs were not unduly lenient.
DPP's Ref No. 17 of 2013	24/01/2014	25/10/13	Making pipe-bomb type improvised explosive devices and possessing such devices in suspicious circumstances contrary to s4(1) of the Explosive Substances Act 1883	Combination Probation and Community Service Order – 2 years' probation and 100 hours community service	Court concluded that the sentence was not unduly lenient.
DPP's Ref No. 18 of 2013	3/3/14	27/11/13	37 counts of indecent assault on male contrary to s62 OAPA 1861. 16 counts of gross indecency with a child contrary to s22 Children & Young Persons Act (NI) 1968. 5 counts of buggery with a boy under 16 contrary to s61 OAPA 1861	2 terms of 6 years imprisonment to run concurrently.  5 years imprisonment to run consecutively to 6 year term.  Total of 11 years imprisonment.	A term of 8 years was substituted for the 6 year term for the first set of offences.  Other sentences remained unchanged.  Total of 13 years imprisonment.



	<b>Date of Appeal Judgment</b>	<b>Date of Sentence</b>	<b>Offence</b>	<b>Original Sentence</b>	<b>Sentence on Appeal</b>
DPP's Ref Nos 2 & 3 of 2012	14/10/14	21/5/12	2 Defendants sentenced to life imprisonment for murder	A – Minimum tariff of 25 years  B – Minimum tariff of 14 years	Court concluded that 25 year tariff was not unduly lenient.  14 year tariff was considered unduly lenient. A minimum tariff of 18 years was substituted. (Court concluded that the mitigation for youth in the case of a person who was approx. 2 months short of his 18 <sup>th</sup> birthday is limited)
DPP's Ref Nos 13,14 & 15 of 2013	12/11/2013	Not stated	3 offenders convicted of riotous assembly contrary to common law	A – 18 months imprisonment suspended  B – 15 months imprisonment suspended.  C – Not stated (though assume it too was 18 months suspended)	A – 18 months DCS substituted: 9 months custody; 9 months on licence.  B – sentence not considered unduly lenient.  C – 18 months DCS: 9 months custody; 9 months on licence

	<b>Date of Appeal Judgment</b>	<b>Date of Sentence</b>	<b>Offence</b>	<b>Original Sentence</b>	<b>Sentence on Appeal</b>
DPP's Ref Nos 8, 9 & 10 of 2013	28/6/13	22/4/13	Attempted grievous bodily harm with intent	<p>3 defendants</p> <p>A- 12 months detention suspended for 3 years</p> <p>B – Juvenile Justice Centre Order: 6 months detention; 6 months supervision</p> <p>C- 3 years DCS: 8 months custody; 28 months on licence</p>	<p>Sentences were considered unduly lenient</p> <p>A – 3 years detention suspended for 3 years</p> <p>B – 2 year Juvenile Justice Centre Order</p> <p>C – 4 years DCS: 2 years custody; 2 years on licence</p>

	<b>Date of Appeal Judgment</b>	<b>Date of Sentence</b>	<b>Offence</b>	<b>Original Sentence</b>	<b>Sentence on Appeal</b>
DPP's Ref No 7 of 2013	27/6/13	22/4/13	Causing grievous bodily injury by careless driving	9 months imprisonment suspended for 2 years	<p>Court considered that sentence of 9 months was not unduly lenient but that the suspension of the sentence was</p> <p>Sentence of 9 months imprisonment was substituted</p> <p>Court also substituted sentences of 6 months concurrent for perverting the course of justice and dangerous driving</p>
DPP's Ref No 11 of 2013	4/10/13	Not stated	1 count of death by dangerous driving 4 counts of causing grievous bodily injury by dangerous driving	15 months DCS: 5 months custody; 10 months on licence	<p>Sentence considered to be unduly lenient</p> <p>21 months DCS substituted: 10½ months custody; 10½ months on licence</p>

