



## **Tithe an Oireachtais**

An Comhchoiste um Dhlí agus Ceart, Cosaint agus  
Comhionannas

Tuarascáil maidir le héisteachtaí i ndáil le Scéim an  
Bhille um Cheartas Coiriúil (Smachtbhannaí Pobail)

*Meitheamh 2014*

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## **Houses of the Oireachtas**

Joint Committee on Justice, Defence and Equality

Report on hearings in relation to the Scheme of the  
Criminal Justice (Community Sanctions) Bill

*June 2014*



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## **Chairman's Preface**

The Joint Committee on Justice, Defence and Equality received four submissions on the Heads of the Criminal Justice (Community Sanctions) Bill and having considered these, held a public hearing to examine in further detail some of the main points raised. The hearing took place on 7 May 2014.

In the course of the public hearing, it became apparent that most participants were broadly in favour of the proposed legislation.

The challenge identified in drafting legislation in this area lies in striking a balance between the need to afford victims of crime a greater opportunity to participate in the criminal justice system whilst preserving the constitutional rights of offenders.

I would like to express my thanks to all those who took part in this process and all the points raised in your submissions have been noted.

I look forward to the publication of the Bill and further engagement with the Minister as the Bill progresses through the Houses.

I would also like to thank the Members of the Joint Committee for their participation and hope this work will help to inform the legislative process and make a valuable contribution to the forthcoming legislation.



A handwritten signature in black ink, appearing to read 'D Stanton', written over a horizontal line.

David Stanton T.D.  
Chairman  
June 2014

## Rapporteur's Preface

As a legislator, I consider that pre-legislative consultation with members of the public and experts on the Heads of a Bill is a great innovation in the legislative process.

It serves as an efficient way for members of the Oireachtas to become better informed through pre-legislative scrutiny and affords an opportunity for any weaknesses or unintended consequences in the legislation to be addressed at an early stage.

The public consultation process on the Heads of the General Scheme of the Criminal Justice (Community Sanctions) Bill held on the 7 May 2014, demonstrates very well how the process of pre-legislative scrutiny can facilitate meaningful contributions from all sides of the Houses as well as wider society in the legislative process.

The hearings and submissions made by those attending raised some very important and interesting matters, which will inform the Minister and the Department in the course of drafting the Bill.

The observations and proposals which emerge from the process are summarised in this report and what struck me in particular was that awareness of restorative justice and its benefits was generally low and this needs to be addressed if the legislation is to be as effective as possible.

I would like to express my appreciation to everyone who took part in this consultative process and also to the Chairman, members of the Joint Committee, the Clerk, Mr. Alan Guidon, the Committee Secretariat Staff, my assistant Ms. Karen Dempsey and Ms. Marie O'Brien for their assistance in compiling this report.



A handwritten signature in black ink, which appears to read "Martin". The script is fluid and cursive, with a large initial 'M'.

Senator Martin Conway

Rapporteur

June 2014

## Introduction

The Minister for Justice, Equality and Defence forwarded the Heads of the Criminal Justice (Community Sanction) Bill to the Joint Committee giving it an opportunity to comment on the proposed legislation. The Heads of the Bill can be viewed at Appendix 5.

The Committee decided to invite written submissions from stakeholders on the Heads of the Bill and a total of 4 submissions were received from various organisations. The submissions raised a diverse range of views and recommendations and the Committee has decided that it should publish these submissions to bring the views expressed into the public domain. These submissions are at Appendix 3.

To further elaborate on the points raised in their submissions, the Committee agreed to invite the following groups/individuals to a meeting on the 7 May 2014. The transcript of this meeting is attached at Appendix 4.

Those attending the public meeting were:

### **Facing Forward:**

Mr. Niall Counihan

Vice-chairperson

Ms. Nadette Foley

Advocacy officer

### **The Law Society of Ireland:**

Mr. Shane McCarthy

Member of the criminal law committee

Ms Shalom Binchy

Chairperson of the criminal law committee

### **Restorative Practices Strategic Forum:**

Ms Catherine Ashe

Steering committee member

Ms. Claire Casey

Quality assurance sub-committee member

### **Rape Crisis Network Ireland:**

Ms. Caroline Counihan BL

Legal Director

The Committee wishes to express its thanks to all those who participated in this process and valued the opportunity to engage with interested parties.



## **Observations**

All those who made a submission broadly welcomed the proposed legislation which will facilitate the effective and efficient use of community sanctions by the courts and will ensure that the courts have a wide range of appropriate options for dealing with persons who have committed minor offences.

In the course of the Committee's public hearings the participants made suggestions as to how to improve further upon the legislation. The following are some of the matters raised for possible further scrutiny:

### **Victim's Consent**

The Committee was informed that the precise mechanism by which the victim's consent is obtained should be specified for the purpose of the legislation.

### **Victims with Specific Protection Needs**

The needs of victims with specified protection needs; namely those under 18 years, victims of sexual crime and hate crime should be addressed.

It was recommended that support agencies receive specific training to meet the needs of those victims or persons.

### **Restorative Justice Provisions**

Concerns were raised that the restorative justice provisions envisaged in the legislation were too narrow in their focus with one participant recommending that the scope of the restorative justice provisions be extended to include offences where a corporate victim is involved.

While another participant cautioned against the introduction of a parallel justice system to the existing court system and recommended that any referral to a restorative justice scheme should begin and end in the appropriate court where the accused would have access to legal advice and representation.

### **Privacy Rights**

One participant was concerned about the proposed system whereby a complaint could be made relating to probation services and recommended that measures be included in the legislation to combat any disclosure of any information of a sensitive or confidential nature to a third party.



## **“Binding over orders”**

It was submitted that, in relation to the use of this term, there is potential for confusion as the courts currently have the power to bind people over to the peace even in circumstances where they are not charged with a criminal offence.

It was submitted that, the use of the terms “full discharge order” and “conditional discharge order” be used in instead of “discharge orders” and “binding over orders”.

## **Reparation Fund**

Most participants welcomed the introduction of the proposed Reparation Fund to replace the current Poor Box system as a fairer way of distributing money for compensation, reparation and assistance of victims than the existing system.

However, another participant pointed out that the existing Poor Box system works very well and that local charities and organisations that benefit from the Poor Box currently will be affected by the proposed amendments, in particular the redirection of funds would not assist with anti-recidivism efforts as locally based front-line organisations are unlikely to receive supports.

## **Probation Service Victim Impact Assessment Reports**

Concerns were raised that the Probation Service should not prepare victim impact statements.

In its contribution, the Rape Crisis Network Ireland stated:

“Our clients associate probation officers with the accused and the interests of the accused. They did not feel that it would be easy for those victims to be open, frank and part with any meaningful information. When dealing with the impacts of sexual violence, it takes time for a victim to build up a relationship where she can be full, frank, open and be herself in getting to the depths of the impact of the crime. As far as sexual violence impact victims are concerned, that suggestion does not seem to be workable.”

**“Reparation” means financial reparation, any other form of reparation, or both.**

It was suggested that the term “any other form of reparation”, should be defined or at least that examples of “any other form of reparation” should be included in the explanatory memorandum of the Bill.

### **Public Awareness**

Some participants recommended a public awareness campaign regarding the operation of restorative justice schemes which this legislation envisages.

In particular one participant recommended a specific knowledge- building campaign for solicitors, judges and others practising in the criminal justice area in order to increase the acceptability of restorative justice as an alternative justice mechanism.

These are just some of the points raised in the course of this process. For a more complete understanding of the points raised reference should be made to the transcript of proceedings at Appendix 1 and the submissions made at Appendix 3.

The Committee recommends that the Minister for Justice and Equality give consideration to the issues raised in his final drafting of the Bill and hopes that he is in a position to address the concerns raised. The Committee looks forward to future engagement with the Minister on this Bill.

## Appendix 1

### **List of Members**

<b>Member</b>	<b>Party</b>
<b>Deputies:</b>	
Niall Collins	Fianna Fáil
Marcella Corcoran Kennedy	Fine Gael
Alan Farrell	Fine Gael
Anne Ferris	Labour
Seán Kenny	Labour
Pádraig Mac Lochlainn	Sinn Féin
Finian McGrath	Independent
John Paul Phelan	Fine Gael
David Stanton	Fine Gael
<b>Senators</b>	
Ivana Bacik	Labour
Martin Conway	Fine Gael
Tony Mulcahy	Fine Gael
Rónán Mullen	Independent
Denis O'Donovan	Fianna Fáil
Katherine Zappone	Independent



## Appendix 2

### ORDERS OF REFERENCE

#### **a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]**

- (1) The Select Committee shall consider and report to the Dáil on—
  - (a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and
  - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—
  - (a) Bills,
  - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 164,
  - (c) Estimates for Public Services, and
  - (d) other matters as shall be referred to the Select Committee by the Dáil, and
  - (e) Annual Output Statements, and
  - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:
  - (a) matters of policy for which the Minister is officially responsible,
  - (b) public affairs administered by the Department,
  - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
  - (d) Government policy in respect of bodies under the aegis of the Department,

- (e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
  - (f) the general scheme or draft heads of any Bill published by the Minister,
  - (g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
  - (h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
  - (i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
  - (j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,
  - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
  - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
  - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- \* (6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:
- (a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
  - (b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.
- (7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.

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\* By Order of the Dáil of 8<sup>th</sup> June 2011, paragraph (6) does not apply to the Committee on Justice, Defence and Equality.

- (8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
  - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
  - (c) at the invitation of the Committee, other Members of the European Parliament.

**b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70])**

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.
- (4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
  - (a) a member of the Government or a Minister of State, or
  - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

## Appendix 3

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*Dé Céadaoin, 07 Bealtaine 2014*  
*Wednesday, 07 May 2014*

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The Joint Committee met at 14.00 p.m.

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### MEMBERS PRESENT:

Deputy Marcella Corcoran Kennedy,	Senator Ivana Bacik,
Deputy Alan Farrell,	Senator Martin Conway,
Deputy Seán Kenny,	Senator Katherine Zappone.
Deputy Finian McGrath,	
Deputy John Paul Phelan,	

DEPUTY DAVID STANTON IN THE CHAIR.

### **General Scheme of Criminal Justice (Community Sanctions) Bill: Discussion**

Chairman:

Apologies have been received from Senator Tony Mulcahy. The purpose of the meeting is to have a discussion with a number of those who made a written submission on the heads of the criminal justice (community sanctions) Bill. On behalf of the joint committee, I welcome from Facing Forward, Ms Nadette Foley, advocacy officer, and Mr. Niall Counihan, vice-chairperson; from the Law Society of Ireland, Ms Shalom Binchy, chairperson of the criminal law committee, and Mr. Shane McCarthy, a member of the criminal law committee; from the Restorative Practice Strategic Forum, Ms Catherine Ashe, steering committee member, and Ms Claire Casey, quality assurance sub-committee member; and from the Rape Crisis Network Ireland, Ms Caroline Counihan, legal director. The format of the meeting is that witnesses will be asked to make an opening statement of approximately five minutes, after which we will have a question and answer session with members.

I remind members, witnesses and observers in the Visitors Gallery that all mobile telephones must be switched off or switched to aeroplane, safe or flight mode, depending on the device. Unfortunately, switching to silent mode will not be sufficient as a level of interference will be maintained that impacts negatively on the broadcasting of proceedings. If a witness's



telephone rings while he or she is making an interesting comment, it will not be picked up by the broadcast unit. If, in the course of proceedings, interference takes place, I will ask everyone to switch off their telephones completely.

I draw attention to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to so do, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a person, persons or an entity by name or in such a way as to make him, her or it identifiable. I remind members that under the salient rules of the Chair, they should not comment on, criticise or make charges against a person outside the House or an official by name in such a way as to make him, her or it identifiable. I invite Ms Foley to make her presentation.

Ms Nadette Foley:

This submission has been prepared on behalf of Facing Forward by Barbara Walshe, Niall Counihan and me. Facing Forward was established in 2005 to support the introduction of restorative approaches based on best practice that have emerged in other countries. We were very much welcome the heads of the criminal justice (community sanctions) Bill for a number of reasons. First, it is an important step in fulfilling the recommendation of the National Commission on Restorative Justice to place restorative approaches on a statutory footing. Second, it takes into account the needs and interests of the victim and offender, places them on a statutory basis and requires the consent of the victim for the payment of reparation and-or a restorative intervention with the offender.

Facing Forward's approach to restorative justice is based on three questions. Retributive justice asks what law was broken, who broke it and how do we punish those who broke it. Restorative justice asks what harm was done and to whom, what needs have arisen based on this harm and whose obligation is it to meet these needs. Internationally, where restorative practices are embedded within criminal justice systems, they are only one part of a wider restorative approach in communities, schools and throughout society. Facing Forward recognises the ripple effect of crime at all levels of the community and wants to encourage and support the adoption of a more restorative approach generally.

The Restorative Justice Council in the United Kingdom has a best practice document that sets out a number of key principles. These are that the primary participants in any restorative process are the individual who has been harmed and the person responsible for the harm. In addition, there

should be some level of agreement about the essential facts of the incident and an acceptance of responsibility by the person who caused the harm.

I now propose to address the heads of the Bill. Facing Forward welcomes the provision in head 8 for a "limited and specific restorative justice approach in relation to District Court criminal proceedings for minor offences".

On section (4) of head 9, the explanatory note reads "reparation means financial reparation, any other form of reparation, or both". However, the examples provided in the head are purely financial. Facing Forward urges that the possibility of encouraging victims and offenders to consider reparation in its widest sense be incorporated more fully in the final version of the Bill to respect the different interests and needs of individual victims in the spirit of the European Union victims' directive.

The heads do not specify the precise mechanism by which the victim's consent is to be sought. Facing Forward recognises that certain victims may have suffered considerable trauma and harm and have safety concerns. For this reason, their overall needs beyond the consent issue must be taken into account and responded to appropriately. To comply with the EU victims' directive, when a garda or other professional contacts a victim to ascertain whether or not he or she consents to a reparation order being made, the garda or professional may also need to assess the victim's additional needs and refer him or her to victim support agencies.

Facing Forward ask that the process to be outlined in the Bill of seeking the victim's consent specify offering information to the victim on wider restorative possibilities, within the limits of the context of summary offences. The restorative element could be strengthened by giving a victim time to consider not only if he or she wants reparation but also what reparation means to him or her. For some victims, this may simply be the cost of damage done or medical expenses incurred as a result of the offence, while for others additional possibilities may arise.

Wider communication with the victim could allow victims to explore their interest in communication of any sort, indirect or direct, with the offender. Such communication would need to be carried out promptly as the purpose of this mechanism is to enable offenders to put the summary offence behind them. Would it be appropriate for victims who consent to reparation to be given the option of attending the summary hearing in the District Court to hear the offender accepting responsibility for the offence and the harm caused and confirmation of the reparation arrangement?

Head 10 refers to the "need to have due regard to the interests of any victim of the Offence". This relates to the EU victims' directive which recognises the need for the victim to play "a key role in criminal proceedings". Facing Forward would like the Bill to include reference to

the needs of "victims with specific protection needs", as obligated by the directive. This category includes all victims under 18 years, victims of sexual crime and victims of hate crime. The directive also encourages states to introduce codes of conduct or guidelines for professionals who are in contact with victims.

Facing Forward asks the joint committee to consider in detail a number of issues, namely, the "specific protection needs" of certain victims and how these will be met within the Bill, for example, considerations around language, age, gender, literacy, culture, ethnicity, mental health or sexual orientation and the specific training needs required to address these considerations; the issue of giving victims information on further restorative possibilities for communication between them and the offender, for example, a range of options which could include a facilitated meeting between the victim and the offender if it was requested; the possibility of informing victims of the option to be present at a District Court hearing where the offender accepts responsibility for the harm. In addition, direct input by victims into the nature and extent of the reparation process and-or the potential to engage in a restorative session with the offender if required should be considered; and the need to conduct public awareness work to ensure widespread understanding of the benefits to victims, offenders and society of introducing restorative justice approaches in the criminal justice system.

I thank members for the opportunity to present to the meeting. We will be pleased to answer any questions they may have.

Chairman:

I thank Ms Foley for her presentation, which was concise and to the point. I invite Ms Binchy to make her presentation.

Ms Shalom Binchy:

On behalf of the Law Society of Ireland, I thank the joint committee for inviting my colleague, Mr. Shane McCarthy, and me to attend today. Mr. McCarthy and I are members of the criminal law committee of the Law Society and Mr. McCarthy is a nominated member of its council.

The criminal justice (community sanctions) Bill constitutes a radical overhaul of the manner in which the sentencing of offenders is dealt with before the courts, with particular reference to minor matters or matters where judges believe alternatives to convictions should be considered. The most significant changes proposed under the new scheme are that the Probation of Offenders Act 1907 will be repealed and the court poor box will be replaced with a reparation fund. The legislation will, to some extent, implement some recommendations of the Law Reform Commission's report of 2005.

Mr. McCarthy will speak about restorative justice, with a focus on the community sanctions Bill, the need for adequate resourcing, the potential restriction of the range of options open to judges and future Garda vetting of community sanctions.

Mr. Shane McCarthy:

The Law Society of Ireland made a submission to the committee on restorative justice alongside its submission on the community sanctions Bill. In this submission, we emphasised the importance of cross-agency and multidisciplinary co-operation, which are vital to ensure the successful roll-out of restorative justice.

While the Law Society welcomes debate as to restorative justice initiatives, we caution against the introduction of a parallel justice system to the existing courts system. Such initiatives might interfere with the rights of people who are suspected of criminal activity, albeit of a minor nature. Any referral to a restorative justice scheme should begin and end in the appropriate court where the accused would have legal advice and representation.

In the context of the criminal justice (community sanctions) Bill, many of our recommendations as regards restorative justice initiatives generally may be of interest to committee members. We recommend that the restorative justice initiatives should be based on an analysis of the impact of any such changes to criminal procedure in Ireland and the avoidance of any potential weakening of the constitutional rights of the accused. They should preserve the rights of accused people to be fully legally advised prior to participating in any such scheme. They should be designed on the basis of evidence-based research and adequate resourcing. They need to be supported by an adequate information programme established to ensure that there is adequate knowledge among all criminal justice personnel as to the appropriateness and suitability of restorative justice options in particular circumstances.

Research has shown that 75% of solicitors are unaware of the main principles of restorative justice. The successful expansion of the restorative justice schemes in Nenagh followed an extensive awareness programme among the public, solicitors, gardaí and other stakeholders. This education scheme is fully supported by the Law Society of Ireland which provides training to lawyers and trainee lawyers as appropriate.

The availability of adequate resources will be vital. Studies in Northern Ireland have indicated that each case referred to a restorative justice conference takes approximately 26 hours of staff time. In cases where it is necessary to obtain the victim's consent, it is the society's view that the victim's opinion should always be considered but there should not be a veto in cases where the judge deems restorative justice an appropriate mechanism. In many cases victims will not want to be involved despite

the benefits of restorative justice schemes. For example, 89% of victims who have got involved in the past have confirmed that the apologies they received were sincerely offered. However, studies in England have shown that as few as 16% of victims want to participate in conferences there, with the comparative figures for Northern Ireland being 20% and Ireland approximately 45%. Of those who refused to participate, more than half gave the reason that they simply did not wish to do so. Similarly in the case of so-called victimless crimes where there is no victim to consent to the process, the society believes that restorative justice should not be automatically dismissed as an option for consideration.

The general scheme may put an end to the practice of courts seeking the assistance of the probation services for persons in circumstances where no formal conviction has been made. In such circumstances the individual concerned may benefit from intervention by the probation services, for example, in respect of addiction issues or training and employment assistance. There are instances where probation officers, after a period of informal supervision, may make recommendations that people should not be formally convicted. We recommend that the general scheme should not limit or restrict the range of options available to the courts. The Judiciary should be allowed to order the involvement of the probation services in any circumstances where it believes their involvement would be beneficial.

The treatment of discharge or binding-over orders made under the general scheme for the purposes of future Garda vetting is another consideration. The general scheme provides no direction or clarity on the manner in which it is intended to record discharge and binding-over orders made for the purposes of Garda vetting. Issues arise as to whether a notice of the making of either of these orders, which do not constitute a conviction, will be forwarded to the Garda Síochána for recording.

It is important to note that the Garda vetting unit does not currently operate pursuant to any specific statutory power. While the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 may resolve some of the issues about which the society is concerned, this Act has not yet commenced. Accordingly, the society is very concerned that the current non-statutory procedure may interfere with the privacy rights of individuals, in particular those pursuant to Article 8 of the European Convention on Human Rights. The society believes that the general scheme must be considered in the context of the manner in which orders made under the general scheme, where there is no conviction, will be treated for the purposes of Garda vetting both under the current non-statutory procedure for Garda vetting and the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

Ms Shalom Binchy:

We feel there is potential confusion with the use of the term "binding-over orders" in heads 8 and 10. The courts currently have the power to bind people over to the peace even in circumstances where they are not charged with a criminal offence. The use of the term "binding-over orders" may result in confusion between the two different types of orders which will be available. The Law Reform Commission's 2005 report suggested the use of terms such as "full dismissal" or "conditional dismissal". It is possible that the inherent jurisdiction of the courts to dismiss a case on its merits may be diluted should the approach proposed by the general scheme be adopted. We recommend the use of the terms "full discharge order" and "conditional discharge order" instead of the term "discharge orders" and "binding-over orders" to avoid confusion.

The maintenance of the privacy and confidentiality of recipients of probation services is addressed at head 38. The general scheme proposes changes to how the Probation Service operates. Under the general scheme of the Bill the Minister may direct a designated person to investigate a complaint regarding the treatment of a person being dealt with by that service. There does not appear to be a requirement that such investigations be made pursuant to a complaint being made by the recipient of the service.

Often persons who are under the care of the Probation Service disclose certain highly confidential and sensitive matters personal to them which may be of interest to other organs of the State. The procedure whereby the Minister can direct investigation by a designated person could result in the State coming into possession of highly sensitive and confidential information. We recommend that the procedure for the investigation of complaints be reviewed to consider the best approach to maintain confidentiality of recipients of probation services.

The use of monies paid into the reparation fund, and the need to maintain the spirit of the poor box system and fund anti-recidivism efforts in communities are dealt with at head 30. The general scheme proposes that monies currently paid towards general community needs and charitable purposes through the poor box system be redirected exclusively to victim support and the funding of the Criminal Injuries Compensation Tribunal. Payments for compensation, reparation and assistance for the victims of crime are provided for, and the fund may not be used for any other purpose. Local charities and organisations benefit from the poor box and they are likely to be affected by the proposed redirection of funds. This redirection will not assist anti-recidivism efforts in communities as locally based front-line organisations are unlikely to receive supports.

In 2005, the Law Reform Commission endorsed the view that the fund "should be used to assist programmes aimed at preventing offending behaviour since these would be of benefit to the offender and the victim in this specific case and to assist potential offenders and potential victims in society." We recommend that the application of monies from the

reparation fund be allocated to community anti-recidivism initiatives in line with Law Reform Commission proposals.

Chairman:

I must stop Ms Binchy there because her time is well and truly up.

I call Ms Ashe of the Restorative Practice Strategic Forum.

Ms Catherine Ashe:

My colleague, Ms Claire Casey, and I represent the Restorative Practice Strategic Forum. The forum promotes and supports the use of a wide range of restorative approaches spanning all sectors of the community. It is grateful to the committee for the opportunity to comment on the heads of the Bill and it restricts its comments to specific aspects of heads 8 and 9, referring to victims' interests and restorative justice.