	<b>Date of Appeal Judgment</b>	<b>Date of Sentence</b>	<b>Offence</b>	<b>Original Sentence</b>	<b>Sentence on Appeal</b>
DPP's Ref No 5 of 2012	27/2/2013	21/10/12	Causing grievous bodily injury by dangerous driving	18 months imprisonment suspended for 3 years and £50,000 fine	Sentence considered to be unduly lenient. Sentence of 12 months imprisonment substituted for suspended sentence & fine
DPP's Ref No 4 of 2012	26/2/2013	20/11/12	3 counts of indecent assault; 2 counts of gross indecency	2 years imprisonment suspended for 3 years for indecent assault; 9 months imprisonment concurrent suspended for 3 years for gross indecency	Sentence considered to be unduly lenient and sentence of 15 months imprisonment substituted
DPP's Ref No 2 of 2013	17/5/2013	12/2/2013	Possession of a Class A drug with Intent to supply	2 years DCS; 9 months custody; 15 months on licence	Sentence considered to be unduly lenient and sentence of 3 years DCS substituted: 18 months custody; 18 months on licence

	<b>Date of Appeal Judgment</b>	<b>Date of Sentence</b>	<b>Offence</b>	<b>Original Sentence</b>	<b>Sentence on Appeal</b>
DPP's Ref No 1 of 2013	10/12/2013	8/2/2013	<p>Possession of explosives with intent to endanger life contrary to s3(1)(b) Explosive Substances Act 1883</p> <p>Causing an explosion likely to endanger life contrary to s2 Explosive Substances Act 1883</p>	4 years imprisonment suspended for 3 years on each count	Court concluded that the sentence was unduly lenient but exercised its discretion and let the sentence stand
DPP's Ref No 1 of 2012	24/9/2012	7/3/2012	Sexual activity involving penetration of a child between 13 and 16 contrary to Art 16 Sexual Offences (NI) Order 2008	30 months imprisonment suspended for 3 years	<p>Sentence considered to be unduly lenient</p> <p>However, the court concluded that it should not interfere with the sentence</p>
DPP's Ref No 2 of 2011	13/9/2012	16/9/2011	Wounding with intent to cause grievous bodily harm contrary to s18 OAPA 1861	Custody Probation Order of 3 years 6 months: 2 years custody; 18 months' probation	Sentence considered to be unduly lenient but the court decided not to interfere with the sentence

	<b>Date of Appeal Judgment</b>	<b>Date of Sentence</b>	<b>Offence</b>	<b>Original Sentence</b>	<b>Sentence on Appeal</b>
DPP's Ref Nos 3 & 4 of 2011	20/9/12	25/11/11	Two Offenders  A – 2 counts of robbery;  1 count of carrying a firearm with criminal intent  B – 3 counts of robbery  1 count of attempted robbery;  1 count of carrying a firearm with criminal intent	7 years imprisonment  5 years imprisonment concurrent  9 years imprisonment  6 years imprisonment concurrent  5 years imprisonment concurrent	Sentences for robbery were considered to be unduly lenient  10 years imprisonment substituted on each of the robbery counts  12 years DCS substituted on each of the robbery counts: 6 years custody 6 years on licence

### Rationale for analysis of impact on workload for PPS and Court of Appeal

There are a large number of hybrid offences, over 1,700, few of which fall within the scope of the ULS scheme. Bringing more, or all, of these offences within the scope of the scheme does not mean that the workload on the PPS or the Court of Appeal would increase proportionately.

There are a limited number of cases that are heard annually in the Crown Court. Tables 4 and 5 below show the volume of prosecutions and convictions across both courts.

To anticipate the impact of any change to the ULS scheme, we analysed cases appearing before the courts where the principal offence was a hybrid offence. In each case there may be more than one offence being considered by the court, but the principal offence will be the most serious one. PPS advised that it would be unlikely that anything other than the sentence given for the principal offence would be considered for undue leniency and were content with our approach to analysis of data. (It should be noted in this context that there has been little variation in the principal offences heard in the Crown Court over the period 2013-2017.)

**Table 4: Prosecutions in courts in Northern Ireland by court type 2013 - 2017**

	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<b>Crown Court</b>	2,553	2,063	1,312	1,882*	1587
<b>Magistrates' Court</b>	32,086	29,417	28,004	25,767	26,767
<b>All courts Total</b>	<b>34,639</b>	<b>31,480</b>	<b>29,316</b>	<b>27,649</b>	<b>28,354</b>

**Table 5: Convictions in courts in Northern Ireland by court type 2013 - 2017**

	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<b>Crown Court</b>	2,080	1,745	1,127	1,623	1,332
<b>Magistrates' Court</b>	26,751	24,862	23,252	21,333	22,298
<b>All courts Total</b>	<b>28,831</b>	<b>26,607</b>	<b>24,379</b>	<b>22,956</b>	<b>23,630</b>

\*The number of cases in the Crown Court increased by 43% from 1312 in 2015 to 1882 in 2016. The introduction of new rules in May 2015 in relation to legal aid remuneration resulted in Counsel and a number of solicitors withdrawing their representation from a range of Crown Court cases. This affected the defendants' access to legally aided representation in 2015 and the increase in the number of defendants disposed of in 2016 was mainly due to the attempts to clear the backlog of cases created by the legal aid dispute. The dispute ended on 11 February 2016.

### **Crime/Prosecution Trends**

The analysis is based on levels of court prosecutions since 2013. There is no guarantee that these levels will be maintained. However, over the last five years there has been a downward trend in the number of prosecutions in the courts. From 2013 - 2017, cases heard in the Crown Court have decreased by 36%, those heard in the Magistrates' courts by 17%.

According to PSNI Recorded Crime Statistics, crime has shown a downward trend in the last 14 years, from a peak of 138,132 in 2002/2003 to 98,076 recorded in 2016/2017, the lowest full financial year recorded since 1998/1999 (the first year for which comparable crime data is available).

The main crime categories of violence against the person, robbery, burglary, theft offences, criminal damage and public order offences are showing a downward trend over the last two years with possession of weapons offences and miscellaneous crimes against society each showing a fairly flat trend. Sexual offences and drug offences are showing a slight upwards trend.

The 2016/2017 Northern Ireland Crime (NICS) Survey shows that the rate of 8.7% is one of the lowest NICS victimisation (prevalence) rates observed since the measure was first reported in NICS 1998 (23%).

There has been little analysis done of these trends and it is likely that there are a number of factors involved. The limited research available in this area (not specific to Northern Ireland) indicates a number of possible contributory factors:



- more effective policing
- smaller youth cohort combined with a larger cohort of an aging population – rates of offending decline as people age;
- better security of vehicles – vehicle theft is regarded as a pathway to more serious offending – cut petty crimes and others fall too:
- CCTV;
- increase in online crime which is less visible to police\*;
- less vandalism etc as young people spend more time online;
- greater use of police discretionary disposals.

\* OCTF Report states that 'law enforcement is becoming increasingly aware and equipped to deal with the threats associated with cyber crime with the formation of a number of multi-agency task forces set up to tackle these issues'.

There can be no certainty that downward trends will continue.