The forum makes comments in respect of five key aspects of the provisions in heads 8 and 9. It welcomes the inclusion in the heads of the Bill of provisions relating to restorative justice. It recognises that the stated intention is to provide for a limited and specific restorative justice approach in District Court criminal proceedings for minor offences. It also recognises that the focus of the Bill is on community sanctions, not restorative justice.

The forum would respectfully suggest that consideration be given to broadening the scope of the restorative justice provisions to include so-called "victimless" crimes or offences where a corporate victim is involved or cases where the victim does not wish to receive reparation or engage otherwise with the offender. In such cases, reparation could be paid to the court reparation fund for possible dispensing to other victims or for the benefit of communities affected by crime.

Of critical importance in the view of the forum is that it is not necessary or desirable that a willing, remorseful and otherwise suitable offender should be denied an opportunity to benefit from a discharge or binding over order by making reparation. We welcome the inclusion of non-financial forms of reparation in the definition of reparation and the possibility to adjourn proceedings to ensure sufficient time to make reparation. We also welcome the possibility of offenders benefiting from discharge and binding-over orders, notwithstanding that they do not have the means to make reparation. It is also our view that the payment of reparation should take place in a restorative context. This would include other restorative actions by the offender, including potentially a restorative dialogue with the victim, and supports for offenders to avoid further offending. We welcome the statutory underpinning of reparation, although we see court-based reparation as a very limited form of restorative justice and recognise that reparation is already a possibility,

and a reality in the majority of cases, under other restorative justice options, such as community-offender reparation panels and victim-offender mediation.

Ms Caroline Counihan:

The Rape Crisis Network Ireland, RCNI, broadly welcomes the forthcoming criminal justice (community sanctions) Bill 2014, as set out in the general scheme, because we welcome the inclusion of victims' interests as an important part of the sentencing process, and as an important way of ensuring the best possible risk assessment and management of sex offenders. In particular, we welcome the provisions which implement our own earlier recommendations about compensation and pre-sentence assessment reports.

I will focus on certain heads of the Bill. In head 44, compensation, we welcome very much the deletion of the words "instead of" from subsection (1) of the original Section 6 of the Criminal Justice Act 1993, as we have already advocated for this, and it was recommended by the legal issues sub-committee, LISC, of the National Steering Committee on Violence against Women. It will no longer be possible to make a compensation order instead of a sentence. This is entirely appropriate. We recommend further that if any judge is considering a compensation order, she or he should be obliged to consult the victim of the crime first. Our experience is that some victims of sexual violence are not willing to accept any compensation from an offender, regardless of the circumstances. If the judge found that the victim was indeed unwilling to accept such compensation, he or she should be able to order that the same amount be paid by the offender to the reparation fund.

With regard to assistance for the victims of crime, we have nothing but praise for the existing Commission for the Support of Victims of Crime funding structure, which is simple and well-administered, and our members have benefited greatly from the funding for court and Garda accompaniment. A request for help can only be funded by the commission if it relates in our case to accompaniment services applied for and approved in advance. The structure is not very flexible. We recommend that, however it is administered, the reparation fund structures should have the capacity to be flexible to victims' needs as they arise, as far as possible. The application process to the reparation fund should be well publicised by the State, simple and easy to understand, easy to administer and account for, and the portion allocated to victim assistance should increase the overall amount of funding available to victims of crime, not replace existing sources of funding. With regard to victim compensation and reparation the existing Criminal Injuries Compensation Tribunal should have its rules replaced to include all those categories of victim who may now find themselves actually or potentially excluded from compensation.



Under head 16, probation assessment reports, we recommend that with regard to the content of such reports, each one should include a detailed assessment of the risk of future re-offending and make proposals to address any such risk, where appropriate. If anyone convicted of a sex offence does not co-operate with the preparation of a probation assessment report, that fact should be brought to the attention of the sentencing judge, who should have the power to impose sanctions if she or he is satisfied there is no reasonable excuse for the failure to co-operate. As part-suspended sentences provide an important mechanism through which the court may impose conditions aimed at reducing the risk of re-offending after release and activate the full sentence if these conditions are breached, we submit that part-suspended sentences should be included explicitly in the wording of head 16(2)(c). Where the sentencing judge considers it may be appropriate to impose a part-suspended sentence on a sex offender, we submit that she or he should have regard to some of the same matters which must be considered by a sentencing judge who has to decide whether to impose a post-release supervision order.

With regard to head 17, other reports that may be requested, we recommend that in the case of sex offenders at least, any report prepared under this head should refer explicitly to the risk of re-offending and the report's author should make any recommendations which seem appropriate to address this risk.

Under heads 20 and 21, access to reports and the right to tender evidence on reports respectively, we recommend that head 20 be reworded slightly so that victims are named as a class of people entitled to see copies of reports under that part, unless there are exceptional circumstances in a particular case which mean that the judge should not allow this. Head 21 is broadly welcomed.

With regard to head 8, discharge orders and binding over orders relating to summary offences, we recommend that the wording about the interests of any victim be changed from "may have regard" to "shall have regard", so that any judge considering a discharge order or binding over order is obliged to consider the needs of any victim of the offence.

In respect of head 9, restorative justice criteria for the purposes of head 8(3)(f) we recommend that the wording of head 8 on restorative justice criteria be changed from "may have regard to" to "shall have regard to", to put it beyond doubt that where they are applicable, the restorative justice criteria must be included in any consideration of a disposal without conviction.

With regard to head 34, role of probation service in relation to court proceedings, we recommend that the proposal to allow Probation Service officers to prepare a victim impact statement be scrapped. In making this

submission, no criticism of the great and necessary work of Probation Service officers is intended.

We thank all members of the committee most sincerely for this opportunity to make submissions on the forthcoming criminal justice (community sanctions) Bill 2014, and for the invitation to attend this meeting today. If any members of the committee would like further information on any point, they should not hesitate to contact us.

Senator Martin Conway:

I thank the four parties for their comprehensive submissions. The Minister is referring much more legislation to the committee for this type of engagement and consultation.

Will Ms Counihan explain why the RCNI would not want the Probation Service to make victim impact reports? I know there is no criticism intended of the service.

Ms Caroline Counihan:

Absolutely not.

Senator Martin Conway:

Why would the RCNI not want that to happen?

Ms Caroline Counihan:

I consulted various managers and counsellors in our network and the response was, without criticism of the Probation Service, that our clients associate probation officers with the accused and the interests of the accused.

They did not feel it would be easy for those victims to be open, frank and part with any meaningful information. When dealing with the impacts of sexual violence, it takes time for a victim to build up a relationship where she can be full, frank, open and be herself in getting to the depths of the impact of the crime. As far as sexual violence victims are concerned, that suggestion does not seem to be workable.

Senator Martin Conway:

That is perfectly reasonable. I thank the Law Society for the comprehensive submission. Will the witnesses elaborate somewhat on the concerns regarding the proceeds of the court poor box? What is proposed is certainly different and the issue is not left to the discretion of a judge. The money would be targeted appropriately.

Ms Shalom Binchy:

The poor box system works very well and although it is not on a statutory footing, we are not keen to see changes made to that system because it has been extremely effective, particularly cost-effective. Currently, funds are usually sent to a charity at the nomination of the judge and administered in a very cost-effective way. They also go to mainly local organisations, very often those which deal with sources of criminal activity. For example, the money may go to local drug treatment organisations and bodies which may not receive much funding from other sources. We are keen to keep that funding available for those types of organisations. Although we welcome the idea that victims of crime could also receive some payments through the court poor box system, we would not like to see a system where local organisations - particularly those involved with measures to prevent offending - would not receive funds from the court box. We are also concerned that this proposal could add another layer of bureaucracy and it could be much more costly than the existing system.

Senator Martin Conway:

Will the witnesses elaborate on the concerns about privacy rights?

Ms Shalom Binchy:

This is uncharted territory as the head proposes a system where a complaint can be made relating to probation services. The complaint would be investigated as a necessary consequence and information given by a person who has dealt with a probation officer would be available to a third party. One can imagine how the information could be extremely sensitive, and we foresee instances where somebody who gives information to a probation officer may disclose a very serious crime of a sensitive nature. We are concerned that such issues may come to the domain of others who may not have constraints similar to the probation services or a solicitor on sharing information. The committee should consider the matter and try to include measures to combat any disclosure of any information of sensitive or confidential nature.

Senator Martin Conway:

The witnesses are aware that the committee is doing some work on restorative justice and will produce a report on that. I hope that by September or October we will see movement on it. How will the principles of restorative justice be improved in this Bill as advocated by Facing Forward?

Mr. Niall Coughlan:

With regard to restorative justice for summary offences, there is an opening-----

Chairman:

Will the witness, for the benefit of those listening, explain summary offences?

Mr. Niall Counihan:

In our view they are minor offences which do not require any lengthy court appearance. I am open to correction on that. We advocate a restorative method of dealing with the offender and victim in so far as the victim could attend court and have an input on the reparation involved in the judgment. Where an offender agrees to take responsibility, rather than reparation or community work, he or she could agree to some sessions of victim-offender mediation with the victim.

Senator Martin Conway:

I was going to discuss the EU victims directive but the witness has pre-empted the next question in his comments. I hope we will see more regard for restorative practices and justice in more legislation. Some delegations have made submissions for the study this committee will complete on restorative justice and I hope we will have an opportunity in the autumn to further engage in advancing this principle. The pilot projects in Nenagh and south Dublin are working well. The Minister has committed, through Private Members' motions in the Seanad, to extending those, and the announcement of a community court in Dublin is to be welcomed. I thank the witnesses for their engagement.

Deputy Finian McGrath:

I welcome and commend all the groups for their valuable submissions and I thank them for their assistance to this committee. We all share the same objective, which is to do something for the broader society and community, repair harm and restore relationships where there are criminal issues. In the submission Facing Forward indicated that for some victims, restorative justice may amount to the cost of damage or medical expenses arising from an offence but for others there may be additional possibilities. Will the witnesses clarify that?

Ms Nadette Foley:

From other jurisdictions we have seen videos of restorative processes, particularly where there is direct or indirect communication between a victim and offender. My colleague referred to this, and if reparation is envisaged - possibly involving community service or another activity - a victim can relay his or her wish for the type of action involved. The party

may be involved in or support a project and wish the offender to contribute directly to it through time or money. The opposite may be the case, and a victim may have safety concerns and not want to walk down a street where there is a possibility of the offender painting the wall of a local youth project, for example. The victim may prefer the community service to be done in a different location.

That is why we say there should be possibilities. We do not want to impose restrictions. The beauty of restorative work is that the creativity of both the offender and the victim can come into play and that they can come up with ideas none of us would even dream of. They are the kind of things we have heard from other jurisdictions.

Deputy Finian McGrath:

In her submission Ms Foley referred to conduct guidelines for professionals in contact with victims. I meet many victims of crime who are on the fringes of criminal gangs who are afraid to report their activities. That is something on which we have touched before in the committee. Is there any advice in such situations? A regular criticism from people in marginalised communities is that some of the professionals do not listen sufficiently or are not able to deal with the issues they want to deal with.

Ms Nadette Foley:

My colleague, Mr. Counihan, might be better able to answer that question.

Deputy Finian McGrath:

That is a regular complaint I receive.

Mr. Niall Counihan:

We come across a lot of drug gang intimidation and it is a very hard nut to crack. In some cases the community garda can help but in others an inspector is required. The safety of the person making the complaint is the key. We operate strictly on the basis of restorative initiatives. In the case of offenders engaged in intimidation, unless a lot of corrective work has been done with them, we would not consider them to be candidates for a restorative justice programme with such victims as described by the Deputy. They could either be on the fringes of gangs or have gone down the road of purchasing certain illicit products and not been able to pay for them. Serious intimidation could be involved. I would not envisage a restorative process working in such a situation in the initial stages until such time as work has been done with the offender.

Deputy Finian McGrath:

The submissions of Ms Ashe and Ms Casey refer to broadening the scope of restorative justice provisions to include offences where a corporate victim is involved. Will they, please, expand on that aspect of the submissions?

Ms Claire Casey:

On the question Deputy Finian McGrath asked about what helped people to report crime, we have found in running a restorative practice programme in Tallaght that where people had received training in restorative practices – residents, as well as gardaí and agencies – when the evaluation was carried out, the people who had undergone the training and were using the skills said they were 30% more likely to report a crime. The evaluation involved self-reporting. Confidence was built in relationships with the Garda through the process. The aim is to broaden restorative justice provisions. The forum sincerely welcomes the intention to put the restorative justice process on a statutory footing. It is a step in the right direction in terms of adults having access to restorative justice processes in the criminal justice system. It is a first step. The recommendations tie in with everything that has been said by everyone present in making the processes more effective.

An example of a corporate victim would be where there is a break-in at a post office at night and nobody is hurt but the post office has been damaged – in that case An Post has been damaged. In such cases there is not strictly a victim for the Garda or the courts, but there is an impact on the community and a restorative justice option could be taken. I return to points made about the supports people need in terms of training, information or skills around approaches to restorative justice and it being done on an inter-agency basis.

Deputy Finian McGrath:

I would appreciate the delegates keeping in touch with the committee because some of the submissions also cover other areas we might deal with in the future. My colleagues would be very interested in some of the points made such as those Ms Casey outlined in the case of Tallaght.

Mr. McCarthy referred in the presentation on behalf of the Law Society of Ireland to issues that might interfere with the rights of people suspected of criminal activity. He also referred to a potential weakening of the constitutional rights of the accused. Will he expand a little on his concerns about sections 8 and 9?

Mr. Shane McCarthy:

It is vital that an accused have the opportunity to engage with a legal adviser and take advice on whether to engage in a restorative justice procedure before deciding whether he or she should become involved.

The point I have made is that all restorative justice procedures should be referred from a court to a restorative justice scheme and that in the court the accused should have the opportunity to discuss the issues involved with a solicitor and be able to take proper advice on the powers and remit of the restorative justice scheme to which he or she is potentially being referred. Once he or she is aware of this, his or her involvement with the restorative justice scheme would be on the basis of informed consent. That is vital from so many points of view, including the subsequent success of the restorative justice scheme.

Deputy Finian McGrath:

I thank Mr. McCarthy.

Senator Katherine Zappone:

I have a couple of questions. I thank the delegates for their presentations. I have one question for Facing Forward about its concluding observations. Reference is made on page 3 to the specific protection needs of certain victims and the importance of the specific training required to meet these needs. Will Ms Foley, please, expand a little more on this? Is she also arguing that this is something that should be incorporated into the Bill?

Ms Nadette Foley:

The EU victims' directive mentions three categories of victims with specific protection needs – those under 18 years, victims of sexual crime and victims of hate crime. In regard to these categories there is an obligation for new legislation to comply with the victims' directive. That part of it is specific. On page 3 we have a wider formulation covering some of the categories in equality legislation. Over and above the obligations of the victims' directive, there are sub-categories of victims. Victims are all individuals. Given the specific sub-categories, it is important for the Garda, the Probation Service, court staff and those involved in reparation or community service processes to be fully informed and trained to deal with the specific sub-categories of victims.

Senator Katherine Zappone:

Presumably, that call comes from the experiences of the membership of the group. Does Ms Foley have any documentation in that regard?

Ms Nadette Foley:

Several of us, me included, have worked with migrants for many years and are particularly conscious of the context of hate crime, including race hate crime.

As my colleague, Mr. Counihan, has said, there are categories of victims who may have perpetrated offences themselves. We are very conscious that this is not black and white.

Senator Katherine Zappone:

Yes.

Ms Nadette Foley:

There are people who are hidden victims.

Senator Katherine Zappone:

I thank Ms Foley. I have a question for the representatives of the Restorative Practice Strategic Forum. They have recommended that the payment of reparation should take place in a restorative context and should include other restorative actions by the offender. Could they say a little more about that, perhaps on the basis of the experience they have gleaned from their work? Is it possible that widening this practice in the way the forum has suggested could have some disadvantages?

Ms Claire Casey:

I can give some other examples of the things that have been talked about - the kinds of supports that have been put in place under the pilot projects and the alternatives to financial reparation. People who do not have the money to make repayments can take on community service or do voluntary work instead. The disadvantages of this approach are the same as the disadvantages of anything. It involves making a commitment to having a longer-term relationship with an offender than one would have if one simply sent him or her to prison. It is more labour-intensive in the community, as has been mentioned. The cost-effectiveness of investing now might not be seen until 15 years down the road. It is the same argument - prevention, in the form of early intervention, is better than cure. The disadvantages relate to the challenges associated with taking an interagency approach to finding a new way to work with people. It might take a little while for it to bed down.

Senator Katherine Zappone:

That is very good. I thank Ms Casey.

Ms Catherine Ashe:

I would like to add to that. I have 12 years experience of working with young offenders, some of whom had served sentences and some of whom were at high risk of going into prison. I am aware that the range of other proactive restorative options will be explored further. Deputy Finian



McGrath mentioned this earlier. It is important to note that restorative practices cannot exist in a vacuum in the criminal justice system. Certain reintegrative processes outside the criminal justice system need to be acknowledged because they are of great value by virtue of their proactive nature and because of the manner in which they facilitate reintegration into society.

Senator Katherine Zappone:

The Rape Crisis Network has strongly recommended that the Probation Service should not prepare victim impact statements. Is it offering an alternative in that regard?

Ms Caroline Counihan:

The role of supporter in preparing victim impact statements or, depending on the level of need, drafting them substantially, often falls to rape crisis people who have been supporting the victim. They are trained to do that with the support of the commission and of victims of crime. We have made some supportive material available for workers and victims. If a victim has a very good relationship with the investigating garda in his or her case, that garda might take on the role of preparing the victim statement, or at least providing a little assistance. It depends. As time goes by, I am noticing in my job that more and more victims seem to be undertaking to do it themselves substantially. We tell them that they really need to crosscheck it to make sure it is all right to go forward. As the members of the committee will be aware, there are certain matters that should not be raised in a victim impact statement for legal reasons, etc. Our philosophy is that it should be left to the victim. I am relaying to the committee the concerns of people in our network, who have said with the greatest of respect to the Probation Service that it is indelibly identified with the accused in the minds of victims. The service often supervises accused persons and prepares reports on them. It is identified by victims as a service for "them" rather than for "us". It is a purely practical point.

Deputy Finian McGrath:

I absolutely concur with what Ms Ashe had to say about the reintegration process. I would like to mention another bee that I have in my bonnet. We are dealing with the victims and the offenders today. I regularly whinge in here that we do not focus sufficiently on prevention in the broader crime debate. As the witnesses were speaking, I was reminded of the recent visit I made to a preschool in my constituency. Many of the 260 kids in the preschool, all of them are under the age of four, come from dysfunctional and violent families. Some of them come from families that have suffered as a result of gangland warfare. The brilliant staff in the preschool are working really hard to try to save these children before they enter the justice system at the age of eight, nine, ten or 15. I have a

bee in my bonnet about the need to do more at the early stages before people get involved in criminal activity.

Chairman:

I thank the Deputy for telling us about the bee in his bonnet. I would like to ask one or two questions now that everyone else seems to have concluded. Mr. McCarthy or Ms Binchy mentioned that 75% of solicitors are not aware of restorative justice measures and processes.

Mr. Shane McCarthy:

I referred to a small-scale survey of solicitors and other people working in the criminal justice area, as reported on in the *Irish Probation Journal*. It has been noted that when visiting judges come to the Nenagh area, where a restorative justice scheme is under way, they are not as aware of the rules applicable to the scheme as the judges who handle it day in, day out. Visiting judges are far less likely to refer a case to a restorative justice solution, as opposed to the standard solutions in the District Court. There is a lack of knowledge of restorative justice schemes right across the board, for example among solicitors, judges and other people practising in the area. One of the major things done as part of the roll-out of the extension of the scheme in Nenagh involved building awareness of the advantages of restorative justice schemes and creating an acceptance of such schemes among the community, which would not be aware of them. It was considered that such knowledge-building was a vital step in increasing the acceptability of restorative justice as an alternative justice mechanism.

Chairman:

That is amazing. When Ms Casey spoke about training earlier, she cited an example of where training occurred in a community and the confidence of victims or possible victims improved dramatically as a result. I think she said that the knowledge of people in general, rather than victims, improved. Their propensity to report crime increased as a result. Could she talk about the kind of training that is provided and how it works? Who does it? Where does it work? What is involved in it? What would Ms Casey like to see happening in order to expand or develop this further?

Ms Claire Casey:

I referred to the actual training we provide. I work for an organisation in Tallaght called the Childhood Development Initiative, which is one of the prevention and early intervention programme projects funded by Atlantic Philanthropies and the Department of Children and Youth Affairs. Over approximately four days, we deliver training in two areas - an introduction to restorative practices and an upskilling in restorative practices - to give

people the skills to use a restorative approach to build relationships and resolve conflict easily. It is not restorative justice training.

Chairman:

Okay.

Ms Claire Casey:

It is linked to it in the training. We explain to people about restorative justice.

The training is about conflict and it is not about tackling crime which is a matter for the Garda Síochána because that is its job. This aspect is covered in the training. The training improves people's confidence about naming problems. The programme was independently evaluated by NUIG over its first two years and it has been running for four years. At that point 700 people had participated in the training programme and 35% of people surveyed reported themselves more confident and willing to report crime. This was an unexpected outcome. Tallaght is also a pilot project for restorative justice training for members of the Garda Síochána. Waterford and Tallaght were the two pilot projects and the reports on those projects will be published next year in 2015. It will be very interesting to see how they have fared. The aim was to forge better relationships between residents and gardaí.

Chairman:

How would Mr. McCarthy see the training area being resolved or developed?

Mr. Shane McCarthy:

An evaluation was carried out on the scheme in Nenagh where the throughput numbers in the scheme increased from approximately 20 a year up to in excess of 100 a year. It expanded geographically to include parts of County Offaly and other adjacent counties. The only way that this expansion was acceptable was by creating awareness of the benefits of the scheme and how it operated. That was done through the probation service meeting with gardaí, public representatives, members of the community and setting up local panels of people who were trained in the appropriate principles.

Chairman:

I ask Ms Counihan to expand on her reference to the victim surcharge system and on how it operates in the UK.

Ms Caroline Counihan:

In the UK a percentage surcharge is applied. It is particularly property crime but with regard to crime against the person there is a fixed amount depending on the kind of crime. A surcharge is levied on any financial penalty and it goes to the victims. It struck me on further reading that the scheme is overly-complicated. What is proposed under this Bill is better because it is more flexible.

Chairman:

Witnesses are welcome to send us any further written information and comments. I thank the witnesses for their attendance and for their engagement with the committee on this interesting and very important topic. We will send a report to the Minister on this issue. We expect the Bill to be published at some stage when it will be debated in the Houses and on Committee Stage. The input of the witnesses is very welcome, and it is also very valuable and important. We are very grateful to them for sharing their time and expertise with us.

The joint committee went into private session at 3.15 p.m. and adjourned at 3.45 p.m. until 2.30 p.m. on Wednesday, 14 May 2014.

## Appendix 4

### Heads of Bill

# **CRIMINAL JUSTICE (COMMUNITY SANCTIONS) BILL 2014**

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## **PART 1**

### **PRELIMINARY AND GENERAL**

#### **Head 1      Short title and commencement**

Provide that:

- (1) This Act may be cited as the Criminal Justice (Community Sanctions) Act 2014.
- (2) This Act shall come into operation on such day or days as the Minister may appoint, by order or orders, either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

#### **Explanatory Notes:**

This Head is a standard provision.



## Head 2 Interpretation

Provide that:

(1) In this Act—

“Act of 1907” means the Probation of Offenders Act 1907;

“Act of 2001” means the Children Act 2001;

“Act of 2006” means the Criminal Justice Act 2006;

“binding over order” means an order under *Head 8(2)* or *Head 10*;

“child” means a person under the age of 18 years;

“community service order” has the meaning assigned to it by section 3 of the Criminal Justice (Community Service) Act 1983;

“controlled drug” has the meaning assigned to it by the Misuse of Drugs Acts 1977 to 2007;

“deferred sentence supervision order” has the meaning assigned to it by *Head 24*;

“Director of the Probation Service” means the person appointed by the Minister to the post of Director of the Probation Service;

“discharge order” means an order under *Head 8(1)*;

“enactment” means—

- (a) an Act of the Oireachtas,
- (b) a statute that was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and that continues in force by virtue of Article 50 of the Constitution, or
- (c) an instrument made under—
  - (i) an Act of the Oireachtas, or
  - (ii) such a statute;

“fixed by law”, in relation to a sentence for an offence, means a sentence which a court is required by law to impose on a person of full capacity who is guilty of the offence;

“intoxicating liquor” has the meaning assigned to it by section 77 of the Licensing Act 1872;

“Minister” means the Minister for Justice and Equality;

“offence” does not include an offence for which the sentence is fixed by law;

“person” means an individual and does not include a body corporate;

“probation assessment report” means a report in writing prepared by the Probation Service pursuant to *Head 16*;

“probation officer” means a person appointed by the Minister to be a probation officer;

“Probation Service” means those officers of the Minister assigned to perform functions in the part of the Department of State for which the Minister is responsible commonly known by that name;

“probation supervision order” has the meaning assigned to it by *Head 25*;

“prosecutor” means, in relation to an offence—

- (a) the Director of Public Prosecutions,
- (b) a person prosecuting the offence at the suit of the Director of Public Prosecutions, or
- (c) a person authorised by law to prosecute the offence;

“psychoactive substance” means a substance to which the Criminal Justice (Psychoactive Substances) Act 2010 applies;

“supervised community sanction” means—

- (a) a deferred sentence supervision order,
- (b) a probation supervision order,
- (c) a community service order, or
- (d) a recognisance described in section 28(2)(a) of the Misuse of Drugs Act 1977;

“suspended sentence” means an order suspending the execution of a sentence of imprisonment, in whole or in part, under section 99 (Power to suspend sentence) of the Act of 2006.

- (2) Notwithstanding *subhead (1)*, references to the prosecutor shall be construed, in relation to offences for which proceedings may not be instituted or continued except by the Attorney General, as references to the Attorney General.

**Explanatory Notes:**

This Head provides for the definition of terms used in the General Scheme.

### **Head 3            Application of Act to children**

Provide that:

- (1)     *Part 3* shall not apply in a case where a child is convicted of an offence.
- (2)     *Heads 23, 24 and 29* shall not apply to children.

#### **Explanatory Notes:**

Certain provisions in the Probation of Offenders Act 1907 can be applied to persons under the age of 18 and it is proposed that most provisions of this Bill will also apply to persons under the age of 18.

However, it is proposed that Part 3 (Probation Assessment Reports) will not apply to children convicted of offences, as sections 99 to 107 of the Children Act 2001 already provide for probation officers' reports in relation to children.

Head 23 (Matters to be considered by the court regarding supervised community sanctions) should not apply to children, as section 96 of the Children Act 2001 provides for principles relating to the exercise of criminal jurisdiction over children.

It is not appropriate for Head 24 (Deferred sentence supervision order) to apply to children, as sections 144 (Deferment of detention order) and 146 (Finding of guilt during deferment) of the Children Act 2001 make provision for the deferral of the making of a children detention order, with Probation Service supervision of the child during the deferment period.

It is not appropriate for Head 29 (Revocation of probation supervision order where term of imprisonment imposed on offender) to apply to children, as this matter is already dealt with by section 140 (Effect of subsequent period of detention) of the Children Act 2001, which provides that an order which imposes a community sanction on a child for an offence and which is in force shall cease to be in force on the child commencing a period of detention for another offence.

## **Head 4        Regulations**

Provide that:

Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution annulling the regulation is passed by either such House within the next 21 days on which the House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

### **Explanatory Notes:**

This Head is a standard provision for regulations to be made by the Minister.

## **Head 5        Expenses**

Provide that:

Any expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

### **Explanatory Notes:**

This is a standard provision.

## **Head 6        Repeals**

Provide that:

The following enactments are repealed:

- (a)     the Probation of Offenders Act 1907 (7 Edw. 7, c. 17);
- (b)     sections 7, 8 and 9 of the Criminal Justice Administration Act 1914 (4 & 5 Geo. 5, c. 58);
- (c)     section 33 of the Courts of Justice Act 1953 (No. 32 of 1953).

### **Explanatory Notes:**

This Head provides for the repeal of the enactments that are to be replaced by this Bill.

## **Head 7            Transitional provisions**

Provide that:

- (1)     An order of a court or a recognisance entered into under section 1(1)(ii) or 1(2) of the Act of 1907 which is in effect on the day *Part 2* comes into operation shall be subject to *Heads 11(7)* and *12* as if it were a binding over order.
- (2)     An order of a court or a recognisance entered into under section 2 of the Act of 1907 which is in effect on the day *Part 4* comes into operation shall be subject to *Heads 26* to *29* as if it were a probation supervision order.

### **Explanatory Notes:**

This Head provides that the provisions of the General Scheme regarding variation and non-compliance with binding over orders and probation supervision orders shall apply to existing orders and recognisances under sections 1 (Power of courts to permit conditional release of offenders) and 2 (Probation orders and conditions of recognizances) of the Probation of Offenders Act 1907.



## PART 2

### DISCHARGE ORDERS AND BINDING OVER ORDERS

#### Head 8 Discharge orders and binding over orders relating to summary offences

Provide that:

- (1) Where a person is before the District Court charged with a summary offence, or with an indictable offence that is being tried summarily, and the court is satisfied of the guilt of the person, but is of opinion, having regard to any matter referred to in *subhead (3)* that is relevant to the circumstances of the case, that it is inexpedient to impose any punishment, the court may, without proceeding to conviction, make an order (in this Act referred to as a “discharge order”) for the discharge of the person.
- (2) Subject to *subhead (5)*, where a person is before the District Court charged with a summary offence, or with an indictable offence that is being tried summarily, and the court is satisfied of the guilt of the person, but is of opinion, having regard to any matter referred to in *subhead (3)* that is relevant to the case, that it is expedient to discharge the person subject to his or her compliance with certain conditions, the court may, without proceeding to conviction, make an order (in this Act referred to as a “binding over order”) discharging the person subject to his or her entering into a recognisance, with or without sureties, to comply with the order.
- (3) The matters to which a court may have regard for the purposes of *subheads (1)* and *(2)* are any of the following:
  - (a) the character, circumstances, previous convictions, age, health or mental condition of the person;
  - (b) any previous order made under this Head or section 1(1) of the Act of 1907 in respect of the person;
  - (c) the trivial nature of the offence;
  - (d) any extenuating circumstances under which the offence was committed;
  - (e) the need to have due regard to the interests of any victim of the offence;
  - (f) the satisfaction by the person of all of the restorative justice criteria specified in *Head 9(1)*.
- (4) A court shall not make an order under *subhead (2)* where it considers it appropriate that the person concerned should be subject to the supervision of the Probation Service.
- (5) Nothing in this Act shall prevent the admission or requirement of any evidence relating to an order under this Head in any criminal proceedings before a court,

including any appeal or other application relating to those proceedings in which the person in respect of whom the order was made is a party to the proceedings.

### **Explanatory Notes:**

Head 8 replaces the order under section 1(1)(i) of the Probation of Offenders Act 1907 and the unsupervised conditional discharge provided for in section 1(1)(ii) of the 1907 Act in relation to summary offences.

A discharge order under Head 8(1) replaces the order under section 1(1)(i) of the 1907 Act (order dismissing the information or charge).

A binding over order under Head 8(2) replaces the order under section 1(1)(ii) of the 1907 Act (order discharging the offender conditionally on his entering into a recognisance).

It is proposed that, in addition to the factors to which the court may have regard under the 1907 Act, a specific reference to the interests of any victim of the offence should be included in **subhead (3)**.

**Subhead (3)(f)**, together with Head 9, provide for a limited and specific restorative justice approach in relation to District Court criminal proceedings for minor offences. It is intended that the provision will deal with cases such as minor assaults or minor criminal damage where the offender accepts responsibility for the wrong-doing, offers to make reparation, e.g. by paying for medical expenses or repairs to a vehicle, and, very importantly, the victim is willing to accept the reparation.

Under **subhead (4)**, the court may not make a binding over order under subhead (2) where it considers that the person should be supervised by the Probation Service, as binding over orders are appropriate to relatively trivial offences, where Probation Service supervision is not needed. **Subhead (4)** maintains a clear division between a binding over order and a probation supervision order.

**Subhead (5)** provides that nothing in the General Scheme shall prevent the admission or requirement of any evidence relating to an order under this Head in any criminal proceedings before a court (including any appeal or other application relating to those proceedings). The provision is based on section 6(3)(a) of the Criminal Justice (Spent Convictions) Bill 2012, as passed by the Seanad and considered by the Dáil Select Committee on Justice, Defence and Equality.

## **Head 9       Restorative justice criteria for the purposes of *Head 8(3)(f)***

Provide that:

- (1) For the purposes of *Head 8(3)(f)* only, the restorative justice criteria are—
  - (a) the person has accepted responsibility for his or her criminal behaviour and has expressed remorse for that behaviour,
  - (b) the person has provided reparation to the person in respect of whom the offence was committed, and
  - (c) the person in respect of whom the offence was committed has accepted the reparation.
- (2) The District Court may adjourn criminal proceedings to facilitate a person in satisfying the restorative justice criteria specified in *subhead (1)* if the court is satisfied that—
  - (a) the person has offered to provide reparation to the person in respect of whom the offence was committed, and
  - (b) the person in respect of whom the offence was committed is willing to accept the reparation.
- (3) This Head is without prejudice to section 6 of the Criminal Justice Act 1993, as amended.
- (4) In this Head, “reparation” means financial reparation, any other form of reparation, or both.

### **Explanatory Notes:**

The purpose of this head is to provide for a limited and specific restorative justice approach in relation to District Court criminal proceedings for minor offences.

It is intended that the provision will deal with cases such as minor assaults or minor criminal damage where the offender accepts responsibility for the wrong-doing, offers to make reparation, e.g. by paying for medical expenses or repairs to a vehicle, and, very importantly, the victim is willing to accept the reparation.

## Head 10      Binding over orders following conviction on indictment

Provide that:

- (1) Subject to *subhead (4)*, where a person has been convicted on indictment of any offence, and the court is of opinion, having regard to any matter referred to in *subhead (2)* that is relevant to the case, that it is inexpedient to impose any other than a nominal punishment, or that it is expedient to discharge the person subject to his or her compliance with certain conditions, the court may make an order (in this Act referred to as a “binding over order”) discharging the person subject to his or her entering into a recognisance, with or without sureties, to comply with the order.
- (2) The matters to which a court may have regard for the purposes of *subhead (1)* are any of the following:
  - (a) the character, circumstances, previous convictions, age, health or mental condition of the person;
  - (b) any previous order made under *Head 8* or section 1(1) of the Act of 1907 in respect of the person;
  - (c) the nature of the offence;
  - (d) any extenuating circumstances under which the offence was committed;
  - (e) the need to have due regard to the interests of any victim of the offence.
- (3) A court shall not make an order under *subhead (1)* where it considers it appropriate that the person concerned should be subject to the supervision of the Probation Service.

### Explanatory Notes:

This Head provides a replacement for the unsupervised conditional discharge provided for in section 1(2) of the 1907 Act (discharging the offender conditionally on his entering into a recognisance) in relation to indictable offences.

It is proposed that, in addition to the factors to which the court may have regard under the 1907 Act, specific references to the interests of any victim of the offence should be included in **subhead (2)**.

Under **subhead (3)**, the court may not make a binding over order under *subhead (1)* where it considers that the person should be supervised by the Probation Service, as binding over orders are appropriate to relatively trivial offences, where Probation Service supervision is not needed. **Subhead (3)** maintains a clear division between a binding over order and a probation supervision order.

## Head 11      Conditions of binding over orders

Provide that:

- (1) It shall be a condition of a binding over order that the person in respect of whom the order is made keep the peace and be of good behaviour for such period, not exceeding 3 years, as shall be specified in the order.
- (2) Subject to *subheads* (4) and (5), the court may, when making a binding over order, specify such conditions in the order as the court considers—
  - (a) appropriate having regard to the nature of the offence, and
  - (b) will reduce the likelihood of the person in respect of whom the order is made committing any other offence.
- (3) Without prejudice to the generality of *subhead* (2), a binding over order may include any of the following conditions:
  - (a) conditions relating to the person's place of residence;
  - (b) conditions requiring the person to refrain from associating or having any contact (direct or indirect) with such person or persons as the court may specify;
  - (c) conditions requiring the person to refrain from attending at such premises or other place as the court may specify;
  - (d) conditions relating to the consumption by the person of intoxicating liquor, controlled drugs or psychoactive substances;
  - (e) conditions relating to the undergoing by the person of psychiatric treatment.
- (4) A binding over order shall not include a condition referred to in *subhead* (3(e)) unless the court is satisfied, on the basis of evidence given by a consultant psychiatrist (within the meaning of the Mental Health Act 2001), that the person is in need of psychiatric treatment.
- (5) A binding over order shall not include a condition requiring a person to be subject to the supervision of the Probation Service.
- (6) The conditions of a binding over order shall be specified in the order.
- (7) Before the court makes a binding over order which includes any of the conditions specified in *subhead* (3) in respect of a person, the court shall explain the conditions of the order to the person.
- (8) The court shall cause a copy of a binding over order containing the conditions of the order to be given to the person in respect of whom the order is made and the

Superintendent of the Garda Síochána for the district in which the person ordinarily resides.

- (9) Where a court makes a binding over order, that court may, on the application to it in that behalf by the person in respect of whom the binding over order was made or by a member of the Garda Síochána not below the rank of [sergeant] [inspector] [superintendent], if it considers it appropriate to do so, by order vary (whether by the alteration, addition or revocation of a condition) a condition specified in the order, other than a condition referred to in *subhead (1)*.
- (10) A person intending to make an application to the court under *subhead (9)*, or to appeal against an order made under that subhead, shall give 10 working days notice in writing of that intention to—
  - (a) the Superintendent of the Garda Síochána for the district in which the person ordinarily resides, where the person in respect of whom the binding over order was made is the applicant or appellant, or
  - (b) the person in respect of whom the binding over order was made, where a member of the Garda Síochána not below the rank of [sergeant] [inspector] [superintendent] is the applicant or appellant.
- (11) The person in respect of whom the binding over order was made and the Garda Síochána shall be entitled to be heard in any proceedings under *subhead (9)* or any appeal against an order made under that subhead.
- (12) Where a court makes an order under *subhead (9)*, it shall cause a copy of the order to be given to the person in respect of whom the order is made and the Superintendent of the Garda Síochána for the district in which the person concerned ordinarily resides.

### **Explanatory Notes:**

This Head provides for the conditions that may be attached to binding over orders.

**Subhead (1)** provides that a person in respect of whom a binding over order is made must keep the peace and be of good behaviour for a specified period. The maximum period cannot exceed 3 years, as in the 1907 Act. No minimum period is specified.

**Subhead (2)** empowers the court to require the person not just to keep the peace and be of good behaviour, but also to comply with such additional conditions as the court may order. The text of the subhead is based on section 99(3) of the Criminal Justice Act 2006.

**Subhead (3)** sets out types of conditions that the court may include in the order. The conditions mentioned in subhead (3) are based on section 2(2) of the 1907 Act (as substituted by section 8 of the Criminal Justice Administration Act 1914), section 117 of the Children Act 2001 (Conditions to which community sanction may be made subject) and section 6 (Conditions of bail) of the Bail Act 1997.

**Subhead (3)(e)** proposes to allow the court, when making a binding over order, to include conditions relating to psychiatric treatment. **Subhead (4)** provides that a binding over order should not include a condition relating to psychiatric treatment unless the court is satisfied on the basis of evidence from a consultant psychiatrist that the person is in need of such treatment.

**Subhead (5)** supplements the provisions in Heads 8 and 10 which preclude a court from making a binding over order where it considers it appropriate that the person should be subject to the supervision of the Probation Service. It is clear from subhead (5) that Probation Service supervision cannot be made a condition of a binding over order.

**Subhead (9)** allows the court to vary a binding over order. The text of the subhead is based on section 6(3) of the Bail Act 1997. An application for variation can be made by the person in respect of whom the binding over order was made or by An Garda Síochána.

**Subhead (10)** provides that the person in respect of whom the binding over order was made, or the Superintendent of the Garda Síochána for the district in which the person ordinarily resides, as appropriate, shall be given 10 working days notice of an application under subhead (9) or any appeal against an order made under that subhead.

**Subhead (11)** provides that the person in respect of whom the binding over order was made and the Garda Síochána shall be entitled to be heard in any proceedings under subhead (9) or any appeal against an order made under that subhead.

**Subhead (12)** provides for the person in respect of whom the binding over order was made and the Garda Síochána to be given notice of the variation of a binding over order.

## Head 12 Failure to comply with binding over order

Provide that:

- (1) If the court that made a binding over order is satisfied by information on oath of a member of the Garda Síochána that the person in respect of whom the order was made has failed, without reasonable excuse, to comply with the order, it may—
  - (a) issue a warrant for his or her arrest, or
  - (b) if it thinks fit, issue a summons to the person requiring him or her to attend at the court at such date and time as may be specified in the summons.
- (2) A member of the Garda Síochána may arrest a person pursuant to a warrant issued under *subhead (1)* notwithstanding that he or she does not have the warrant concerned in his or her possession at the time of the arrest.
- (3) Where a person is arrested pursuant to *subhead (2)*, the member arresting him or her shall as soon as practicable produce and serve on the person the warrant concerned.
- (4) A person arrested pursuant to a warrant under *subhead (1)* shall, as soon as practicable, be brought before the court that made the binding over order.
- (5) A court that made a binding over order, on being satisfied that the person in respect of whom the order was made has failed, without reasonable excuse, to comply with the order—
  - (a) may, where the order was made under *Head 8(2)*, convict the person of the offence in respect of which the order was made and deal with him or her accordingly, or
  - (b) may, where the order was made under *Head 10*, deal with the person for the offence in respect of which the order was made in any manner in which he or she could have been dealt with for that offence if the order had not been made.
- (6) The jurisdiction of the District Court under this Head shall be exercised by a judge for the time being assigned to the district court district in which the binding over order was made.
- (7) The jurisdiction of the Circuit Court under this Head shall be exercised by a judge for the time being assigned to the circuit in which the binding over order was made.

### Explanatory Notes:

Head 12 sets out how failure to comply with a binding over order will be dealt with. It is based on section 6 (Provision in case of offender failing to observe conditions of release) of the Probation of Offenders Act 1907.



**Subhead (1)** allows the court that made a binding over order to issue an arrest warrant or a summons where it is satisfied by information on oath of a member of the Garda Síochána that the person in respect of whom the order was made has failed to comply with the order.

**Subheads (2), (3) and (4)**, which provide for the arrest of a person pursuant to a warrant under subhead (1), are based on subheads (6), (7) and (8) of section 6 of the Bail Act 1997.

**Subhead (5)** provides for court powers to deal with a person who has failed to comply with a binding over order.

**Subheads (6) and (7)** provide for the jurisdiction of the District and Circuit Courts under this Head.

### **Head 13      Application of *Heads 8 and 10***

Provide that:

- (1) A court shall not make a discharge order or binding over order in respect of a person who is before the court charged with an offence to which any of the following enactments applies:
  - (a) section 35 of the Intoxicating Liquor Act 1927;
  - (b) section 41 of the Foyle Fisheries Act 1952 (as amended by section 3 of the Foyle Fisheries (Amendment) Act 1961);
  - (c) section 164 of the Fisheries (Consolidation) Act 1959 (as amended by section 16 of the Fisheries (Amendment) Act 1962);
  - (d) section 40 of the Road Traffic Act 1961 (as substituted by section 59 of the Road Traffic Act 2010 and amended by section 2 of the Road Traffic (No. 2) Act 2011);
  - (e) section 34 of the Finance Act 1963;
  - (f) section 16 of the Air Navigation and Transport Act 1973;
  - (g) section 6 of the Air Navigation and Transport Act 1975;
  - (h) section 78 of the Finance Act 1984;
  - (i) Regulation 7 of the European Communities (Community Transit) Regulations 1992 (S.I. No. 433 of 1992);
  - (j) Regulation 5 of the European Communities (Tir Carnet and Ata Carnet — Transit) Regulations 1993 (S.I. No. 61 of 1993);
  - (k) section 1078 of the Taxes Consolidation Act 1997;
  - (l) section 126 of the Finance Act 2001;
  - (m) section 8 of the Competition Act 2002 (as amended by section 2(h) of the Competition (Amendment) Act 2012);
  - (n) Regulation 7 of the European Communities (Controls of Cash Entering Or Leaving the Community) Regulations 2007 (S.I. No. 281 of 2007);
  - (o) sections 4, 5, 9, 11, 12, 14, 24 or 55 of the Road Traffic Act 2010.
- (2) Nothing in *Head 10* shall be construed as preventing a court which makes a binding over order under that Head from making, in relation to the offence in respect of which the order is made, an order under any other enactment for—

- (a) the revocation of any licence,
- (b) the imposition of any disqualification or endorsement,
- (c) the forfeiture, confiscation, seizure, restriction or disposal of any property, or
- (d) the payment of compensation, costs or expenses.

**Explanatory Notes:**

At present, a number of offences in various enactments are precluded from having section 1(1), 1(2) or the whole of section 1 of the Probation of Offenders Act 1907 applied to them. Other provisions creating offences state that the 1907 Act in its entirety shall not apply to the offence concerned. **Subhead (1)** proposes to preserve this position.

**Subhead (2)** is based on section 3(3) of the Criminal Justice (Community Service) Act 1983.

## **Head 14      Appeal from order under *Head 8***

Provide that:

An appeal shall lie to the Circuit Court from an order of the District Court under *Head 8* [at the instance of the person in respect of whom the order is made], *Head 11(9)* or *Head 12*.

### **Explanatory Notes:**

Section 33 of the Courts of Justice Act 1953 states that “An appeal shall lie to the Circuit Court from an order of the District Court under sub-section (1) of section 1 of the Probation of Offenders Act 1907”. It is proposed that Head 14 will replace this provision. This Head also makes it clear that an appeal can be made against an order of the District Court varying a binding over order or in relation to a person who has failed to comply with a binding over order.

## **Head 15      Effect of order under *Head 8* for the purpose of restoring stolen property**

Provide that:

An order under *Head 8* shall, for the purpose of section 56 of the Criminal Justice (Theft and Fraud Offences) Act 2001 or otherwise for the purpose of re-vesting or restoring stolen property, and of enabling the court to make orders as to the restitution or delivery of property to the owner and as to the payment of money upon or in connection with such restitution or delivery, have the like effect as a conviction.

### **Explanatory Notes:**

Head 15 is based on section 1(4) of the 1907 Act, with the addition of a reference to section 56 of the Criminal Justice (Theft and Fraud Offences) Act 2001, which deals with orders for restitution.