**‘FRESH START’ LIST OF OFFENCES TO BE BROUGHT WITHIN THE SCOPE OF THE SCHEME – HIGHLIGHTED OFFENCES RELATE TO THOSE WITH A MAXIMUM PENALTY OF 2 YEARS AND UNDER**

<b>OFFENCES AGAINST THE PERSON ACT 1861</b>
<p><b>s.47 Assault at Common Law</b> s.47 Assault occasioning actual bodily harm</p>
<b>MEDICINES ACT 1968</b>
<p><b>s.67 Possessing medicinal product with intent to supply</b></p>
<b>PROTECTION OF PERSONS AND PROPERTY ACT (NI) 1969</b>
<p>s.1 Threats to expel or to compel conduct</p>
<b>THEFT ACT (NI) 1969 - BURGLARY</b>
<p>s.9(1)(a) &amp; (b): Attempted Burglary/Burglary with intent to steal Burglary (dwelling) Attempted Burglary/Burglary (non-dwelling)</p>
<b>THEFT ACT (NI) 1969 - FRAUD</b>
<p>s.17 False accounting s.23(A) Dishonestly retaining wrongful monetary credit s.15(1) Obtaining money transfer by deception s.16 Obtaining pecuniary advantage by deception s.18 False statement by director or officer s.19(1) Destroying or concealing will/security w/l to gain</p> <p>s.15(1) – <i>Repealed by Fraud Act 2006</i> s.16 – <i>Repealed by Fraud Act 2006</i></p>
<b>THEFT ACT (NI) 1969 - THEFT</b>
<p>s.1 Theft s.21 Handling/receiving stolen goods s.23(4) Handling property stolen/obtained by blackmail in ROI s.24 Going equipped for theft</p>
<b>IMMIGRATION ACT 1971</b>
<p><b>s.24A Obtaining leave by deception</b> ss. 25, 25A, 25B Assisting illegal entry/assisting asylum seeker for gain/assisting</p>

deported or excluded entrant

s.26A Making, using false or altered registration card/possessing same

s.26B Possession of immigration stamp

### **MISUSE OF DRUGS ACT 1971**

s.5(2) Attempted possession/possession of Class A/B/C controlled drug (2 yrs for Class C drug)

s.8 Occupier of premises permitting production of Class A Drug

s.23(4) Obstructing Powers of Search for Drugs

### **CRIMINAL LAW AMENDMENT (NI) ORDER 1977**

Art 3 Bomb Hoaxes

### **CRIMINAL DAMAGE (NI) ORDER 1977**

Art 2(1)(3) Arson

Art 3(1) Attempted Criminal Damage/Criminal Damage

Art 4(a) Threats to Damage Property

Art 5 Possessing things with intent to damage

### **FORGERY & COUNTERFEITING ACT 1981**

s.1 Forgery

s.2 Copying false instrument/s

s.3 Using false instrument/s

s.5(2)(4) Possessing false instrument or machine for making such

s.5(1)(3) Possessing w/i to pass off

s.14(2) counterfeiting notes or coins

s.15(2) Passing counterfeit currency

s.16(2) Possessing counterfeit currency

s.17(2)(3) Having things to make or imitate coins or notes

ss. 14(1), 15(1), 16(1), s.17(1) Above counterfeiting offences w/i to pass off

### **PUBLIC ORDER (NI) ORDER 1987**

Art 9 Stirring up fear in or hatred (of group by religion, colour race, sexual orientation, nationality, ethnic origin etc)