## PART 3

### PROBATION ASSESSMENT REPORTS

#### Head 16 Probation assessment report

Provide that:

- (1) Subject to *subhead (2)*, where a person has been convicted of an offence, the court by or before which he or she stands convicted may adjourn the proceedings, remand the person on bail or in custody and request the Probation Service to prepare a probation assessment report in respect of the person.
- (2) Subject to *subhead (3)*, where a person has been convicted of an offence, the court by or before which he or she stands convicted shall adjourn the proceedings, remand the person on bail or in custody and request the Probation Service to prepare a probation assessment report in respect of the person, where the court is of opinion that it would be appropriate to deal with the person by—
  - (a) imposing a supervised community sanction,
  - (b) imposing a sentence of imprisonment, and the person concerned—
    - (i) is aged at least 18 years but under the age of 21 years, and
    - (ii) has not previously been sentenced to a term of imprisonment of 12 months or more,
  - (c) imposing a suspended sentence subject to a condition that the convicted person shall co-operate with, or be supervised by, the Probation Service, or
  - (d) making an order imposing post-release supervision pursuant to section 29 of the Sex Offenders Act 2001.
- (3) A court shall not be required to request the Probation Service to prepare a probation assessment report under *subhead (2)* where—
  - (a) the person concerned has been the subject of a probation assessment report not more than 12 months prior to the conviction concerned, and
  - (b) the court is satisfied that the material in that report is sufficient to enable it to deal with the case.
- (4) A probation assessment report shall contain—
  - (a) such information as the Probation Service considers would assist the court in determining an appropriate way of dealing with the person,

- (b) information on such matters as may be prescribed in regulations made by the Minister, and
  - (c) any information specifically requested by the court.
- (5) The court shall notify the Probation Service in writing of a request under *subhead (1) or (2)*—
  - (a) if the person is remanded in custody, before the end of the next working day following the adjournment of the proceedings, or
  - (b) if the person is remanded on bail, within 4 working days following the adjournment of the proceedings.
- (6) For the purposes of *subhead (7)*, the grounds on which the Probation Service may be of opinion that the preparation of a probation assessment report pursuant to a request under *subhead (1) or (2)* is not necessary are that—
  - (a) the person was the subject of a probation assessment report furnished to a court not more than 12 months prior to the request under *subhead (1) or (2)* (in this Head referred to as “the previous report”), and
  - (b) it appears to the Probation Service that—
    - (i) the person’s attitude to, and the circumstances of, the offence of which he or she has been convicted are similar to his or her attitude to, and the circumstances of, the offence to which the previous report related, or
    - (ii) the person’s personal circumstances have not significantly changed since the previous report was prepared.
- (7) Where the Probation Service is of opinion that the preparation of a probation assessment report pursuant to a request under *subhead (1) or (2)* is not necessary on the grounds referred to in *subhead (6)*, it shall furnish to the court the previous report and a written statement of reasons for its opinion that preparation of a probation assessment report is not necessary.
- (8) Where the court is satisfied that the material in a previous report and written statement of the Probation Service furnished to it in accordance with *subhead (7)* is sufficient to enable it to deal with the case, it may withdraw the request under *subhead (1) or (2)*, and where the court is not so satisfied, the request under *subhead (1) or (2)* shall continue in force.

### **Explanatory Notes:**

This Head provides legislative authority for reports assessing suitability for Probation Service intervention before a court imposes a supervised community sanction, a suspended sentence, or post-release supervision under the Sex Offenders Act 2001. It draws from section 99 of the Children Act 2001. As with the Children Act, assessment is mandatory before the court may order a supervised community sanction.

**Subhead (1)** provides that the court may request a report in any case. Under **subhead (2)**, the court must request a report where it is considering a supervised community sanction, or, in the case of a person aged between 18 and 21 who has not previously been sentenced to a term of imprisonment of 12 months or more, a sentence of imprisonment.

**Subhead (3)** provides that a court will not be required to request a probation assessment report under subhead (2) where the person has been the subject of a probation assessment report within the previous 12 months and the court is satisfied that the material in that report is sufficient to enable it to deal with the case.

The Probation Service, rather than an individual probation officer, will be requested to arrange for the provision of the probation assessment report under this Head. Matters to be contained in the probation assessment report may be prescribed in regulations to be made by the Minister under **subhead (4)**.

The court must notify the Probation Service that the report has been requested. If the person is remanded in custody, the notification must be made before the end of the following working day, so as not to prolong unduly the remand in custody for the purposes of the report. Otherwise, a period of 4 working days applies.

Not infrequently, a person is dealt with by a court for a similar offence within a relatively short time of being dealt with on a previous occasion. There is little value in preparing a fresh report where the offence is the same and the person's attitudes or circumstances have not changed. However, this may only become evident after perusal of the original report and perhaps an interview by a probation officer. **Subheads (6), (7) and (8)** provide for this situation.



## **Head 17      Other reports that may be requested**

Provide that:

- (1) When a court requests a probation assessment report to be prepared under *Head 16*, it may also request the Courts Service to arrange for the preparation of such other report or reports, including medical, psychological or psychiatric reports, in relation to the person concerned, as would in the opinion of the court assist it in dealing with the case.
- (2) Where the court requests the preparation of a report pursuant to *subhead (1)*, it shall notify the Probation Service of the request.
- (3) A report prepared pursuant to a request under *subhead (1)* shall contain information on or assessment of any matter that may be specifically requested by the court.
- (4) The court may request the Probation Service to prepare a further probation assessment report if, having considered a probation assessment report and any report prepared pursuant to a request under *subhead (1)*, the court considers that it requires—
  - (a) further information on any matter contained in the report or reports, or
  - (b) the examination of a matter not contained in the report or reports.
- (5) The court may request the Courts Service to arrange for the preparation of a further report referred to in *subhead (1)* if, having considered a probation assessment report and any report prepared pursuant to a request under *subhead (1)*, the court considers that it requires—
  - (a) further information on any matter contained in the report or reports,
  - (b) the examination of a matter not contained in the report or reports, or
  - (c) any further report, including a medical, psychological or psychiatric report, as would in its opinion assist it in dealing with the case.

### **Explanatory Notes:**

This Head makes provision for requests by the court for the Courts Service to arrange for the preparation of other reports, such as medical, psychological or psychiatric reports.

Such reports can be requested at the same time as the probation assessment report under Head 16, or following the court's consideration of a probation assessment report. The court can also request further reports following consideration of a probation assessment report or a report arranged by the Courts Service under this Head (**subheads (4) and (5)**).

The Head draws from section 106(4) and (5) of the Children Act 2001.

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

Provide that:

- (1) A probation assessment report shall be prepared and furnished to the court within a period of 28 days from receipt of a notification referred to in *Head 16(6)*.
- (2) A report requested under *Head 17* shall be prepared and furnished to the court within a period of 28 days from receipt of the request referred to in that head.
- (3) The court may, of its own motion or upon application to it in that behalf by a probation officer, extend the period within which a probation assessment report or a report requested under *Head 17(4)* is to be furnished if the court is satisfied that there is good reason for doing so and it would be in the interests of justice so to do.
- (4) The court may of its own motion extend the period within which a report requested under *Head 17(1)* or *17(5)* is to be furnished if the court is satisfied that there is good reason for doing so and it would be in the interests of justice so to do.

### **Explanatory Notes:**

Head 18 is based on sections 3(1C) and 3(1D) of the Criminal Justice (Community Service) Act 1983, as inserted by section 3(b) of the Criminal Justice (Community Service) Amendment Act 2011.

## **Head 19      Immunity from liability for reports**

Provide that:

Any person who prepares or furnishes any report pursuant to this Part or who supplies any information for the purposes of preparing or furnishing it shall not be under any civil or criminal liability in respect of it unless the person has acted in bad faith in preparing or furnishing it or in supplying information for such purposes.

### **Explanatory Notes:**

This Head is based on section 102 of the Children Act 2001.

## **Head 20      Access to reports**

Provide that:

- (1) A copy of any report furnished to a court in accordance with this Part shall, subject to *subhead (2)*, be made available by the clerk or other proper officer of the court to—
  - (a) the person to whom the report relates or any counsel or solicitor representing that person,
  - (b) the prosecutor, and any counsel or solicitor representing the prosecutor, and
  - (c) any other person whom the court considers to have a proper interest in receiving a copy of the report.
- (2) The court may order that the whole or any part of a report made available to any person pursuant to *subhead (1)* shall not be disclosed to any person specified in the order where it is satisfied that to do so would not be in the interests of any person to whom the report relates.
- (3) Any copy of a report made available under this Head shall, wherever possible, be supplied to the persons concerned in advance of the resumed sitting of the court.

### **Explanatory Notes:**

Head 20 is based on section 103 of the Children Act 2001.

## **Head 21      Right to tender evidence on report**

Provide that:

- (1) Any person to whom a copy of a report has been made available pursuant to *Head 20* may tender evidence on any matter contained in it.
- (2) Where a court requests a report under this Part, it may at any time summon as a witness any person, including any victim of the offence concerned, whose evidence in its opinion would assist it in dealing with the case.

### **Explanatory Notes:**

**Subhead (1)** is based on section 104 of the Children Act 2001.

**Subhead (2)** is a more general provision, following section 99(5) of the 2001 Act, which gives the court a general power to summon anyone who can assist it in dealing with the case (including the victim of the offence), whether specifically referred to in a report or not.

## **Head 22      Oral reports**

Provide that:

A court may, unless any party to the proceedings objects direct that any report requested pursuant to this Part be made orally to the court.

### **Explanatory Notes:**

Head 22 is based on section 105 of the Children Act 2001.

## **PART 4**

### **COMMUNITY SANCTIONS SUPERVISED BY THE PROBATION SERVICE**

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

Provide that:

In determining whether a supervised community sanction would be an appropriate way of dealing with a person convicted of an offence, a court shall have regard to the following considerations:

- (a) the protection of the public;
- (b) the facilitation of the rehabilitation of the person;
- (c) the seriousness of the offence;
- (d) the promotion in the person of a sense of responsibility for, and an acknowledgment of, the harm done by the offence committed by him or her;
- (e) the need to have due regard for the interests of any victim of the offence;
- (f) the provision of reparation for the harm done by the offence;
- (g) the extent to which the imposition of a supervised community sanction may reduce the likelihood of the person committing further offences.

#### **Explanatory Notes:**

This Head proposes 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 draws from section 96 (Principles relating to exercise of criminal jurisdiction over children) of the Children Act 2001.

## Head 24      Deferred sentence supervision order

Provide that:

- (1) The court by or before which a person is convicted of an offence may, subject to *subhead (2)*, make an order (in this Head referred to as a “deferred sentence supervision order”)—
  - (a) deferring, for a period not exceeding 6 months, the imposition of a sentence on the person for the offence, and
  - (b) requiring the person to be subject to the supervision of the Probation Service during that period.
- (2) A court shall not make a deferred sentence supervision order unless—
  - (a) the court is satisfied that, having regard to the nature of the offence concerned and all of the circumstances of the case, it would be in the interests of justice to make such an order,
  - (b) the court has first considered a probation assessment report relating to the person and any other report relating to the person furnished to it under *Part 3*, and
  - (c) the person gives an undertaking to comply with the conditions that may be specified in the deferred sentence supervision order.
- (3) A deferred sentence supervision order shall specify—
  - (a) the date (in this Head referred to as the “specified date”) on which the court proposes to impose a sentence on the offender, being a date that falls not later than 6 months after the making of the order, and
  - (b) the conditions with which the offender is to comply during the period between the making of the order and the specified date, which shall include conditions that the offender—
    - (i) be of good behaviour and keep the peace,
    - (ii) be subject to the supervision of the Probation Service,
    - (iii) inform the Probation Service if he or she is charged with any offence,
    - (iv) report to a probation officer as directed from time to time by the Probation Service, and
    - (v) notify the Probation Service of his or her address for the receipt of correspondence from the Probation Service



and to notify the Probation Service immediately of any change of that address.

- (4) In addition to the conditions referred to in *subhead (3)(b)*, the court may include in the deferred sentence supervision order such other conditions as the court considers—
- (a) appropriate having regard to the nature of the offence, and
  - (b) will reduce the likelihood of the person in respect of whom the order is made committing any other offence,

and, without prejudice to the generality of the foregoing, such conditions may include any of the following:

- (i) conditions relating to the person's place of residence;
  - (ii) conditions prohibiting the person from associating with any specified person or with persons of any specified class;
  - (iii) conditions requiring the person to refrain from having contact (direct or indirect) with the victim of the offence or any member of the victim's family unless such contact is approved by the court;
  - (iv) conditions relating to the consumption by the person of intoxicating liquor, controlled drugs or psychoactive substances;
  - (v) conditions prohibiting the person from leaving the State without the prior consent of the Probation Service
- (5) Before making a deferred sentence supervision order, the court shall explain to the person concerned, in ordinary language—
- (a) the effect of the order,
  - (b) the conditions of the order,
  - (c) the specified date, and
  - (d) that the court shall, in determining the sentence to be imposed on the person, have regard to the extent to which he or she has complied with the conditions of the deferred sentence supervision order.
- (6) The court shall cause copies of a deferred sentence supervision order to be sent within 4 working days of the making of the order to—
- (a) the offender,
  - (b) the Probation Service, and

- (c) the Superintendent of the Garda Síochána for the district in which the offender ordinarily resides.
- (7) The Probation Service shall make appropriate arrangements for the supervision of the offender.
- (8) If the court that made a deferred sentence supervision order is satisfied by information on oath of a member of the Garda Síochána or a probation officer that the offender has failed, without reasonable excuse, to comply with the conditions of the order, the court may specify an earlier date for the imposition of a sentence on the offender and that earlier date shall be the specified date for the purposes of *subheads (9), (15) and (16)*.
- (9) A court that has made a deferred sentence supervision order shall, not later than one month before the specified date—
  - (a) require the offender, by notice, to attend a sitting of the court on that date and at such time as is specified in the notice, and
  - (b) cause copies of a notice issued under *paragraph (a)* to be sent to the Probation Service and the Superintendent of the Garda Síochána for the district in which the offender ordinarily resides.
- (10) A notice under *subhead (9)(a)* shall be addressed to the offender by name, and may be given to him or her in one of the following ways:
  - (a) by delivering it to him or her;
  - (b) by leaving it at the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, at that address;
  - (c) by sending it by post in a prepaid registered letter to the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, to that address.
- (11) If a person fails to comply with a requirement in a notice under *subhead (9)(a)*, the court may issue a warrant for the arrest of that person.
- (12) A member of the Garda Síochána may arrest a person pursuant to a warrant issued under *subhead (11)* notwithstanding that he or she does not have the warrant concerned in his or her possession at the time of the arrest.
- (13) Where a person is arrested pursuant to a warrant issued under *subhead (11)*, the member arresting him or her shall as soon as practicable produce and serve on the person the warrant concerned.
- (14) A person arrested pursuant to a warrant issued under *subhead (11)* shall, as soon as practicable, be brought before the court concerned.

- (15) (a) The Probation Service shall prepare a report (in this Head referred to as a “supervision outcome report”) on the offender for consideration by the court on the specified date.
- (b) The supervision outcome report shall detail the compliance by the offender with the conditions of the deferred sentence supervision order and any other information which the Probation Service considers to be relevant.
- (c) The Probation Service shall make all reasonable endeavours to ensure that the supervision outcome report is lodged with the clerk or other proper officer of the court at least 4 working days before the specified date.
- (d) On the specified date, the court shall consider the supervision outcome report and, if the court so requires, hear evidence from the Probation Service.
- (16) On the specified date, the court shall, in determining the sentence to be imposed on the offender, have regard to the extent to which the offender has complied with the conditions of the deferred sentence supervision order.
- (17) A court shall not make more than one deferred sentence supervision order in respect of a person for the same offence.
- (18) Section 18(1) of the Courts of Justice Act 1928 is amended by the insertion of “and a deferred sentence supervision order under *Head 24* of the *Criminal Justice (Community Sanctions) Act 2014*” after “including an order under section 100(1) of the Criminal Justice Act 2006”.
- (19) In this Head, “offender” means the person in respect of whom a deferred sentence supervision order has been made.

### **Explanatory Notes:**

This Head makes statutory provision for Probation Service supervision during deferment of penalty.

The Head, which draws from section 100 (Imposition of fine and deferral of sentence) of the Criminal Justice Act 2006, provides that a court may defer sentencing of an offender for up to 6 months, during which the person will be required to be under the supervision of the Probation Service. At the sentencing hearing, the court will be required to have regard to the extent to which the offender complied with the conditions of the deferred sentence supervision order.

Subhead (8) provides that the court may bring forward the date for sentencing the offender if satisfied that the offender has failed to comply with the conditions of the order.

## Head 25      Probation supervision order

Provide that:

- (1) Subject to *subheads (2), (12) and (16)*, the court by or before which a person is convicted, instead of dealing with the person in any other way, may, if it considers it appropriate that the person concerned should be subject to the supervision of the Probation Service, make an order (in this Act referred to as a “probation supervision order”) requiring the person concerned—
  - (a) to keep the peace, be of good behaviour and be subject to the supervision of the Probation Service for such period as is specified in the order, being not less than 6 months and not exceeding—
    - (i) on summary conviction, 18 months,
    - (ii) on conviction on indictment, 2 years,
  - (b) to co-operate with the Probation Service during that period to the extent specified by the court for the purpose of his or her rehabilitation and the protection of the public,
  - (c) to inform the Probation Service if he or she is charged with any offence while the order is in force,
  - (d) to report to a probation officer as directed from time to time by the Probation Service,
  - (e) to notify the Probation Service of his or her address for the receipt of correspondence from the Probation Service and to notify the Probation Service immediately of any change of that address, and
  - (f) subject to *subhead (6)(b)*, to comply with any conditions imposed under *subhead (3)* for such period, not exceeding the period specified under *subhead (1)*, as the court may specify in the order in relation to any one or more of those conditions.
- (2) A court shall not make a probation supervision order in respect of a person unless it has first considered—
  - (a) (i) a probation assessment report relating to the person, and  
(ii) any other report relating to the person furnished to it under *Part 3*,  
or
  - (b) in the case of a child, any report furnished to it under *Part 9* of the Act of 2001.

- (3) Subject to *subheads (4) to (9)*, in addition to the conditions referred to in *subhead (1)*, the court may include in the probation supervision order such other conditions as the court considers—

- (a) appropriate having regard to the nature of the offence, and
- (b) will reduce the likelihood of the person in respect of whom the order is made committing any other offence,

and, without prejudice to the generality of the foregoing, such conditions may include any of the following:

- (i) conditions relating to the person's place of residence;
- (ii) conditions requiring the person to undergo such—
  - (I) treatment for drug, alcohol or other substance addiction,
  - (II) course of education, training or therapy,
  - (III) psychological counselling or other treatment,as may be approved by the court and to attend for such treatment or course as directed by the Probation Service;
- (iii) conditions prohibiting the person from associating with any specified person or with persons of any specified class;
- (iv) conditions requiring the person to refrain from having contact (direct or indirect) with the victim of the offence or any member of the victim's family unless such contact is approved by the court;
- (v) conditions relating to the consumption by the person of intoxicating liquor, controlled drugs or psychoactive substances;
- (vi) conditions prohibiting the person from leaving the State without the prior consent of the Probation Service;
- (vii) conditions requiring the person to be in such place or places as may be specified for such period or periods in each day or week as shall be specified;
- (viii) conditions requiring the person not to be in such place or places, or such class or classes of place or places, at such time or during such periods, as shall be specified.

- (4) (a) *Subheads (1)(f), (3), (6), (7), (8) and (9)* shall not apply to a probation supervision order made in respect of a child.

- (b) A probation supervision order made in respect of a child shall be subject to section 117 of the Act of 2001.
- (5) A probation supervision order shall not include a condition that a person undergo treatment referred to in *subhead (3)(ii)(I)* or *(III)* unless the court is satisfied, on the basis of evidence given by a registered medical practitioner (within the meaning of section 2 of the Medical Practitioners Act 2007), that the person is in need of such treatment.
- (6) A probation supervision order shall not—
  - (a) include a condition referred to in *subhead (3)(vii)* requiring a person to be in any place or places for a period or periods of more than 12 hours in any one day, or
  - (b) require a person to be subject to a condition referred to in *subhead (3)(vii)* for a period of more than 6 months.
- (7) In determining for the purposes of *subhead (3)(vii)* the period or periods during which a person shall be in a specified place or places, the court shall have regard to the nature and circumstances of the offence of which the person has been found guilty and any educational course, training, employment or other activity in which the person is participating, and it shall ensure, as far as practicable, that that period or those periods do not conflict with the practice by the person of his or her religion.
- (8) In determining for the purpose of *subhead (3)(viii)* the place or places, or class or classes of place or places, the time or the periods to be specified in a probation supervision order, the court shall have regard to the nature and circumstances of the offence of which the person has been found guilty, the time that the person committed the offence, the place where the offence was committed and the likelihood of the person committing another offence in the same or similar place or places or class or classes of place or places.
- (9) A probation supervision order which restricts the movements of a person in accordance with *subhead (3)(vii)* shall not be made without the consent of the owner of, or any adult person habitually residing at, the place or places concerned or, as the case may be, the person in charge of the place or places concerned.
- (10) The conditions of a probation supervision order shall be specified in the order.
- (11) Before making a probation supervision order in respect of a person, the court shall explain to him or her in ordinary language the effect of the order, the conditions of the order, and the period of time for which the conditions apply.
- (12) The court shall not make a probation supervision order in respect of a person unless he or she gives an undertaking to comply with the conditions of the order.
- (13) The court shall cause copies of a probation supervision order (other than an order to which section 124, 125 or 126 of the Act of 2001 applies) to be sent within 4 working days to—

- (a) the person in respect of whom the order is made, and
  - (b) the Probation Service.
- (14) The Probation Service shall make appropriate arrangements for the supervision of a person in respect of whom a probation supervision order is made.
- (15) Subject to *subhead (16)*, where at the time of the making of a probation supervision order in respect of a person, another such order or another supervised community sanction is in force in respect of that person, the court may order that the period for which the person is to be subject to the supervision of the Probation Service under the latest order shall be concurrent with or additional to that specified in the earliest order, but the aggregate period of supervision under the orders shall not exceed—
  - (a) where the person was convicted on indictment of all the offences concerned, 4 years,
  - (b) where the person was convicted on indictment of at least one of the offences concerned, 3 years and 6 months, or
  - (c) in any other case, 3 years.
- (16) Nothing in *subhead (1)(a)* or *(15)* shall operate so as to extend the duration of a period of intensive supervision under section 125 of the Act of 2001 or of a probation (residential supervision) order under section 126 of that Act beyond the maximum duration provided for under those sections.
- (17) A probation supervision order or an order under *subhead (15)* made in respect of a child shall be subject to section 138 of the Act of 2001.

### **Explanatory Notes:**

Head 25 makes provision for probation supervision orders, which will replace probation orders under section 2 of the 1907 Act.

It is proposed to reduce the maximum period for a probation supervision order from 3 years to 18 months, in the case of summary conviction, or 2 years on conviction on indictment. A minimum duration of 6 months is proposed. Head 26 allows the Probation Service to apply to the court for an extension, e.g. where the offender would benefit significantly or to allow completion of a programme, but the court may only allow one such extension.

The order itself is outlined in **subhead (1)**. There is no requirement that it can only be made in relation to a first-time offender, so it may be made more than once in respect of an offender where appropriate. A number of basic conditions that will be requirements of every probation order are set out in subhead (1).

**Subhead (3)** provides that the court may include additional conditions in the order. The conditions mentioned in subhead (3) are based on section 2(2) of the 1907 Act (as substituted

by section 8 of the Criminal Justice Administration Act 1914), section 117 of the Children Act 2001 (Conditions to which community sanction may be made subject) and section 99 (Power to suspend sentence) of the Criminal Justice Act 2006. Under subhead (1)(f), the court may specify a shorter duration for any one or more of these conditions than the duration of the probation supervision order.

A probation supervision order may include conditions requiring the person to remain in specific places or not to enter specific places. This is provided for in **paragraphs (vii) and (viii) of subhead (3) and subheads (6) to (9)**. These provisions are based on subsections (2), (5), (6), (7) and (9) of section 101 of the Criminal Justice Act 2006 (Restriction on movement order).

**Subheads (3)(ii)(I) and (III)**, which are based on section 99(4) (Power to suspend sentence) of the Criminal Justice Act 2006, propose to allow the court to include as a condition of a probation supervision order that the person undergo such treatment for drug, alcohol or other substance addiction, course of education, training or therapy, or psychological counselling or other treatment, as may be approved by the court. **Subhead (5)** provides that a probation supervision order should not include a requirement for a person to undergo such treatment unless the court is satisfied on the basis of medical evidence that the person is in need of treatment.

Section 117 (Conditions to which community sanction may be made subject) of the Children Act 2001 sets out the conditions to which a community sanction imposed on a child may be made subject. In order to avoid overlap, **subhead (4)** provides that subhead (3) will not apply to an order made in respect of a person under the age of 18. As a consequence, subheads (1)(f), (6), (7), (8) and (9) will also not apply to such an order. A probation supervision order made in respect of a child will instead be subject to section 117 of the 2001 Act.

**Subhead (6)** provides that a probation supervision order cannot include a condition requiring the person to be in any place for more than 12 hours in any one day. It is based on section 101(2) (Restriction on movement order) of the Criminal Justice Act 2006. The maximum permitted duration of a condition requiring a person to be in a specified place at certain times is 6 months.

**Subheads (7) to (9)** make further provision in relation to conditions of probation supervision orders which provide for the restriction of a person's movement under subhead (3)(vii) or (3)(viii).

Under **subhead (10)**, all the conditions of the order must be specified in it.

**Subhead (11)** requires the court to explain the effect and conditions of the order. **Subhead (12)** requires the person to give an undertaking to comply with the conditions of the order before such an order can be made by the court.

**Subhead (13)** provides that copies of the order will be sent to both the offender and the Probation Service, except in the case of orders made under sections 124 (Probation (training or activities programme) order), 125 (Probation (intensive supervision) order) and 126 (Probation (residential supervision) order) of the Children Act 2001, which have their own specific requirements.



**Subhead (14)** requires the Probation Service to arrange for the appropriate supervision of the person.

**Subhead (15)** deals 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 which, however, cannot combine to exceed 4 years, 3.5 years or 3 years in aggregate, depending on the offences of which the person was convicted.

**Subhead (16)** provides for a link between this Head and sections 125 (Probation (intensive supervision) order) and 126 (Probation (residential supervision) order) of the Children Act 2001. Under section 125(6), a period of intensive supervision cannot exceed 180 days. If the period exceeds 90 days, it must be reviewed by the court after 60 days of operation. Under section 126(7)(a), the duration of a probation (residential supervision) order cannot exceed one year.

**Subhead (17)** provides for a link between this Head and section 138 (Expiry of community sanction) of the Children Act 2001. Section 138 of the 2001 Act provides that every community sanction within the meaning of that Act, other than a community service order, shall, unless it sooner expires or the context otherwise requires, expire 6 months after the child in respect of whom the order was made attains the age of 18 years.

## Head 26      Variation or extension of probation supervision order

Provide that:

- (1) The court which made a probation supervision order in respect of an offender may, on application by the Probation Service or the offender, if it considers it appropriate to do so, vary or revoke a condition specified in the order under *Head 25(3)* or impose further conditions.
- (2) An application under *subhead (1)* shall be made on notice to—
  - (a) the offender, where the Probation Service is the applicant, or
  - (b) the Probation Service, where the offender is the applicant.
- (3) Subject to *subheads (4), (6) and (13)*, on application to it by the Probation Service, the court which made a probation supervision order in respect of an offender may, once only, if it is satisfied that there is good reason for doing so, extend the duration of the order by a period of—
  - (a) not more than 6 months, where the offender was summarily convicted of the offence to which the probation supervision order relates, or
  - (b) not more than one year, where the offender was convicted on indictment of the offence to which the probation supervision order relates.
- (4) A probation supervision order may be extended under *subhead (3)* once only.
- (5) Where the court fixes a date for the hearing of an application referred to in *subhead (3)*, it shall, by notice in writing, so inform the offender, and such notice shall require the offender to appear before it on the date so fixed and at such time as is specified in the notice.
- (6) Where—
  - (a) two or more probation supervision orders, or
  - (b) a probation supervision order and another supervised community sanction,

are in force in respect of an offender, the court shall not extend a probation supervision order under *subhead (3)* if the effect of the extension would be to require the offender to be subject to the supervision of the Probation Service for—

- (i) where the person was convicted on indictment of all the offences concerned, more than 4 years after the commencement of the first such probation supervision order or supervised community sanction,

- (ii) where the person was convicted on indictment of at least one of the offences concerned, more than 3 years and 6 months after the commencement of the first such probation supervision order or supervised community sanction, or
  - (iii) in any other case, more than 3 years after the commencement of the first such probation supervision order or supervised community sanction.
- (7) Before making an order under this Head, the court may direct that a report on the compliance of the offender with the probation supervision order be prepared by the Probation Service and furnished to the court.
- (8) Before making an order under this Head, the court shall explain to the offender the effect of the order.
- (9) The court shall not make an order under *subhead (1)* unless the offender gives an undertaking to comply with the conditions to be imposed or varied by the order.
- (10) The court shall cause copies of an order under this Head to be sent within 4 working days to—
  - (a) the offender and
  - (b) the Probation Service.
- (11) The jurisdiction of the District Court under this Head shall be exercised by a judge for the time being assigned to the district court district in which the probation supervision order was made.
- (12) The jurisdiction of the Circuit Court under this Head shall be exercised by a judge for the time being assigned to the circuit in which the probation supervision order was made.
- (13) Nothing in *subhead (3)* shall operate to permit the extension of the duration of a period of intensive supervision under section 125 of the Act of 2001 beyond the maximum duration provided for under that section.
- (14) This Head shall not apply to a probation (residential supervision) order under section 126 of the Act of 2001.
- (15) An order under *subhead (3)* made in respect of a person under the age of 18 years shall be subject to section 138 of the Act of 2001.
- (16) In this Head, “offender” means the person in respect of whom a probation supervision order has been made.

## **Explanatory Notes:**

Under section 5 (Power to vary conditions of release) of the Probation of Offenders Act 1907, as substituted by section 9 of the Criminal Justice Administration Act 1914, the probation officer may apply for alteration of or addition to the conditions of a probation order or extension or diminution of the duration of the order (section 5(a)), or discharge the recognisance where it is satisfied that the conduct of the person bound by the recognisance has been such as to make it unnecessary that he any longer be under supervision.

**Subhead (1)** makes provision for variation of the conditions of a probation supervision order on application by the Probation Service or the offender. Such an application must be on notice to the other party (**subhead (2)**).

**Subhead (3)** enables the Probation Service to apply for an extension of the duration of the probation supervision order. Such an order may be made once only (**subhead (4)**). The application must be on notice to the offender (**subhead (5)**).

**Subhead (6)** provides that where a person is subject to two or more probation supervision orders or a probation supervision order and another supervised community sanction, the court shall not extend a probation supervision order if the extension would result in the supervision period lasting beyond 4 years, 3.5 years or 3 years in total, depending on the offences of which the person was convicted.

Section 4(c) of the 1907 Act requires a probation officer to report to the court as to the offender's behaviour. **Subhead (7)** allows the court to direct that a report on the offender's compliance with the probation supervision order be prepared before it makes an order under this Head.

**Subhead (8)** requires the court to explain the effects of an order under this Head to the offender.

Under **subhead (9)**, an undertaking by the offender to comply with the revised conditions is an essential pre-condition to the making of an order under subhead (1).

**Subhead (10)** provides that copies of an order under this Head will be sent to both the offender and the Probation Service.

**Subheads (11) and (12)** provide for the jurisdiction of the District and Circuit Courts under this Head.

**Subhead (13)** provides for a link between this Head and section 125 (Probation (intensive supervision) order) of the Children Act 2001. Under section 125(6), a period of intensive supervision cannot exceed 180 days. If the period exceeds 90 days, it must be reviewed by the court after 60 days of operation.

**Subhead (14)** provides that this Head shall not apply to a probation (residential supervision) order under section 126 of the Children Act 2001. Section 127 (Power to vary probation (residential supervision) order) of the 2001 Act provides for the variation of orders made under section 126. The purpose of subhead (13) is to avoid overlap between this Head and section 127 of the 2001 Act.

**Subhead (15)** provides for a link between this Head and section 138 (Expiry of community sanction) of the Children Act 2001. Section 138 of the 2001 Act provides that every community sanction within the meaning of that Act, other than a community service order, shall, unless it sooner expires or the context otherwise requires, expire 6 months after the child in respect of whom the order was made attains the age of 18 years.

## **Head 27      Revocation of probation supervision order**

Provide that:

- (1) Subject to *subheads (5) and (6)*, the court which made a probation supervision order in respect of an offender may, on application by the Probation Service, revoke the probation supervision order where it is satisfied that—
  - (a)
    - (i) at least 6 months, or half of the period specified under *Head 25(1)(a)*, whichever is the longer, has elapsed, and
    - (ii) having regard to the offender's compliance with the probation supervision order, it is no longer necessary for him or her to be subject to the supervision of the Probation Service,
  - or
  - (b) due to exceptional circumstances that have arisen since the order was made, it would be in the interests of justice to revoke the order.
- (2) An application under *subhead (1)* shall be made on notice to the offender.
- (3) Before making an order under *subhead (1)*, the court may direct that a report on the compliance of the offender with the probation supervision order be prepared by the Probation Service and furnished to the court.
- (4) The jurisdiction of the District Court under this Head shall be exercised by a judge for the time being assigned to the district court district in which the probation supervision order was made.
- (5) The jurisdiction of the Circuit Court under this Head shall be exercised by a judge for the time being assigned to the circuit in which the probation supervision order was made.
- (6) *Subhead (1)(a)* shall not apply to a probation (intensive supervision) order under section 125 of the Act of 2001.
- (7) The provisions of this Head shall not affect the operation of sections 125(7) and 127 of the Act of 2001.
- (8) In this Head, "offender" means the person in respect of whom a probation supervision order has been made.

### **Explanatory Notes:**

Section 5 (Power to vary conditions of release) of the Probation of Offenders Act 1907, as substituted by section 9 of the Criminal Justice Administration Act 1914, allows the court, where it is satisfied that the conduct of the person bound by the recognisance has been such

as to make it unnecessary that he any longer be under supervision, to discharge the recognisance.

This is provided for in **subhead (1)**, with the restriction that half of the period of supervision or 6 months, whichever is the greater, must have elapsed. Provision is also made for revocation of the order where the court is satisfied that due to exceptional circumstances that have arisen since the order was made (e.g. the person has been offered a job abroad) it would be in the interests of justice to revoke the order.

**Subhead (2)** provides that an application under subhead (1) must be made on notice to the offender.

Section 4(c) of the 1907 Act requires a probation officer to report to the court as to the offender's behaviour. **Subhead (3)** allows the court to direct that a report on the offender's compliance with the probation supervision order be prepared before it makes an order under this Head.

**Subheads (4) and (5)** provide for the jurisdiction of the District and Circuit Courts under this Head.

**Subheads (6) and (7)** provide for a link between this Head and sections 125 (Probation (intensive supervision) order) and 127 (Power to vary probation (residential supervision) order) of the Children Act 2001. Under section 125(6) of the 2001 Act, a period of intensive supervision cannot exceed 180 days. If the period exceeds 90 days, it must be reviewed by the court after 60 days of operation. Section 127 provides for the variation of a probation (residential supervision) order.

## Head 28      Failure to comply with probation supervision order

Provide that:

- (1) If the court that made a probation supervision order is satisfied by information on oath of a probation officer that the offender has failed, without reasonable excuse, to comply with the order, it may—
  - (a) issue a warrant for his or her arrest, or
  - (b) if it thinks fit, issue a summons to the offender requiring him or her to attend at the court at such date and time as may be specified in the summons.
- (2) Where a court issues a warrant or summons under *subhead (1)*, it shall cause the Probation Service to be notified of the issue of the warrant or summons as soon as practicable and, where it issues a summons, the date and time specified in the summons.
- (3) A warrant issued under *subhead (1)* shall be addressed for execution to the Superintendent or an Inspector of the Garda Síochána for the area in which the offender resides.
- (4) A member of the Garda Síochána may arrest a person pursuant to a warrant issued under *subhead (1)* notwithstanding that he or she does not have the warrant concerned in his or her possession at the time of the arrest.
- (5) Where a person is arrested pursuant to *subhead (4)*—
  - (a) the member arresting him or her shall as soon as practicable produce and serve on the person the warrant concerned, and
  - (b) the Garda Síochána shall inform the Probation Service of the arrest of the person.
- (6) A person arrested pursuant to a warrant under *subhead (1)* shall, as soon as practicable, be brought before the court that issued the warrant.
- (7) Where a warrant or summons has been issued by a court pursuant to *subhead (1)*, the Probation Service shall, as soon as practicable, prepare and furnish to the court a written summary of the offender's compliance with the probation supervision order.
- (8) A court that made a probation supervision order, on being satisfied that the offender has failed, without reasonable excuse, to comply with the order, may revoke the order and deal with the offender for the offence in respect of which the order was made in any manner in which he or she could have been dealt with for that offence if the order had not been made.



- (9) The jurisdiction of the District Court under this Head shall be exercised by a judge for the time being assigned to the district court district in which the probation supervision order was made.
- (10) The jurisdiction of the Circuit Court under this Head shall be exercised by a judge for the time being assigned to the circuit in which the probation supervision order was made.
- (11) In this Head, “offender” means the person in respect of whom a probation supervision order has been made.

### **Explanatory Notes:**

Head 28 sets out how failure to comply with a probation supervision order will be dealt with. It is based on section 6 (Provision in case of offender failing to observe conditions of release) of the Probation of Offenders Act 1907.

**Subhead (1)** allows the court that made a probation supervision order to issue an arrest warrant or a summons where it is satisfied by information on oath from a probation officer that an offender has failed to comply with the order.

**Subhead (2)** requires the court to notify the Probation Service of any warrant or summons issued under subhead (1).

**Subhead (3)** provides for the addressing of a warrant under subhead (1) to An Garda Síochána.

**Subheads (4), (5) and (6)**, which provide for the arrest of a person pursuant to a warrant under subhead (1), are based on subheads (6), (7) and (8) of section 6 of the Bail Act 1997. The Garda Síochána will be required to notify the Probation Service when a person is arrested pursuant to a warrant under subhead (1).

**Subhead (7)** requires the Probation Service to submit a report regarding the offender’s compliance with the probation supervision order.

**Subhead (8)** provides that where the court is satisfied that the offender has failed to comply with a probation supervision order, the court may deal with him or her in the same manner as for the original offence.

**Subheads (9) and (10)** provide for the jurisdiction of the District and Circuit Courts under this Head.

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

Provide that:

- (1) If a probation supervision order is in force in respect of a person and a court sentences the person to a term of imprisonment of at least 3 months, the probation supervision order shall be deemed to be revoked with effect from the date of commencement of the term of imprisonment unless the court, being satisfied that due to exceptional circumstances it would be in the interests of justice to do so, orders the continuation in force of the probation supervision order.
- (2) An order under *subhead (1)* for the continuation in force of a probation supervision order shall not operate to extend the duration of the order beyond the date on which it would otherwise have expired.
- (3) Where a court sentences a person who is subject to a probation supervision order to a term of imprisonment, it shall cause notice of the sentence of imprisonment and any order under *subhead (1)* for the continuation in force of a probation supervision order to be sent within 4 working days to—
  - (a) the court that made the probation supervision order, and
  - (b) the Probation Service.

### **Explanatory Notes:**

**Subhead (1)** 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.

The effect of **subhead (2)** will be that an order under subhead (1) for the continuation in force of the probation supervision order will not extend the duration of the order beyond the date on which it would otherwise have expired. The clock will continue to run on the probation supervision order while the person is in prison. For example, if a person who has 2 months left on a probation supervision order is sentenced to 3 months imprisonment, the order will come to an end while he or she is in prison and will not resume on his or her release.

**Subhead (3)** provides for notice of any sentence of imprisonment imposed on a person subject to a probation supervision order and any order for the continuation in force of a probation supervision order to be sent to the court which made the probation supervision order and the Probation Service.

## PART 5

### REPARATION ORDERS

#### Head 30      **Reparation Fund**

Provide that:

- (1) There shall stand established a fund which shall be known, and is in this Act referred to, as the “Reparation Fund”.
- (2) Subject to *subhead (3)*, the Minister shall manage and control the Reparation Fund.
- (3) The Minister may by regulations delegate the management and control of all or part of the Reparation Fund and any other functions under this Head related to such management and control to a specified person and functions so delegated shall, accordingly, be performable by that person.
- (4) The accounts of the Reparation Fund shall be in such form and be prepared in such manner as the Minister may determine.
- (5) Subject to, and in accordance with, any regulations under *Head 31*, there shall be paid into the Reparation Fund the amounts collected under that Head.
- (6) The Minister, with the consent of the Minister for Public Expenditure and Reform, may pay out of the Reparation Fund such amounts of moneys as he or she considers appropriate for the provision of compensation, reparation and assistance for the victims of crime and may not pay moneys out of the Reparation Fund for any other purpose.

#### **Explanatory Notes:**

Head 30 proposes the establishment of a Reparation Fund to replace the Court Poor Box, as recommended by the Law Reform Commission in its 2005 report *The Court Poor Box: Probation of Offenders*.

The Head is based on section 74 (Environment Fund) of the Waste Management Act 1996, as inserted by section 12 of the Waste Management (Amendment) Act 2001.

The Reparation Fund will be managed by the Minister for Justice and Equality. The operation of the Reparation Fund will be subject to audit by the Comptroller & Auditor General.

It is proposed that the receipts from the Reparation Fund should be allocated to State financing of essential services for the support of victims of crime and the State-funded criminal injuries compensation scheme. This will be done by using existing structures rather than incurring the cost of a new administrative system.

It is intended that the moneys to be paid into the Reparation Fund will be collected by the Courts Service, paid into the Department of Justice and Equality and allocated between the Commission for the Support of Victims of Crime and the Criminal Injuries Compensation Tribunal for appropriate distribution.

**Subhead (6)** provides that the Minister may provide funding from the Reparation Fund as he or she considers appropriate for the provision of compensation, reparation and assistance for the victims of crime and the Reparation Fund may not be used for any other purpose.

## Head 31      **Reparation order**

Provide that:

- (1) In this Head, “reparation order” means an order of the District Court or, in a case referred to in *subhead (4)*, an order of the Circuit Court requiring a person to make a payment not exceeding €5,000 (or, if the order is made in respect of a child, a payment not exceeding €2,500) to the Reparation Fund.
- (2) In deciding on the amount to be paid under a reparation order, the court shall take into account the means of the person insofar as they are known to the court and in assessing the means of a person, the court shall take into account his or her financial commitments.
- (3) Subject to *subheads (5) and (6)*, where the District Court makes a discharge order or a binding over order in respect of a person, it may, in addition to making such an order, make a reparation order in respect of the person.
- (4) Subject to *subhead (5)*, where a person appeals to the Circuit Court against a conviction in the District Court, and the Circuit Court makes a discharge order or binding over order in respect of the person, that court may, in addition to making such an order, make a reparation order in respect of the person.
- (5) *Subheads (3) and (4)* shall not apply where a person is before a court charged with an offence—
  - (a) to which an enactment referred to in *Head 13(1)* applies, or
  - (b) in relation to which any enactment provides that *Head 8 (Discharge orders and binding over orders relating to summary offences)* or *10 (Binding over orders following conviction on indictment)* shall not apply.
- (6) A reparation order shall specify the period, not exceeding 30 days from the expiry of the period referred to in *Head 33(1) (Suspension of reparation order pending appeal)*, within which the person in respect of whom the order is made is required to comply with the order.
- (7) From the commencement of this Head, a court shall not, whether by order or otherwise, require a person charged or convicted of a criminal offence to pay any amount, directly or indirectly, to a court poor box, however described, or to any person or body, except in accordance with this Head or with any other enactment.
- (8) The Minister may by regulations provide for the collection by the Courts Service of amounts payable under a reparation order.

### **Explanatory Notes:**

Head 31 makes provision for the District Court and, in certain circumstances the Circuit Court, to make reparation orders requiring a person to make a payment to the Reparation Fund.

Under **subhead (1)**, the maximum amount payable into the Reparation Fund under a reparation order cannot exceed €5,000, or, in the case of a child, €2,500.

**Subhead (2)** requires the court to take the means of the person into account in deciding the amount to be paid under a reparation order.

**Subhead (3)** provides that the District Court may make a reparation order in addition to a discharge order or a binding over order.

**Subhead (4)** provides that the Circuit Court may make reparation orders in cases where a conviction is appealed to the Circuit Court from the District Court.

At present, a number of offences in various enactments are precluded from having section 1(1), 1(2) or the whole of section 1 of the Probation of Offenders Act 1907 applied to them. Other provisions creating offences provide that the 1907 Act in its entirety shall not apply to the offence concerned. **Subhead (5)** provides that a court will be precluded from making a reparation order in a case involving such an offence.

**Subhead (6)** requires the court to specify the period, not exceeding 30 days from the expiry of the period referred to in *Head 32(1) (Suspension of reparation order pending appeal)*, within which the offender must comply with a reparation order.

**Subhead (7)** proposes that a court will not be permitted to require or order a person charged or convicted of a criminal offence to make a payment, directly or indirectly, to a court poor box, however described, or any person or body, except where specifically provided for in legislation.

Under **subhead (8)**, the collection of amounts payable under a reparation order will be provided for by Ministerial regulations.

## **Head 32      Suspension of reparation order pending appeal**

Provide that:

- (1) The operation of a reparation order shall be suspended—
  - (a) in any case, until the ordinary time for giving notice of an appeal under *Head 14 (Appeal from order under Head 8)* or, in a case referred to in *Head 31(4)*, any further appeal, has expired, and
  - (b) in a case where the notice aforesaid is given within that time or such extended time as the court to which the appeal is brought may allow, until the appeal or any further appeal therefrom is finally determined or abandoned or the ordinary time for instituting any further appeal has expired.
- (2) Where the operation of a reparation order is suspended under *subhead (1)(b)*, the order shall not take effect if the discharge order or binding over order concerned is reversed on appeal.
- (3) A court hearing an appeal against a discharge order or binding over order may annul or vary the reparation order concerned.
- (4) A person in respect of whom a reparation order is made may appeal against the order to the court to which an appeal against the discharge order or binding over order concerned may be brought and *subheads (1)(b)* and (3) shall apply in relation to an appeal under this subhead as they apply, or would apply, to an appeal against the discharge order or binding over order.
- (5) Where a reparation order has been made in respect of a person in respect of an offence taken into consideration in determining his or her sentence, the order shall cease to have effect if he or she successfully appeals against his or her conviction of the offence, or, if more than one, all the offences, of which he or she was convicted in the proceedings in which the order was made.
- (6) In *subhead (5)*, references to conviction of a person include references to dealing with a person under *Head 8* (Discharge orders and binding over orders relating to summary offences).

### **Explanatory Notes:**

Head 32, which provides for the suspension of the operation of a reparation order pending an appeal, is based on section 8 (Suspension of compensation order pending appeal) of the Criminal Justice Act 1993.