Art 22 Carrying offensive weapon in public place

### **COPYRIGHT DESIGNS AND PATENTS ACT 1988**

s.107 Making, distributing, infringing copy

s.107(2)(A) Communicating copyright work to public

s.198(1) Making distributing illicit recording of performance

s.198(1A) Infringing performer's making available right

<b>TRADE MARKS ACT 1994</b>
s.92 Selling goods bearing an unauthorised trade mark
<b>CRIMINAL JUSTICE (NI) ORDER 1996</b>
Art 47 Intimidation – witness/juror
<b>POLICE (NI) ACT 1998</b>
s.66 Assaulting/obstructing/impeding/resisting police
<b>DATA PROTECTION ACT 1998</b>
s.55 Unlawful obtaining of personal data
<b>POSTAL SERVICES ACT 2000</b>
s.83 Postal operator opening/delaying mail s.85 Sending injurious/indecent thing by post
<b>PROCEEDS OF CRIME ACT 2002</b>
s.327 Concealing Criminal Property s.328 Entering into arrangement to acquire criminal property s.329 Using/possessing Criminal Property s.329 Acquiring Criminal Property ss. 330, 331, 332 Person in business failing to disclose identity of money-launderer s.333A Tipping off to prejudice money laundering investigation s.342 Prejudicing money laundering investigation
<b>FIREARMS (NI) ORDER 2004</b>
Art 3(1)(b) Possession of sawn off shotgun/converted firearm without certificate Art 45(1)(f) Dealing in electric, noxious material weapons Art 61(1) Carrying firearm/imitation firearm in public Art 64 Possession of Firearms/Ammunition in suspicious circumstances. Possession etc of a prohibited weapon (electric, noxious material weapons)
<b>IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006</b>
s.21 Employing adult subject to immigration control
<b>FRAUD ACT 2006</b>
s.1 Fraud s.2 Fraud by false representation s.3 Fraud by failing to disclose information under legal duty s.4 Fraud by abuse of position to safeguard financial interests

s.6 Possession of articles for use in fraud  
s.7 Making/supplying article for use in fraud  
s.9 Participating in fraudulent non-company business  
s.11 Obtaining services by dishonest act not intending to pay

**IDENTITY DOCUMENTS ACT 2010**

s.6 Possession of false identity documents

**JUSTICE ACT NI 2011**

s.93 Possession of offensive weapon with intent to commit an indictable offence

**HUMAN TRAFFICKING AND EXPLOITATION (CRIMINAL JUSTICE AND SUPPORT FOR VICTIMS) ACT (NI) 2015**

S.4 Committing offence with intent to commit the following offences: slavery, servitude, forced or compulsory labour, human trafficking within to or from a country; kidnapping with intent

**PSYCHOACTIVE SUBSTANCES ACT 2016**

s.4 Producing a psychoactive substance  
s.5 Supplying or offering psychoactive substance  
s.7 Possession of psychoactive substance with intent to supply  
s.9 Possession of a psychoactive substance in a custodial institution

## TERRORISM OFFENCES

### AVIATION SECURITY ACT 1982

s.4 possessing explosive, firearm on aircraft

### TERRORISM ACT 2000

s.11 Belongs or professes to belong to a proscribed organisation  
s.12 Inviting, arranging, encouraging non-financial support for proscribed organisation  
s.15 Fund raising  
s.16 Use and possession  
s.17 Funding arrangements  
s.18 Money laundering  
s.19 Failing to disclose suspicion acquired in the course of business  
s.21A Failing to disclose suspicion acquired in the course of regulated sector business

#### s.21D Tipping off in course of regulated sector business

s.38B Failure to disclose information about acts of terrorism  
s.39 Disclosing or interfering with terrorist investigation material  
s.54 Acts of training  
s.57 Possession for terrorist purposes  
s.58 Collection of information  
s.58A Eliciting, publishing or communicating information about members of the armed forces etc  
s.103 Terrorist information

Sch. 4 para 37 Breach of a High Court restraint order  
(Where proceedings have been instituted or investigations commenced for offences under sections 15 – 18, the court can make a restraint order)

### ANTI-TERRORISM, CRIME AND SECURITY ACT 2001

s.113 Use of noxious substances and things to cause harm and intimidate  
s.114 hoax placing, sending of noxious substances or things

### TERRORISM ACT 2006

s.1 Encouragement of terrorism  
s.2 Dissemination of terrorist publications  
s.6 Training of terrorism  
s.8 Attendance at a place used for terrorist training

### COUNTER TERRORISM ACT 2008

s.54 Offences re convicted terrorist notification requirement

<b>TERRORISM PREVENTION AND INVESTIGATIVE MEASURES ACT 2011</b>
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s.23 Breach of a TPIM Order
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<b>COUNTER-TERRORISM ACT 2015</b>
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s.10 Breach of a temporary exclusion order
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