### Head 33      Failure to comply with reparation order

Provide that:

- (1) Where a person in respect of whom a reparation order was made fails to comply with the order within the period specified under *Head 31(6)* or *subhead (7)(a)*, the appropriate court official concerned shall, by notice in writing served on the person, require the person to appear before the court on the date and at the time specified in the notice.
- (2) A notice under *subhead (1)* shall—
  - (a) inform the person of the powers of the court under *subhead (7)(b)*, and
  - (b) state that a warrant may be issued for the arrest of the person if he or she fails to appear before the court as required by the notice.
- (3) Where a person in respect of whom a reparation order has been made fails, without reasonable excuse, to appear before the court as required by a notice under *subhead (1)*, the court shall, if satisfied that the notice was served on the person—
  - (a) issue a warrant for the arrest of the person, or
  - (b) if the court thinks it appropriate in all the circumstances, cause a further notice under *subhead (1)* to be served on the person specifying a new date for the person to appear before the court.
- (4) A member of the Garda Síochána may arrest a person pursuant to a warrant issued under *subhead (3)(a)* notwithstanding that he or she does not have the warrant concerned in his or her possession at the time of the arrest.
- (5) Where a person is arrested pursuant to a warrant issued under *subhead (3)(a)*, the member arresting him or her shall as soon as practicable produce and serve on the person the warrant concerned.
- (6) A person arrested pursuant to a warrant issued under *subhead (3)(a)* shall, as soon as practicable, be brought before the court concerned.
- (7) Where a person in respect of whom a reparation order was made fails to comply with the order within the period specified under *Head 32(6)* or *paragraph (a)*, the court may, at the sitting of the court on the date specified in the notice under *subhead (1)* served on the person (unless the person has complied with the order on or before that date)—
  - (a) subject to *subhead (8)*, specify a period not exceeding 30 days within which the person is required to comply with the reparation order, or
  - (b) revoke the reparation order and the discharge order or binding over order, as the case may be, convict the person of the offence in respect of which the order was made and deal with him or her accordingly.



- (8) *Subhead (7)(a)* shall not be applied more than once in respect of a reparation order.
- (9) In this Head, “appropriate court official”—
- (a) in relation to a reparation order made by the District Court, means the district court clerk for the district court area in which the order was made,
  - (b) in relation to a reparation order made by the Circuit Court under *Head 32(4)*, means the county registrar for the county in which the order was made or, if a combined court office has been established under the Courts and Court Officers Act 2009 in respect of that county, the manager of that combined court office.

### **Explanatory Notes:**

**Head 33** sets out what is to happen where a person fails to comply with a reparation order. It is based on section 7 (Failure to pay fine by due date) of the Fines (Payment and Recovery Bill) 2013.

**Subhead (1)** provides that where a person fails to comply with a reparation order, the appropriate court official (as defined in subhead (8)), will issue a notice requiring the person to appear in court on a specified date.

**Subhead (2)** makes provision for the content of a notice under subhead (1).

**Subhead (3)** provides for non-appearance of a person in court as required by a notice under subhead (1). It allows the court to issue an arrest warrant or require a further notice to be issued. Under **subhead (4)**, a person issued under a warrant issued by the court must be brought before the next sitting of the court.

**Subheads (4), (5) and (6)**, which provide for the arrest of a person pursuant to a warrant under subhead (3), are based on subheads (6), (7) and (8) of section 6 of the Bail Act 1997.

**Subhead (7)** provides that where the court is satisfied that the person has failed to comply with a reparation order, the court may (a) allow the person 30 days to comply with the order or (b) revoke the discharge order or binding over order, convict the person of the offence in respect of which the order was made and deal with him or her accordingly. **Subhead (8)** provides that the period for compliance with a reparation order may be extended under subhead (7)(a) once only.

**Subhead (9)** defines “appropriate court official” for the purposes of this Head. The definition is based on the definition of that term in section 2 (Interpretation) of the Fines (Payment and Recovery Bill) 2013.

## **PART 6**

### **PROBATION SERVICE**

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

Provide that:

- (1) Subject to *subhead (2)*, a court shall not request or direct the preparation of a report by the Probation Service unless the preparation of the report is expressly provided for by or under this Act or any other enactment.
- (2) A court may request the Probation Service to prepare a report on a person in respect of whom an offence to which section 5 of the Criminal Justice Act 1993 applies was committed, for the purposes of section 5(2)(a) of that Act.
- (3) A court shall not order a person to be under the supervision of the Probation Service unless the supervision of such a person is expressly provided for by or under this Act or any other enactment.

#### **Explanatory Notes:**

The purpose of this Head is 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.

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.

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

Provide that:

- (1) The Minister may appoint, with the consent of the Minister for Public Expenditure and Reform, such and so many persons to be probation officers as he or she considers necessary.
- (2) A probation officer is a civil servant of the Government.
- (3) A person shall not be appointed to be a probation officer unless he or she is registered in the register of social workers maintained by the Social Workers Registration Board under section 36 of the Health and Social Care Professionals Act 2005.
- (4) While a person is subject to the supervision of the Probation Service pursuant to this Act or any other enactment, the probation officer responsible for supervising the person shall, subject to the conditions of the supervision—
  - (a) aim to establish a positive relationship with the person in order to supervise, guide and assist him or her,
  - (b) visit or meet the person at reasonable intervals,
  - (c) work to ensure the compliance of the person with the conditions of his or her supervision,
  - (d) monitor the person's compliance with the conditions of his or her supervision and evaluate his or her progress at regular intervals,
  - (e) when necessary and appropriate, assist the person in finding suitable employment, education or accommodation.

### **Explanatory Notes:**

Head 36 provides for the appointment of probation officers and their duties. It proposes to replace sections 3 (Probation officers) and 4 (Duties of probation officers) of the Probation of Offenders Act 1907.

**Subhead (1)** will replace section 3 of the 1907 Act, which made provision for the appointment of probation officers.

**Subhead (2)** provides that probation officers are civil servants.

**Subhead (3)** provides that only registered social workers may be appointed as probation officers.

**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).

## **Head 36      Delegation by Director of Probation Service**

Provide that:

- (1) The Director of the Probation Service may, [in writing,] delegate to a named officer of the Probation Service of a specified grade, position or description any specified function of the Director under this Act or any other enactment and may revoke the delegation.
- (2) The delegation of a function under this Head is without prejudice to the right of the Director to continue to exercise the function.
- (3) The performance of any function delegated under this Head shall be subject to the general superintendence and control of the Director and to such limitations (if any) as may be specified in the instrument of delegation or by the Director at any time thereafter.

### **Explanatory Notes:**

This Head enables the Director of the Probation Service to delegate any specific function under this Act or any other enactment. It is based on section 262 (Delegation by principal probation and welfare officer) of the Children Act 2001.

## **PART 7**

### **INSPECTION OF PROBATION**

#### **Head 37      Designated person**

Provide that:

The Minister may appoint a person or persons (to be known as the “designated person”) to perform the functions provided for in this Part.

#### **Explanatory Notes:**

Head 37 provides for the appointment by the Minister of designated persons to carry out the probation inspection functions provided for in this Part.

## Head 38      Functions of designated person

Provide that:

- (1) The functions of the designated person shall include:
  - (a) carrying out regular inspections of the Probation Service;
  - (b) investigating, whether on his or her own initiative or at the request of the Minister, any matter arising out of the management or operation of the Probation Service;
  - (c) carrying out thematic reviews of the Probation Service, at the request of the Minister, for the purpose of promoting best probation practice.
- (2) (a) Subject to *paragraph (b)*, it is not a function of the designated person to investigate or adjudicate on a complaint about the Probation Service regarding the treatment of a person who is or has been subject to the supervision of the Probation Service, but he or she may examine the circumstances relating to such a complaint where necessary for performing his or her functions.
- (b) The designated person shall investigate a complaint about the Probation Service regarding the treatment of a person who is or has been subject to the supervision of the Probation Service if the Minister requests the designated person to carry out such an investigation in the public interest.
- (3) (a) Any allegation made to the designated person in the course of an inspection under *subhead (1)(a)*, an investigation under *subhead (1)(b)* or *subhead (2)(b)* or a review under *subhead (1)(c)* that an act has been committed that may constitute a criminal offence shall be notified by the designated person to the Garda Síochána as soon as practicable and the designated person shall arrange for a record to be kept of—
  - (i) the identity of the complainant and the time and date the complaint was made,
  - (ii) the details of the complaint,
  - (iii) the time and date the complaint was notified to the designated person, and
  - (iv) the time and date of the notification to the Garda Síochána and the name of the member notified.
- (b) Where the designated person makes a notification to the Garda Síochána under *paragraph (a)*, he or she shall not carry out any further investigation of the act alleged and shall, if the notification arises from an investigation under *subhead (2)(b)*, inform the Minister of the notification.

- (4) Following the conclusion of each inspection under *subhead (1)(a)*, investigation under *subhead (1)(b)* or *subhead (2)(b)* or review under *subhead (1)(c)*, the designated person shall submit to the Minister a report containing the findings of the inspection, investigation or review.
- (5) Any report submitted under *subhead (4)* shall, where appropriate, contain recommendations for any action that the designated person considers necessary.
- (6) As soon as practicable after receiving a report under this Head (other than a report relating to an investigation under *subhead (2)(b)*), the Minister shall, subject to *subhead (8)*, cause a copy of the report to be laid before each House of the Oireachtas and shall publish the report.
- (7) The Minister may, subject to *subhead (8)*, cause a copy of a report received by him or her relating to an investigation under *subhead (2)(b)* to be laid before each House of the Oireachtas and may publish the report.
- (8) The Minister may omit any matter from any report laid before each House of the Oireachtas or published in accordance with this Head where—
  - (a) the designated person so requests,
  - (b) its disclosure may lead members of the public to identify a person who has made a complaint about the Probation Service or a specific person against whom a complaint was made,
  - (c) its disclosure might prejudice any criminal proceedings,
  - (d) the Minister is of opinion that its disclosure may be prejudicial to the security of the State, or
  - (e) the Minister is of opinion, after consultation with the Attorney General, that its disclosure would be contrary to the public interest or may infringe the constitutional rights of any person.
- (9) Where any matters are so omitted, a statement to that effect shall be attached to the report concerned on its being laid before each House of the Oireachtas and on its publication.

### **Explanatory Notes:**

Head 39 provides for the functions of the designated person. 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.

It is not intended that the designated person would routinely investigate complaints relating to the Probation Service. The Probation Service operates a customer complaints procedure which covers levels and standards of service, delays and poor customer service. While this procedure would appear to be sufficient to deal with most complaints, in order to deal with

particularly grave complaints, or complaints for which an external investigation would be appropriate, it is proposed that the designated person will be required to investigate a specific complaint if the Minister requests such an investigation in the public interest.



## Head 39 Powers of designated person

Provide that:

- (1) The designated person shall have all such powers as are necessary or expedient for the performance of his or her functions including, and without prejudice to the generality of the foregoing, the following powers:
  - (a) to enter at any time any premises of the Probation Service or any premises where persons attend for the purpose of complying with a supervised community sanction or any part of such premises;
  - (b) to require any person to provide the designated person with such information in possession of the person as the designated person may reasonably require for the purposes of his or her functions;
  - (c) to require any person to produce to the designated person any books, records or other documents (and in the case of documents or records stored in non-legible form, to produce to the designated person a legible reproduction of those documents or records) that are in that person's power or procurement, as the designated person may reasonably require for the purposes of his or her functions;
  - (d) where appropriate, to require a person to attend before the designated person for the purposes of *paragraph (b) or (c)*;
  - (e) to inspect and take copies of any books, records or other documents (including documents stored in non-legible form) or extracts from those books, records or documents, kept at a premises of the Probation Service or any premises where persons attend for the purpose of complying with a supervised community sanction;
  - (f) to remove any books, records or documents referred to in *paragraph (e)* from the premises and retain them for so long as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act;
  - (g) in the course of an inspection or investigation or arising out of an inspection or investigation, to bring any issues of concern to him or her to the notice of the Director of the Probation Service or the Minister or of both of them, as the designated person considers appropriate.
- (2) When performing a function under this Act, the designated person may be accompanied by any such person as he or she considers appropriate in the circumstances.
- (3) A statement or admission made by a person pursuant to a requirement under *subhead (1)(b)* shall not be admissible as evidence in proceedings brought against that person for an offence.

- (4) Nothing in this section shall be taken to compel the production by any person of a document that he or she would be exempt from producing in proceedings in a court on the ground of legal professional privilege.

**Explanatory Notes:**

Head 39 provides for the powers of the designated person. It expands on the provisions of section 31 (Functions of Inspector) of the Prisons Act 2007. It also draws from subheads (2) to (4) of the Mental Health Act 2001, which provides for the powers and functions of the Inspector of Mental Health Services.

The Head clearly sets out the designated person's right of access to probation facilities as well as to information and records in the course of his or her inspections investigations. It places an obligation on persons, at subhead (1)(b), to provide the designated person with information required for his or her investigations.

## PART 8

### AMENDMENT OF ENACTMENTS

#### Head 40      Amendment of Misuse of Drugs Act 1977

Provide that:

Section 30 of the Misuse of Drugs Act 1977 is amended by inserting the following subsection after subsection (2):

- “(3) For the purposes of subsection (1), “convicted of an offence under this Act” includes being dealt with under *Head 8* (Discharge orders and binding over orders relating to summary offences) of the *Criminal Justice (Community Sanctions) Act 2014* in relation to an offence under this Act.”.

#### Explanatory Notes:

Head 40 proposes to amend section 30 (Forfeiture) of the Misuse of Drugs Act 1977. Section 30 of the 1977 Act permits a court by which a person is convicted of an offence under that Act or a drug trafficking offence to order anything shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the court thinks fit.

The proposed amendment will clarify that a discharge order or binding over order under Head 8 will be treated as a conviction for the purposes of section 30 of the 1977 Act. The wording of the proposed new subsection is based on section 6(12)(b) (Compensation orders) of the Criminal Justice Act 1993 (as proposed to be amended by Head 44).

## **Head 41      Amendment of Criminal Justice Act 1984**

Provide that:

Section 28 of the Criminal Justice Act 1984 is amended—

- (a) in subsection (1), by substituting “a discharge order or binding over order under *Head 8 or 10* of the *Criminal Justice (Community Sanctions) Act 2014*” for “an order under subsection (1) or (2) of section 1 of the Probation of Offenders Act, 1907”, and
- (b) in subsection (3), by substituting “a discharge order or binding over order under *Head 8 or 10* of the *Criminal Justice (Community Sanctions) Act 2014*” for “an order under subsection (1) or (2) of section 1 of the Probation of Offenders Act, 1907”.

### **Explanatory Notes:**

This Head provides for consequential amendments to the references in section 28 of the Criminal Justice Act 1984 to the Probation of Offenders Act 1907.

## **Head 42      Amendment of Firearms and Offensive Weapons Act 1990**

Provide that:

Section 13 of the Firearms and Offensive Weapons Act 1990 is amended by inserting the following subsection after subsection (2):

- “(3) For the purposes of subsection (1), ‘convicted of an offence under this Part’ includes being dealt with under *Head 8* (Discharge orders and binding over orders relating to summary offences) of the *Criminal Justice (Community Sanctions) Act 2014* in relation to an offence under this Part.”.

### **Explanatory Notes:**

Head 42 proposes to amend section 13 (Forfeiture of weapons and other articles) of the Firearms and Offensive Weapons Act 1990. Section 13 of the 1990 Act permits a court by or before which a person is convicted of an offence under Part III (Offensive Weapons) of that Act to order any article in respect of which the offence was committed to be forfeited and either destroyed or otherwise disposed of in such manner as the court may determine.

The proposed amendment will clarify that a discharge order or binding over order under Head 8 will be treated as a conviction for the purposes of section 13 of the 1990 Act. The wording of the proposed new subsection is based on section 6(12)(b) (Compensation orders) of the Criminal Justice Act 1993 (as proposed to be amended by Head 44).

### **Head 43      Amendment of Criminal Justice (Forensic Evidence) Act 1990**

Provide that:

Section 4 of the Criminal Justice (Forensic Evidence) Act 1990 is amended—

- (a) in subsection (4)(a), by substituting “a discharge order or binding over order under *Head 8 or 10* of the *Criminal Justice (Community Sanctions) Act 2014*” for “an order under subsection (1) or (2) of section 1 of the Probation of Offenders Act, 1907”, and
- (b) in subsection (4)(b), by substituting “a binding over order under *Head 10* (Binding over orders following conviction on indictment) of the *Criminal Justice (Community Sanctions) Act 2014*” for “an order under section 1(2) of the Probation of Offenders Act, 1907”.

#### **Explanatory Notes:**

This Head provides for consequential amendments to the references in section 4 of the Criminal Justice (Forensic Evidence) Act 1990 to the Probation of Offenders Act 1907.

## **Head 44      Amendment of Criminal Justice Act 1993**

Provide that:

The Criminal Justice Act 1993 is amended—

- (a) in section 6—
  - (i) in subsection (1), by repealing “instead of or”, and
  - (ii) in subsection (12)(b), by substituting “*Head 8* (Discharge orders and binding over orders relating to summary offences) of the *Criminal Justice (Community Sanctions) Act 2014*” for “section 1(1) of the Probation of Offenders Act, 1907”, and
- (b) in section 8(6), by substituting “*Head 8* (Discharge orders and binding over orders relating to summary offences) of the *Criminal Justice (Community Sanctions) Act 2014*” for “section 1(1) of the Probation of Offenders Act, 1907”.

### **Explanatory Notes:**

Statutory provision giving the courts power to make compensation orders against persons convicted of offences is contained in sections 6 to 9 of the Criminal Justice Act 1993.

Section 6(1) provides that a court may make a compensation order against an offender instead of or in addition to dealing with the person in any other way. This Head proposes to amend that section by deleting the text which allows a court to make a compensation order instead of dealing with the person in any other way. The purpose of the amendment is to break the link between the payment of compensation and the sentencing of the offender.

The amendments to sections 6(12) and 8 of the 1993 Act are consequential amendments to the references in the Criminal Justice Act 1993 to the Probation of Offenders Act 1907.

## **Head 45      Amendment of Criminal Justice Act 1994**

Provide that:

The Criminal Justice Act 1994 is amended, in section 61, by inserting the following subsection after subsection (9):

“(10) In this section, references to conviction of a person include references to dealing with a person under *Head 8* (Discharge orders and binding over orders relating to summary offences) of the *Criminal Justice (Community Sanctions) Act 2014*.”.

### **Explanatory Notes:**

It is proposed to amend section 61 (Forfeiture orders) of the Criminal Justice Act 1994 to clarify that a discharge order or binding over order under Head 8 will be treated as a conviction for the purposes of that section. The wording of the proposed new subsection is based on section 6(12)(b) (Compensation orders) of the Criminal Justice Act 1993 (as proposed to be amended by Head 44).



## Head 46      Amendment of Children Act 2001

Provide that:

(1)      The Act of 2001 is amended—

(a)      in section 95—

(i) by inserting “ ‘probation supervision order’ means an order under *Head 25* of the *Criminal Justice (Community Sanctions) Act 2014*”, and

(ii) by deleting the definition of “probation order”,

(b)      in section 98(a), by substituting “a discharge order or binding over order under *Head 8* or *10* of the *Criminal Justice (Community Sanctions) Act 2014*” for “a conditional discharge order”,

(c)      in section 115(c), by substituting “*Head 25* of the *Criminal Justice (Community Sanctions) Act 2014* (a probation supervision order)” for “section 2 of the Act of 1907 (a probation order)”,

(d)      in section 124(2), by substituting “probation supervision order” for “probation order”,

(e)      in section 124(6)(d), by substituting “*Head 25* of the *Criminal Justice (Community Sanctions) Act 2014*” for “section 2 of the Act of 1907”,

(f)      in section 125(2), by substituting “probation supervision order” for “probation order”,

(g)      in section 125(9)(e), by substituting “*Head 25* of the *Criminal Justice (Community Sanctions) Act 2014*” for “section 2 of the Act of 1907”,

(h)      in section 126(2), by substituting “probation supervision order” for “probation order”,

(i)      in section 126(7)(c), by substituting “*Head 25* of the *Criminal Justice (Community Sanctions) Act 2014*” for “section 2 of the Act of 1907”,

(j)      by substituting the following section for section 128:

**“Failure to comply with order under *Criminal Justice (Community Sanctions) Act 2014*.**

**128.**—If a person who has failed to comply with a discharge order, a binding over order or a probation supervision order under the *Criminal Justice (Community Sanctions) Act 2014* is a child, the court may, in addition to its powers under *Heads 12*

(Failure to comply with binding over order) and 28 (Failure to comply with probation supervision order) of that Act—

(a) direct the child to comply with the order in so far as it has not been complied with, or

(b) revoke the order and substitute another community sanction.”, and

(k) in section 137(3)(a), by substituting “probation supervision order” for “probation order”.

(2) A failure by a child, within the meaning of the Act of 2001, to observe any condition of a recognisance under the Act of 1907 entered into before the commencement of this Head may be dealt with under section 128 of the Act of 2001 as if that section 128 had not been amended by this Act.

### **Explanatory Notes:**

This Head substitutes the references in the Children Act 2001 to probation orders under section 2 of the 1907 Act with references to probation supervision orders under *Head 25* of the General Scheme.

The provisions in the 2001 Act relating to specialised probation orders, for training or activities, intensive supervision or residential supervision (sections 124 to 127) will otherwise be left unchanged. Appropriate references to these orders are contained in the relevant provisions of Part 4 of the General Scheme.

It is proposed to substitute a new section for section 128 (Failure to observe conditions of probation) of the 2001 Act in order to link that section with this Bill, which replaces the 1907 Act.

## **Head 47      Amendment of Social Welfare Consolidation Act 2005**

Provide that:

Section 256 of the Social Welfare Consolidation Act 2005 is amended, in paragraph (b), by substituting “a discharge order or binding over order under *Head 8 (Discharge orders and binding over orders relating to summary offences)* of the *Criminal Justice (Community Sanctions) Act 2014*” for “an order under section 1(1) of the Probation of Offenders Act 1907”.

### **Explanatory Notes:**

This is a consequential amendment to a reference in section 256 (Application of Probation of Offenders Act 1907) of the Social Welfare Consolidation Act 2005 to the Probation of Offenders Act 1907.

## **Head 48      Amendment of section 99 of Criminal Justice Act 2006**

Provide that:

The Act of 2006 is amended by substituting the following section for section 99:

### **“Power to suspend sentence.**

**99.**—(1) Where a person is sentenced to a term of imprisonment (other than a mandatory term of imprisonment) by a court in respect of an offence, that court may make an order suspending the execution of the sentence in whole or in part, subject to the person entering into a recognisance to comply with the conditions of, or imposed in relation to, the order.

(2) It shall be a condition of an order under subsection (1) that the person in respect of whom the order is made keep the peace and be of good behaviour during—

(a) the period of suspension of the sentence concerned, or

(b) in the case of an order that suspends the sentence in part only, the period of imprisonment and the period of suspension of the sentence concerned,

and that condition shall be specified in the order concerned.

(3) The court may, when making an order under subsection (1), impose such conditions in relation to the order as the court considers—

(a) appropriate having regard to the nature of the offence, and

(b) will reduce the likelihood of the person in respect of whom the order is made committing any other offence,

and any condition imposed in accordance with this subsection shall be specified in that order.

(4) In addition to any condition imposed under subsection (3), the court may, when making an order under subsection (1) or upon an application under subsection (7), impose any one or more of the following conditions in relation to that order or the order referred to in the said subsection (7), as the case may be:

(a) that the person co-operate with the Probation Service to the extent specified by the court for the purpose of his or her rehabilitation and the protection of the public—

(i) in a case where the person was convicted summarily of the offence concerned, for a period not exceeding 18 months, or

(ii) in a case where the person was convicted on indictment of the offence concerned, for a period not exceeding 2 years;

(b) that the person undergo such—

(i) treatment for drug, alcohol or other substance addiction,

(ii) course of education, training or therapy,

(iii) psychological counselling or other treatment,

as may be approved by the court;

(c) that the person be subject to the supervision of the Probation Service—

(i) in a case where the person was convicted summarily of the offence concerned, for a period not exceeding 18 months, or

(ii) in a case where the person was convicted on indictment of the offence concerned, for a period not exceeding 2 years.

(5) A court shall not impose a condition that a person undergo treatment referred to in subsection (4)(b)(i) or (iii) unless the court is satisfied, on the basis of evidence adduced before it, that the person is in need of such treatment.

(6) A condition (other than a condition imposed, upon an application under subsection (7), after the making of the order concerned) imposed under subsection (4) shall be specified in the order concerned.

(7) A probation officer may, at any time before the expiration of a sentence of a court to which an order under subsection (1) consisting of the suspension of a sentence in part applies, apply to the court for the imposition of any of the conditions referred to in subsection (4) in relation to the order.

(8) Where a court makes an order under this section, it shall cause a copy of the order to be given to—

(a) the Garda Síochána, or

(b) in the case of an order consisting of the suspension of a sentence in part only, the governor of the prison to which the person is committed and the Garda Síochána.

(9) Where a court has made an order under subsection (1) that imposes conditions under subsection (4) or upon an application under subsection (7), it shall cause a copy of the order and conditions to be given to—

(a) the Probation Service, and

(b) (i) the Garda Síochána, or

(ii) in the case of an order consisting of the suspension of a sentence in part only, the governor of the prison to which the person is committed and the Garda Síochána.

(10) Where a person to whom an order under subsection (1) applies is, during the period of suspension of the sentence concerned or during the period of one year following the expiry of the period of suspension of the sentence concerned, convicted of an offence, being an offence committed after the making of the order under subsection (1) and before the expiry of the period of suspension, the court before which proceedings for the offence are brought shall, before imposing sentence for that offence, remand the person in custody or on bail to the next sitting of the court that made the said order.

(11) A court to which a person has been remanded under subsection (10) shall revoke the order under subsection (1) unless it considers that the revocation of that order would be unjust in all the circumstances of the case, and where the court revokes that order, the person shall be required to serve the entire of the sentence of imprisonment originally imposed by the court, or such part of the sentence as the court considers just having regard to all of the circumstances of the case, less any period of that sentence already served in prison and any period spent in custody (other than a period spent in custody by the person in respect of an offence referred to in subsection (10)) pending the revocation of the said order.

(12) The court referred to in subsection (11) shall remand the person concerned in custody or on bail to the next sitting of the court referred to in subsection (10) for the purpose of that court imposing sentence on that person for the offence referred to in that subsection.

(13) (a) Where an order under subsection (1) is revoked under subsection (11), a sentence of imprisonment (other than a sentence consisting of imprisonment for life) imposed on the person concerned under subsection (12) shall not commence until the expiration of any period of imprisonment required to be served by the person under subsection (11).

(b) This subsection shall not affect the operation of section 5 of the Criminal Justice Act 1951.

(14) Where an order under subsection (1) is revoked in accordance with this section, the person to whom the order applied may appeal against the revocation to such court as would have jurisdiction to hear an appeal against any conviction of, or sentence imposed on, a person for an offence by the court that revoked that order.

(15) Where a member of the Garda Síochána or, as the case may be, the governor of the prison to which a person was committed has reasonable grounds for believing that a person to whom an order under subsection (1) applies has contravened the condition referred to in subsection (2) or a condition imposed under subsection (3), he or she may apply to the court to fix a date for the hearing of an application for an order revoking the order under subsection (1).

(16) Where a probation officer has reasonable grounds for believing that a person to whom an order under subsection (1) applies has contravened a condition imposed under subsection (4), he or she apply to the court to fix a date for the hearing of an application for an order revoking the order under subsection (1).

(17) Where the court fixes a date for the hearing of an application referred to in subsection (15) or (16), it shall, by notice in writing, so inform the person in respect of whom the application will be made, or where that person is in prison, the governor of the prison, and such notice shall require the person to appear before it, or require the said governor to produce the person before it, on the date so fixed and at such time as is specified in the notice.

(18) If a person who is not in prison fails to appear before the court in accordance with a requirement contained in a notice under subsection (17), the court may issue a warrant for the arrest of the person.

(19) A court shall, where it is satisfied that a person to whom an order under subsection (1) applies has contravened a condition of the order, revoke the order unless it considers that in all of the circumstances of the case it would be unjust to so do, and where the court revokes that order, the person shall be required to serve the entire of the sentence originally imposed by the court, or such part of the sentence as the court considers just having regard to all of the circumstances of the case, less any period of that sentence already served in prison and any period spent in custody pending the revocation of the said order.

(20) A notice under subsection (17) shall be addressed to the person concerned by name, and may be given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address.

(21) This section shall not affect the operation of—

- (a) section 2 of the Criminal Justice Act 1960 or Rule 59 of the Prison Rules 2007 (S.I. No. 252 of 2007), or
- (b) subsections (3G) and (3H) of section 27 of the Misuse of Drugs Act 1977.

(22) Where a court imposes a sentence of a term of imprisonment that is to run consecutively to a sentence of a term of imprisonment the operation of a part of which is suspended, the first-mentioned sentence shall commence at the expiration of the part of the second-mentioned sentence the operation of which is not suspended.”.

**Explanatory Notes:**

The purpose of the amendments to section 99 of the Criminal Justice Act 2006, which provides the statutory basis for suspended sentences, is to clarify and improve the operation of that section in cases where the court wishes to impose Probation Service supervision as a condition of a suspended sentence.

It is proposed to substitute section 99 entirely, in view of the numerous amendments proposed to be made to it by the General Scheme, and the amendments already made by section 60 of the Criminal Justice Act 2007 and section 51 of the Criminal Justice (Miscellaneous Provisions) Act 2009.



## **Head 49      Other amendments of Criminal Justice Act 2006**

Provide that:

- (1) Section 98 of the Act of 2006 is amended—
  - (a) by inserting the following definitions:

“ ‘probation officer’ means a person appointed by the Minister to be a probation officer;

‘Probation Service’ means those officers of the Minister assigned to perform functions in the part of the Department of State for which the Minister is responsible commonly known by that name;”, and
  - (b) by deleting the definitions of “probation and welfare officer” and “probation and welfare service”.
- (2) Section 101 of the Act of 2006 is amended, in subsection (8), by substituting “probation officer” for “probation and welfare officer”.

### **Explanatory Notes:**

As it is proposed to use the current titles for probation officers and the Probation Service in the new text of section 99 of the Criminal Justice Act 2006, it would be appropriate to update the terminology wherever else it occurs in Part 10 (Sentencing) of the 2006 Act. This Head provides accordingly.

## **Head 50      Amendment of Criminal Justice (Mutual Assistance) Act 2008**

Provide that:

Section 79 of the Criminal Justice (Mutual Assistance) Act 2008 is amended, in subsection (10)(c), by substituting “a discharge order or binding over order under *Head 8* (Discharge orders and binding over orders relating to summary offences) of the *Criminal Justice (Community Sanctions) Act 2014*” for “a probation order under section 1(1) of the Probation of Offenders Act 1907”.

### **Explanatory Notes:**

This Head provides for a consequential amendment to a reference in section 79 (Action on request) of the Criminal Justice (Mutual Assistance) Act 2008 to an order under section 1(1) of the Probation of Offenders Act 1907.

## Appendix 5

### **SUBMISSIONS RECEIVED**

Facing Forward

The Law Society of Ireland

Restorative Practices Strategic Forum

Rape Crisis Network Ireland (RCNI)



# **Facing Forward Submission to the Joint Oireachtas Committee on Justice, Defence and Equality on the Heads of the Criminal Justice (Community Sanctions) Bill**

## **April 2014**

### **1. Introduction to this Submission**

a. This submission has been prepared on behalf of Facing Forward by Barbara Walsh, Niall Counihan, and Nadette Foley. Their relevant professional experience and expertise is detailed in Appendix 1.

b. Facing Forward was established in 2005 in response to gaps in the Irish criminal justice system and to support the introduction of restorative approaches based on best practice that has emerged in other countries.

Our Management Committee is made up of people from a variety of backgrounds including mediation, criminal justice, community development, and peace and reconciliation work. We are a member based, voluntary organisation.

c. In October 2013, Facing Forward made a detailed submission to the Oireachtas Committee for Justice, Defence and Equality on the larger topic of Restorative Justice on which a hearing is pending later this year.

### **2. Facing Forward's Approach to Restorative Justice**

One way of understanding RJ is to consider the differences between it and our current Retributive Justice system by looking at three questions:

#### **Retributive Justice asks:**

1. What law was broken?
2. Who broke it?
3. How do we punish them?

#### **Restorative Justice asks:**

1. What harm was done and to whom?
2. What needs have arisen based on that harm?
3. Whose obligation is it to meet those needs?

RJ also has a purpose beyond the immediate objectives of the Criminal Justice System. Internationally, where restorative practices are embedded within criminal justice systems, they are one part of a wider restorative approach in communities, schools and throughout society. Facing Forward recognises the ripple effect of crime at all levels of the community, and is working to encourage and support a more restorative approach.

The Restorative Justice Council in the UK has a document which outlines best practice([http://www.restorativejustice.org.uk/resource/best\\_practice\\_guidance\\_for\\_restorative\\_practice\\_2011/](http://www.restorativejustice.org.uk/resource/best_practice_guidance_for_restorative_practice_2011/)). The following are some of their key principles which may be relevant to the provision in the Heads of this Bill:

- Primary aim to be the repair of harm.
- Secondary aim to be to restore relationships between individuals impacted by harm and throughout the wider community affected.
- The individual who has been harmed and the person responsible for the harm are the primary participants in any restorative process. There should be some level of agreement about the essential facts of the incident and an acceptance of responsibility by the person who caused the harm.

### **3. The Heads of the Criminal Justice (Community Sanctions) Bill**

Facing Forward welcomes the mention of restorative justice and reparation and the introduction of a statutory obligation to obtain the consent of the person, contained in the draft Heads of the above Bill. Facing Forward is limiting its detailed comments to Heads 8, 9 and 10. Facing Forward also welcomes the proposed steps to give a statutory basis for a Reparation Fund to replace 'Court Poor Box' in Head 30, and encourages the Committee members to consider how funds from this source could be used to support the expansion of restorative options alongside other supports for victims of crime. In keeping with the principle of Community Engagement and the importance of maintaining community trust in the criminal justice system, the involvement of community and victims' representatives in monitoring the implementation of the Reparation Fund might be considered.

Facing Forward particularly welcomes the breaking of the link between payment of monetary reparation and any mitigation of a sentence.

Facing Forward would urge the Committee to consider what awareness raising among the general public, those being brought before the District Court on summary charges or on indictable charges being dealt with summarily and those harmed by such offences, might be necessary to provide a supportive context for the future use of the restorative approach detailed in the Heads of this Bill. As the criminal justice system formalises the restorative direction which is becoming more apparent in its work, there is a need to ensure that there is sufficient public understanding of the benefits to victims, offenders and society of restorative approaches.

#### **Head 8**

Subhead (3)(f), together with Head 9, provide for a "limited and specific restorative justice approach in relation to District Court criminal proceedings for minor offences". Facing Forward

welcomes this provision which replaces some sections of the Probation Act 1907 and expands the statutory basis for Restorative Justice interventions.

(3) (f) This requires the Restorative Justice criteria specified in Head 9 to be satisfied. Facing Forward would like further explanation of the wider meaning of the restorative process envisaged in the Bill.

### **Head 9**

This Head introduces a mechanism for reparation with the following conditions, which recognise the rights of the person whom the offence has harmed as set out in the EU Victim's Directive:

(2) (a) the person has offered to provide reparation to the person in respect of whom the offence was committed, and  
(b) the person in respect of whom the offence was committed is willing to accept the reparation.

(4) In this Head, "reparation means financial reparation, any other form of reparation, or both". In the Explanatory Notes for Head 9, the only examples of 'reparation' given are monetary compensation. Facing Forward would urge that the possibility of encouraging victims and offenders to consider reparation in its widest sense be incorporated into the final version of the Bill. This would respect the different interests and needs of individual victims in the spirit of the EU Victim's Directive.

Facing Forward welcomes the requirement that the 'person in respect of whom the offence was committed is willing to accept the reparation'. We see this as a statutory recognition of the voice of the victim, which can be seen as facilitating the victim's right to be heard in Article 10 of the EU Victims Directive. Facing Forward wonders if the court would want to see evidence of this consent in the form of a signed written consent from the person impacted by the offence?

The Heads of the Bill do not specify the precise mechanism by which the victim's consent is to be sought. It is likely that in the case of adult offenders it will be the Gardai as the 'designated authority' (EU Victim's Directive) who will carry out the action to obtain the victim's consent under this Bill. Facing Forward would like to see some mention of the needs of 'victim's with specific protection needs' as obligated by the EU Victim's Directive, which include all victim's under 18, victims of sexual crime and victims of hate crime. Mention of the need for specialised training for communication with such victims could also enhance the provisions of this Bill. Under the terms of this Bill, when a Garda contacts a victim to ascertain whether or not they consent to a reparation order being made, to comply with the obligation in the Victim's Directive, they may also need to refer people to victim support agencies. Facing Forward recognises that certain individual victims may have suffered considerable trauma and harm and have safety concerns, so it is important that their individual needs be taken into account and responded to appropriately. The EU Victim's Directive also encourages States to put in place Codes of Conduct or Guidelines for professionals who are in contact with victims.

Facing Forward would like the process of seeking the victim's consent to include information to the victim on wider restorative possibilities, within the limits of the context of summary offences. Can the restorative element be strengthened by giving a victim time to consider not only if they want reparation, but what reparation means to them? For some victims, it may simply be the cost of damage done or medical expenses incurred as a result of the offence, but for others, there may be additional issues. It may be necessary for Gardai to take other needs into account, beyond the limits of obtaining consent.

Facing Forward would also ask the Oireachtas Committee to investigate whether an additional question could be asked of victims, to see if they might be interested in communication of any sort, indirect or direct with their offender. As these are summary offences, such communication would need to be carried out promptly as the purpose of this mechanism is that the offender can put this 'minor' offence behind them. Would it be appropriate for victims who consent to reparation to be given the option of attending the summary hearing in the District Court to hear the offender accepting responsibility for the offence and the harm caused and the reparation arrangement being confirmed? This option could have additional restorative benefit for both the victim and offender.

In considering the Heads of this Bill, Facing Forward hopes that the Oireachtas Committee will avail of every opportunity to consult widely with agencies working with those responsible for such offences as well as those impacted by the harm caused by such offences.

### **Head 10**

(e) 'The need to have due regard to the interests of any victim of the Offence'. This item relates to the EU Victim's Directive which recognises the need for the victim to play 'a key role in criminal proceedings'. In summary offences, this role may be less than in proceedings dealing with offences which attract higher tariffs.

### **Conclusion**

Facing Forward welcome the Heads of the Criminal Justice (Community Sanctions Bill) for the following reasons:

- It is a first step in fulfilling the National Commission on Restorative Justice recommendations to place restorative approaches on a statutory footing.
- It gives a statutory basis for taking the needs and interests of the victim into account, through requiring consent for the payment of reparation.

Facing Forward proposes that the following issues be considered:

- The needs of the victim for a wider consideration of reparation, other than monetary and support for their other needs.
- The 'specific protection needs' of certain victims and how these will be met.
- The questions of giving victims information on further restorative possibilities for communication between them and the offender.
- The possibility of informing victims of the option to be present at a District Court hearing where the offender accepts responsibility for the harm.
- The need to conduct public awareness work to ensure widespread understanding of the benefits to victims, offenders and Irish society of introducing restorative justice approaches within the criminal justice system.





**RCNI Submission on the General Scheme of the forthcoming  
Criminal Justice (Community Sanctions) Bill 2014**

**April 2014**

# RCNI Submission on Criminal Justice (Community Sanctions) Bill General Scheme to Joint Oireachtas Committee on Justice, Defence and Equality April 2014

## Introduction – Rape Crisis Network Ireland Overview:

- 1.0 Rape Crisis Network Ireland broadly welcomes the forthcoming Criminal Justice (Community Sanctions) Bill 2014, as set out in the General Scheme.** In general, RCNI welcomes the inclusion of victims' interests as an important part of the sentencing process, and also, as an important way of assuring the best possible risk assessment and management of sex offenders once they are released from prison. In particular, RCNI welcomes those provisions which implement its own earlier recommendations in relation to compensation and pre-sentence assessment reports.

## Rape Crisis Network Ireland: Aims, Activities, Goals, Members, Staff

- 2.0 RCNI** is the national representative body for its 13 member Rape Crisis Centres. It is a specialist information and resource centre on rape and all forms of sexual violence. The RCNI role includes the development and coordination of national projects including expert data collection, supporting Rape Crisis Centres to reach best practice standards, legal advice and policy development, and using our expertise to influence national policy and social change. Our member Rape Crisis Centres provide free advice, specialised counselling, advocacy and other supports such as Court and Garda accompaniment, for survivors of sexual abuse in Ireland, including a growing number between the ages of 14 and 18. The RCNI Legal Director has chaired the Legal Issues Sub-Committee of the National Steering Committee on Violence against Women from September 2008 to date. NSCVAW is a high-level multi-agency advisory body, chaired by the Head of Cosc, the National Office for the Prevention of Domestic, Sexual and Gender-Based Violence. The NSC remit includes making recommendations to Government and relevant State agencies for the improvement of existing services and structures which affect victims of both domestic and sexual violence. Over the past few years, LISC has produced a number of legal recommendations and discussion documents, which have been approved by the NSCVAW. Where this RCNI document makes recommendations relevant to sentencing which are in accordance with those made by LISC, this is stated in the text *in italics*<sup>1</sup>.

## **3.0 This Submission – Structure:**

This submission is made on a Head by Head basis, beginning with Head 8, and is limited to those Heads which are most relevant to victims of sexual violence crimes. It refers throughout to our existing legal reform position papers and submissions, and web links to the full texts are included where appropriate. This document should be read in conjunction with the relevant sections of the RCNI Submission on Sexual Violence and the Criminal Justice System made to the Joint Oireachtas Committee on Justice, Defence and Equality in writing in June 2013<sup>2</sup>.

## **Part 2:**

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<sup>1</sup> A summary of LISC's remit and composition can be found at Appendix II hereto.

<sup>2</sup> Available online through this weblink for convenience: <http://www.rcni.ie/wp-content/uploads/RCNISubmissiononSexualViolencetoJointOireachtasCommitteeonJusticeEqualityandDefenceJune2013FINAL.pdf> . The relevant paragraphs are 3.9 to 3.10.5 inclusive.

## RCNI Submission on Criminal Justice (Community Sanctions) Bill General Scheme to Joint Oireachtas Committee on Justice, Defence and Equality April 2014

### 3.1 Head 8 – Discharge Orders and Binding Over Orders relating to summary offences:

While relatively few sexual offences are dealt with summarily, nevertheless we welcome the inclusion of “the need to have due regard to the interests of any victim of the offence” at Subhead (3) (c), as one of the matters to which a court may have regard when considering whether a discharge order or binding over order, is appropriate in a particular case. RCNI considers that this is especially appropriate in this situation, as there will be no conviction if a discharge order or binding over order is made. For many victims of sexual offences, this is difficult to accept. In our respectful submission, the interests of victims should **always** be included in the consideration of any disposal without a conviction.

**RCNI recommends** that the wording in relation to the interests of any victim be changed from “may have regard” to “shall have regard”, so that any judge considering a discharge order or binding over order is obliged to consider the needs of any victim of the offence.

### 3.2 Head 9 – Restorative Justice criteria for the purposes of Head 8(3)(f):

While this provision is not likely to apply to many victims of sexual offences, nevertheless we welcome the condition at Head 9(1)(c) to the effect that the victim of the offence has accepted the reparation. It has the effect of putting the victim’s point of view at the centre of any restorative justice process, giving him/her control over the outcome. We submit that any judge considering a disposal without conviction should be obliged to consider if the restorative justice criteria have been fulfilled, where applicable.

**RCNI therefore recommends** that the wording of Head 8 in relation to restorative justice criteria be changed from “may have regard to” to “shall have regard to”, to put it beyond doubt that where they are applicable, the restorative justice criteria must be included in any consideration of a disposal without conviction.

## Part 3

### 3.3 Head 16 – Probation Assessment Reports – Head 16 (2) (c) and (d) in particular:

RCNI welcomes these provisions which complement the proposed new provisions at Head 48 replacing Section 99 of the Criminal Justice Act 2006 and Part V of the Sex Offenders Act 2001, which are close to recommendations made in various RCNI policy papers and submissions on sentencing. It seems to us of the first importance that sentencing judges should have the benefit of probation assessment reports whenever either a suspended, part-suspended sentence OR a post-release supervision order is being considered in respect of a sex offender.

**RCNI recommends the following:**

(1)With regard to the content of such reports, we submit that each one should include a detailed assessment of the risk of future re-offending and make proposals to address any such risk, where appropriate; (Head 16(4)(a)) refers) ; further

(2)If anyone convicted of a sex offence does not co-operate with the preparation of a probation assessment report, that fact should be brought to attention of the sentencing judge, who should have the power to impose sanctions if s/he is satisfied that there is no reasonable excuse for the failure to co-operate; (there does not appear to be any sanction proposed for non-cooperation in the preparation of a Probation Assessment Report)

## RCNI Submission on Criminal Justice (Community Sanctions) Bill General Scheme to Joint Oireachtas Committee on Justice, Defence and Equality April 2014

(3) As part-suspended sentences provide an important mechanism through which the court may impose conditions aimed at reducing the risk of re-offending after release, - and activate the full sentence if these conditions are breached – we submit that part-suspended sentences should be included explicitly in the wording of Head 16(2)(c).

(4) Where the sentencing judge considers it may be appropriate to impose a part-suspended sentence on a sex offender, we submit that s/he should have regard to some of the same matters which must be considered by a sentencing judge when s/he has to decide whether to impose a post-release supervision order, namely:<sup>3</sup>

“(a) the need for a period, after the offender has been released into the community, during which his or her conduct is supervised by a responsible person,

(b) the need to protect the public from serious harm from the offender,

(c) the need to prevent the commission by the offender of further sexual offences, and

(d) the need to rehabilitate or further rehabilitate the offender...”

**3.4 Head 17: Other reports that may be requested:** RCNI welcomes this provision, as in our view, the more expert information available to the sentencing judge, the better s/he can work out a sentencing regime which addresses the risks of re-offending by a sex offender.

**RCNI recommends** that in the case of sex offenders at least, that any report prepared under this Head should refer explicitly to the risk of re-offending and the report’s author should make any recommendations which seem appropriate, to address this risk.

**3.5 Heads 20 and 21:** These two sections taken together enable certain reports for the court relating to convicted offenders to be made available to each party and to “any other person whom the court considers to have a proper interest in receiving a copy of the report”. In our respectful submission, victims of sexual crimes (and other victims) are always to be considered persons having “a proper interest in receiving a copy of the report”, as the report will include much material about their own most distressing and intimate experiences, and particularly if they could be summoned by the judge to give evidence in order to assist him/her on sentencing.

**RCNI recommends** that Head 20 be reworded so that victims are named as a class of people entitled to see copies of reports under that Part, unless there are exceptional circumstances in a particular case which mean that the judge should not allow this.

### Part 5

**Heads 30 and 31: Reparation Fund and Reparation Orders respectively:** RCNI broadly welcomes both sets of provisions, which replace the current Poor Box system. It seems to us that the proposed Reparation Fund is a much fairer way to distribute money for the “compensation, reparation and assistance” of victims of crime than the existing system. We note that it is proposed to use existing structures to distribute Reparation Fund revenue, rather than incur the cost of a new structure, and that it is proposed to divide the amount

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<sup>3</sup> see Section 28 (2) of the Sex Offenders Act 2001 as amended

## RCNI Submission on Criminal Justice (Community Sanctions) Bill General Scheme to Joint Oireachtas Committee on Justice, Defence and Equality April 2014

available between the Commission for the Support of Victims of Crime and the Criminal Injuries Compensation Tribunal.

**“Assistance for the victims of crime”:** The existing Commission structure is simple and very well-administered, and any victim support organisation can apply to it for funding to assist victims in a wide variety of ways. RCNI itself has benefited from this funding for Court and Garda Accompaniment and associated training, over the years, and the RCNI office organises and administers expenses payments for accompaniment and training for its own members, (and just training and related expenses, for non-member Centres). Any victim of sexual violence (not simply existing clients) can ask a Rape Crisis Centre funded by the Commission (they all are) for free accompaniment services. However, we are well aware that Commission funding should not be used for any other purpose which might help victims, other than that already applied for and approved in advance, and funding applications are considered only once a year<sup>4</sup>. RCNI regularly receives requests for small amounts of funding for a specific purpose to help a victim, such as Refugee Appeal Tribunal accompaniment, travel costs to access counselling sessions, child care costs to enable clients to attend sessions, (to name but three recent examples), for which a local Centre might have no or no adequate funding. In our submission, it would be great to be able to apply for some funding to assist individual victims with small amounts of money on an ad hoc basis as the need arises, whatever that need is, without having to name it as a “project” – and/or to provide much-needed services as the need arises, such as a local Centre being asked to come talk to secondary school pupils about sexual violence, consent and so on, but lacking the resources to pay for travel and/or cost of materials (a very worthwhile task in terms of prevention of future sexual violence but one which costs money to complete).

In summary, the RCNI point of view is that this element of the Reparation Fund has the potential to provide assistance directly to victims quickly and simply, and thankfully the structures are already pretty well in place to ensure that does happen. The State should ensure that it is well publicised so that victims know to whom they can apply and how, and both State and recipient organisations should ensure that any system is as simple to access as it can be.

**“Compensation, Reparation...for the victims of crime”:** With regard to the proposal to allocate some part of the Reparation Fund to the Criminal Injuries Tribunal, RCNI would point out that the existing CICT rules exclude a great number of victims as they stand. This cannot be the intention of Head 30. If victims are to be compensated and reparation made to them through the CICT, it should no longer be allowed to operate to exclude:

- (a) any victim who was living with the perpetrator of the crime at the time of the crime;
- (b) any victim who makes an application to it later than three months after the crime;
- (c) any victim who fails to make a report to the Guards soon after the crime;
- (d) any victim who wishes to make a claim for pain and suffering endured as a result of the crime (at the very least victims who have no chance of being compensated in the civil courts should be able to apply to CICT);
- (e) any victim whose actions were held to “cause or contribute to the crime”, and
- (f) any victim in whose case CICT is satisfied that “the conduct of the victim, his character or his way of life make it inappropriate”

**RCNI recommends:**

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<sup>4</sup> That is not to say that the Commission is entirely inflexible in their attitude – far from it - but we must always seek special permission if we wish to use their funding for a slightly different (but related) purpose.

## RCNI Submission on Criminal Justice (Community Sanctions) Bill General Scheme to Joint Oireachtas Committee on Justice, Defence and Equality April 2014

- (1) **Assistance:**
- (a) However it is administered, the Reparation Fund structures should have the capacity to be flexible to victims' needs as they arise as far as possible;
  - (b) The application process to the Reparation Fund should be well publicised by the State and
  - (c) It should be simple and easy to understand;
  - (d) It should be easy to administer and account for; and
  - (e) The portion of the Reparation Fund allocated to victim assistance should increase the overall amount of funding available to victims of crime, not replace existing sources of funding
- (2) **Compensation and Reparation:**
- The existing Criminal Injuries Compensation Tribunal should have its rules replaced to include all those categories of victims who may now find themselves excluded, listed above under the subheading "Compensation, Reparation for the Victims of Crime".<sup>5</sup>

### Part 6

**Head 34: Role of Probation Service in relation to court proceedings** Subhead (2) provides that a court may request the Probation Service to provide a Victim Impact Statement in relation to a victim of crime. The rationale for this provision is not clear to us. We are concerned that this might be completely unworkable in the case of victims of sexual violence, and that it may have the effect of taking away from all relevant victims one of their few explicit rights in criminal proceedings. The subhead does not make clear in what circumstances the Probation Service may be requested to provide a victim impact statement by the court. We are inclined to believe that the intention of the subhead is not to replace victims' existing right to make a Victim Impact Statement with a power given to the court alone to request one from the Probation Service. If we are wrong and this is indeed the case, we must oppose this very strongly. If the intention is to ask the Probation Service to make a supplemental Victim Impact Statement, in addition to the one provided by or on behalf of the victim, we do not see how it work. In order to be of real use to the court, any such statement would have to be prepared after an in-depth interview with the victim. We cannot imagine that victims of sexual violence would find it appropriate, or easy, to tell their story to any representative from a service associated so closely with offenders and their welfare. It can take months or even years for victims of sexual violence to build up enough trust and confidence to tell a rape crisis counsellor in detail about the violence and its impact on them, let alone a representative of a service whose core role is the supervision and welfare of offenders. While we assume of course that the same Probation Service officer would not prepare both Probation Assessment Report and Victim Impact Statement in the same case, we cannot see that victims would be able and willing to disclose such personal material about the impacts of the sexual violence on their lives, to any Probation Service officer, given the close association between the Probation Service and offenders. If the Statement were to be prepared without any interview with the victim, it is hard to see how it could assist the court, on the other hand. In our view, if a victim wishes to have someone assist her with a Victim Impact Statement, it should be someone with whom s/he already has a good and trusting relationship, such as a rape crisis counsellor, the investigating Guard, a friend or relative – who is already familiar with the facts of the case and its impacts on the

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<sup>5</sup> The Committee may wish to consider the Victim Surcharge system which operates in the UK, details of which may be found online through this weblink: <http://sentencingcouncil.judiciary.gov.uk/sentencing/victim-surcharge.htm>

## RCNI Submission on Criminal Justice (Community Sanctions) Bill General Scheme to Joint Oireachtas Committee on Justice, Defence and Equality April 2014

victim, who is not associated with offenders in general, and with whom the victim feels entirely comfortable, not least because s/he does not have to explain and/or repeat everything because that person knows all about it already. Having to explain and/or repeat everything in itself to a complete stranger can amount to being re-traumatised.

RCNI would like to make it clear that in making this submission, **no criticism of the great and necessary work of Probation Service officers is intended.**

**RCNI recommends** that the proposal to allow Probation Service officers to prepare a Victim Impact Statement be scrapped.

### Part 8 Amendments of Existing Legislation

**Head 44: [Compensation]** RCNI welcomes very much the deletion of the words “instead of” from subsection (1) of the original Section 6 of the Criminal Justice Act 1993, as we have already advocated for this, and *it was a LISC recommendation*. We feel it is entirely appropriate to break the link between the payment of compensation and the sentencing of the offender.

**RCNI recommends further** that if any judge is considering a compensation order, s/he should be obliged to consult the victim of the crime first. Our experience is that some victims of sexual violence are not willing to accept any compensation from an offender, regardless of the circumstances. If the judge found that the victim was indeed unwilling to accept such compensation, should not the judge be able to order that the same amount be paid by the offender to the Reparation Fund?

### 4.0 Executive Summary of RCNI Recommendations in relation to the General Scheme of the forthcoming Criminal Justice (Community Sanctions) Bill 2014

RCNI recommends that:

- Compensation in sexual violence cases should never be “instead of” another sentencing option, as this General Scheme proposes at Head 44<sup>6</sup>, and
- The complainant’s own wishes in relation to compensation should also be ascertained and taken into account by the judge before any decision is made on compensation (Head 44 refers), and the onus should be on the sentencing judge to raise the issue of possible compensation at the appropriate stage in proceedings;
- Any judge considering a suspended, or part-suspended sentence, or a sentence including a post-release supervision order, should be obliged to seek a probation assessment report from the Probation Service, as this General Scheme appears to propose at Head 16;
- All Probation Assessment Reports relating to sex offenders should set out the risks of re-offending and where appropriate, make proposals to address these risks;
- Any sex (or other) offender who does not co-operate with the Probation Service in the preparation of a Probation Assessment Report without reasonable cause, should face sanctions (such as by way of increased sentence);
- All revenues from the proposed Reparation Fund should be ring-fenced so that they are only used to provide “compensation, reparation and assistance” for victims of crime, as Head 30 proposes, no matter what the structure for holding and disbursing these revenues is;
- These revenues should be used to **increase**, not **replace**, funding available to victims for their assistance, compensation and reparation;

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<sup>6</sup> This recommendation was also made by LISC

## **RCNI Submission on Criminal Justice (Community Sanctions) Bill General Scheme to Joint Oireachtas Committee on Justice, Defence and Equality April 2014**

- Any system for holding and disbursing these revenues should be simple, and easy to understand and access, so that any victims of crime could make an application for payment quickly and easily, without any need to seek legal assistance in order to do so;
- Any system for holding and disbursing these revenues should be flexible enough to provide assistance to individual victims on an ad hoc basis, as and when the need arises;
- Any such system should be well publicised by the State;
- The Criminal Injuries Compensation Tribunal Rules should be amended to allow those victims who may now be barred from making a claim, to make a claim;
- The proposal to allow the court to request the Probation Service to prepare Victim Impact Reports/Statements should be scrapped as unworkable;
- Any judge contemplating a disposal without conviction (discharge order or binding over order) should be obliged to consider the needs of the victim of the crime; and
- Any judge contemplating such a disposal should be obliged to have regard to whether any reparation offered by way of a restorative justice proposal is acceptable to the victim of the crime;
- Reports on sex offenders made under Part 3 should be made available to the victim, unless there are exceptional circumstances in a particular case which render this inappropriate.

**Rape Crisis Network Ireland  
4, Prospect Hill, Galway**

3 April 2014

LPD/1



## RCNI Submission on Criminal Justice (Community Sanctions) Bill General Scheme to Joint Oireachtas Committee on Justice, Defence and Equality April 2014

### Appendix I:

List of RCNI Position Papers and Submissions relevant to this Submission, in chronological order:

1. RCNI Submission on the Management of Sex Offenders (2009): available online at: <http://www.rcni.ie/uploads/RCNISubmissiononthemanagmentofsexoffenders29thApril2009.pdf>
2. RCNI Submission on the Community and the Criminal Justice System (2011), available online at: <http://www.rcni.ie/uploads/RCNISubmissionOnTheCommunityCriminalJusticeSystemAug11.pdf>
3. RCNI Legal Recommendations Position Paper (2012), available online at: <http://www.rcni.ie/uploads/RCNILEgalRecommendationsPositionPaperMay12.pdf>
4. RCNI Submission to Joint Oireachtas Committee on Justice, Equality and Defence on Sexual Sexual Violence and the Criminal Justice System, available online through this link <http://www.rcni.ie/wp-content/uploads/RCNISubmissiononSexualViolencetoJointOireachtasCommitteeonJusticeEqualityandDefenceJune2013FINAL.pdf>
5. RCNI Submission to the Strategic Review of Penal Policy Working Group (2013), available online through this weblink: <http://www.rcni.ie/wp-content/uploads/RCNI-Submission-SRPP-February-2013-LPD-Final-Word.pdf>

## RCNI Submission on Criminal Justice (Community Sanctions) Bill General Scheme to Joint Oireachtas Committee on Justice, Defence and Equality April 2014

### Appendix II:

*LISC composition: The Legal Issues Sub-Committee is a sub-committee of the National Steering Committee on Violence against Women, on whose behalf it conducts research and discussions and formulates agreed recommendations on domestic and sexual violence legal issues, wherever possible and appropriate. It works to an NSC agreed annual Work Plan based on the National Strategy to prevent Domestic, Sexual and Gender-Based Violence<sup>7</sup>, and in addition addresses legal issues whenever requested to do so by NSC. Like the NSC itself, it is a multi-agency body, whose volunteer membership meets quarterly and includes senior and junior representatives from the Law Library, a Law Society representative, a Legal Aid Board representative, domestic and sexual violence NGO representatives (in the case of sexual violence, this means both RCNI and Dublin Rape Crisis Centre), and representatives from An Garda Síochána, the Department of Justice, the Probation Service, and the Courts Service. All members are encouraged to contribute their views, and all recommendations put forward are agreed by LISC members. The variety of experiences, roles and perspectives within LISC has allowed it to make informed and thoughtful recommendations, well grounded in the daily reality of our justice system.*

*Its remit is purely **advisory** and non-executive, as is that of the NSC itself.*

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<sup>7</sup> available online in both summary and full form at [www.cosc.ie/publications](http://www.cosc.ie/publications)

## **Criminal Justice (Community Sanctions) Bill 2014**

### **Submission on behalf of the Restorative Practices Strategic Forum**

The Restorative Practices Strategic Forum (RPSF) promotes and supports the use of restorative approaches spanning all sectors of the community. It is grateful for the opportunity to comment on the Bill and restricts its comments to specific aspects of Heads 8 and 9, referring to victims' interests and restorative justice.

It welcomes the inclusion in the Bill of provisions relating to restorative justice. It recognises that the stated intention is to provide for a limited and specific restorative justice approach in relation to District Court criminal proceedings for minor offences. It also recognises that the focus of the Bill is on community sanctions, not restorative justice.

However, the RPSF would respectfully suggest that consideration be given to broadening the scope of the restorative justice provisions to include (i) so-called "victimless" crimes or (ii) offences where a corporate victim is involved or (iii) cases where the victim does not wish to receive reparation or engage otherwise with the offender. In such cases reparation could be paid to the court reparation fund for possible dispensing to other victims or for the benefit of communities affected by crime. It does not seem necessary or desirable that a victim should be able to deny a willing, remorseful and otherwise suitable offender an opportunity to benefit from a discharge or binding over order by making reparation.

The RPSF welcomes the inclusion of non-financial forms of reparation in the definition of reparation and the possibility to adjourn proceedings to ensure sufficient time to make reparation. Non-financial reparation could include unpaid work for victims or the community, which would be completed in a reasonable time and attested by the recipient as having been completed.

The RPSF welcomes the possibility of offenders benefitting from discharge and binding over orders notwithstanding that they do not have the means to make reparation, in other words that a court is not obliged to consider Head 8 Subhead (3)(f) but that it is a matter that "may" be taken into consideration.

The RPSF made a previous submission to the Oireachtas Committee supporting a significantly wider use of a range of restorative options at all stages of the criminal justice system. In this view, the payment of reparation would ideally take place in a restorative context that would include other restorative actions by the offender, including potentially a restorative dialogue with the victim, and supports for offenders to avoid further offending.

The RPSF welcomes the statutory underpinning of reparation, although it sees court-based reparation as a very limited form of restorative justice and recognises that reparation is already a possibility (and a reality in the majority of cases) under other restorative justice options such as community/offender reparation panels and victim-offender mediation.

4 April 2014



# *Law Society of Ireland*

SUBMISSION OF THE  
*Law Society of Ireland*

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CRIMINAL JUSTICE (COMMUNITY SANCTIONS) BILL 2014

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9<sup>th</sup> April 2014  
Joint Oireachtas Committee on Justice, Defence and Equality

## Introduction

1. The Criminal Law Committee of the Law Society have considered the General Scheme and Heads of the Bill on behalf of the Society. Committee members practice in criminal law on both defence and prosecution sides. It is hoped that their expertise and opinion is of assistance in the consideration of this General Scheme.
2. The Law Society's submission should be read in conjunction with their contribution to the consideration by the Joint Oireachtas Committee on Justice, Defence and Equality of the Restorative Justice model, which is attached as Appendix A.

## Context

3. The General Scheme represents a radical overhaul of the manner in which the sentencing of offenders is dealt with before the courts, with particular reference to minor matters or matters where Judges believe alternatives to convictions should be considered.
4. The most significant changes proposed under the new scheme are that the Probation of Offenders Act, 1907 will be repealed and the court poor box will be replaced with a reparation fund. It will, to some extent, implement some recommendations of the Law Reform Commission in their 2005 Report entitled *The Court Poor Box: Probation of Offenders*,<sup>1</sup> (the "LRC 2005 Report")
5. The Society wishes to draw attention to the following key issues and to make recommendations in respect of each.

## **Heads 8 and 10: Potential confusion from use of the term 'binding over orders'**

6. The courts currently have the power to bind people over to the peace even in circumstances where they are not charged with a criminal offence. The use of the term 'binding over orders' may result in confusion between the two different types of orders which will be available. The LRC's 2005 Report suggests the use of terms such as 'full dismissal' or 'conditional dismissal'. It is possible that the inherent jurisdiction of the courts to dismiss a case on its merits may be diluted should the approach proposed by the General Scheme be adopted.

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<sup>1</sup> [\*The Court Poor Box: Probation of Offenders\*](#), Law Reform Commission Report, 2005

**Recommendation 1:**

The Society recommends the use of the terms 'full discharge order' and 'conditional discharge order' instead of the term 'discharge orders' and 'binding over orders' to avoid confusion.

**Head 34: Potential restriction of the range of options available to judges**

7. The General Scheme may have the effect of restricting the range of possible options available to judges. Currently the Courts may request the probation services to assess the suitability of a person for involvement with the probation services in circumstances other than those determined by statute. While the range of options available to the courts under the General Scheme will be extensive, there may occasionally be circumstances where the courts will desire the involvement of the probation services, but will be statutorily prohibited from doing so. As a result, the options before the Court may become rigid and there may be less opportunity for flexibility.
8. The General Scheme may put an end to the practice whereby the courts can seek the assistance of the probation services for persons in circumstances where no formal conviction has been made. In such circumstances the individual concerned may benefit from intervention by the probation services, for example, in respect of addiction issues or training and employment assistance. There are instances where probation officers, after a period of informal supervision, make recommendations that people should not be formally convicted.

**Recommendation 2:**

The General Scheme should not limit or restrict the range of options available to the courts. The judiciary should be allowed to order the involvement of the probation services in any circumstances where they believe their involvement would be beneficial.

**The treatment of discharge or binding over orders made under the General Scheme for the purposes of future Garda vetting**

9. The General Scheme provides no direction or clarity on the manner in which it is intended to record discharge and binding over orders made for the purposes of Garda vetting. Issues arise as to whether a notice of the making of either of these orders, which do not constitute a conviction, will be forwarded to An Garda Síochána for recording.

10. It is important to note that the Garda Vetting Unit does not currently operate pursuant to any specific statutory power. While the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 may resolve some of the issues about which the Society is concerned, this Act has not yet commenced.<sup>2</sup> Accordingly, the Society is very concerned that the current non-statutory procedure may interfere with the privacy rights of individuals, in particular those pursuant to Article 8 of the European Convention on Human Rights.
11. The Society believes that the General Scheme must be considered in the context of the manner in which orders made under the General Scheme, where there is no conviction, will be treated for the purposes of garda vetting both under the current non-statutory procedure for garda vetting and the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 should it be commenced.

**Recommendation 3:**

The Society recommends that discharge or binding over orders made pursuant to the General Scheme must be considered in the context of the privacy rights of individuals who have not been convicted.

Consideration must be given to the proper treatment of records of discharge or binding over orders in the context of their future release pursuant to Garda vetting either under the current non-statutory regime or pursuant to the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 should it be commenced.

**Head 38: The maintenance of the privacy and confidentiality of recipients of probation services**

12. The General Scheme proposes changes to how the Probation Service operates. Under the General Scheme of the Bill the Minister may direct a designated person to investigate a complaint regarding the treatment of a person being dealt with by that service (Head 38(2)(b)). There does not appear to be a requirement that such investigations be made pursuant to a complaint being made by the recipient of the service.
13. Often persons who are under the care of the Probation Service disclose certain highly confidential and sensitive matters personal to them which may be of interest to other organs of the State. The procedure whereby the

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<sup>2</sup> The Society notes that the new statutory procedure, if commenced, would facilitate the disclosure of information relating to criminal offences and criminal records regarding non-successful prosecutions only where such information is specified by statute. The Court of Appeal case of *T, R (on the application of) v Greater Manchester Chief Constable & Ors* ([2013] eWCA Civ 25) is of particular relevance. This is particularly relevant where no conviction is the outcome of proceedings. There are implications for spent convictions legislation as well.

Minister can direct investigation by a designated person could result in the State coming into possession of highly sensitive and confidential information.

**Recommendation 4:**

The Society recommends that the procedure for the investigation of complaints be reviewed to consider the best approach to maintain confidentiality of recipients of probation services.

**Head 30: The use of monies paid into the reparation fund: the need to maintain the spirit of the poor box system and fund recidivism efforts in communities**

14. The General Scheme proposes that monies currently paid towards general community needs and charitable purposes through the 'poor box system' will be redirected exclusively to victim support and the funding of the Criminal Injuries Compensation Tribunal. Payments for compensation, reparation and assistance for the victims of crime are provided for, and the fund may not be used for any other purpose.
15. Local charities and organisations benefit from the poor box and they are likely to be affected by the proposed redirection of funds. This redirection will not assist recidivism efforts in communities as locally based front line organisations are unlikely to receive supports.
16. In 2005, the Law Reform Commission endorsed the view that the fund "should be used to assist programmes aimed at preventing offending behaviour since these would be of benefit to the offender and the victim in this specific case and to assist potential offenders and potential victims in society."<sup>3</sup>

**Recommendation 5:**

The Law Society recommends that the application of monies from the reparation fund be allocated to community recidivism initiatives, in line with Law Reform Commission proposals.

**The need for adequate resources**

17. Adequate resources must be allocated to the probation services to permit deliver of the service envisaged by the the General Scheme. An increase in demand for probation assessment reports is likely to ensue following implementation of the new community sanctions regime. Consequently, it is vital that there is no delay in finalising probation reports, due to increased

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<sup>3</sup> LRC 2005 Report at para. 4.20



workload on other ancillary professionals e.g. psychiatry, drug addiction and family counselling.

**Recommendation 6:**

The Law Society recommends that an impact assessment be carried out prior to the implementation of the General Scheme to identify the resources which will be required to give effect to the Scheme.

**Head 48: Welcome clarification and improvement of the operation of suspended sentences**

18. The General Scheme proposes replacing and restating section 99 of the Criminal Justice Act 2006, which provides the statutory basis for suspended sentences. It also improves the operation of that section in cases where the court wishes to impose Probation Service supervision as a condition of a suspended sentence.
19. The General Scheme envisages the complete substitution of section 99 in its entirety, in view of the numerous amendments proposed to be made to it by the Bill itself and other statutes<sup>4</sup>. The Committee welcomes the replacement of section 99 with a coherent and functional section after the previous attempts at amendment.

**The contribution of the expertise of solicitors through the Law Society**

20. The Society would welcome the opportunity to further participate in the development of this Bill. Solicitors who practice in criminal law have valuable experience and insights which they would happily make available to the process which the legislature is currently undertaking. The Society would welcome the opportunity to contribute to any oral hearings established by the Oireachtas Committee.

**For further information please contact:**

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<sup>4</sup> Amendments have already made to Section 99 of the 2006 Act by section 60 of the Criminal Justice Act 2007 and section 51 of the Criminal Justice (Miscellaneous Provisions) Act 2009

## **APPENDIX – A**

**Law Society of Ireland submission on the Restorative Justice Model.**