

PROBATION ORDERS

Criminal Justice (NI) Order 1996

Description	Minimum Requirements	Permissible Duration/Conditions	Cases	Notes
<p>An order requiring D to be under the supervision of a probation officer for a period specified in the order of not less than 6 months nor more than 3 years</p> <p>A probation order is a ‘community order’. [Art.2(1)]</p>	<p>The sentence for the offence must not be fixed by law (i.e. not a mandatory life sentence or a minimum custodial sentence under Article 70(2) of the Firearms (NI) Order 2004 or paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006). [Art.10(1)]</p> <p>Art. 10(1) - The Court must be of the opinion that the supervision of the offender by a probation officer is desirable in the interests of-</p> <p>(a) securing the rehabilitation of the offender; or</p> <p>(b) protecting the public from harm from him or preventing the commission by him of further offences.</p>	<p>The duration of the order shall not be less than 6months nor more than 3 years. [Art.10(1)]</p> <p>(a) The order shall be such as in the opinion of the court is, or taken together are, the most suitable for the offender; and</p> <p>(b) The restrictions on liberty imposed by the order or orders shall be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it. [Art.8(2)]</p> <p>In forming any such opinion for (a) above, a court may take into account any information about the offender which is before it. In forming any such opinion for (b) above, a court shall take into account all such information about the circumstances of the offence (including any aggravating or mitigating factors) as is available to it. [Art.9(1)&(2)]</p>	<p><i>R v T</i> [1999] 2 Cr App R(S) 304 - Interpretation of offence being ‘serious enough’.</p> <p><i>Thorpe v Griggs</i> (1984) 6 Cr App R(S) 286 - Service of order on D.</p> <p><i>R v Emmett</i> (1969) 53 Cr App R 203 - Simultaneous custodial sentence and probation order.</p> <p><i>R v Carr Thompson</i> [2002] Cr App R(S) 335 – Can not impose simultaneous custodial sentence and probation order.</p> <p><i>R v Fonteneau</i> [2001] 1 Cr App R(S) 15 - Imposing probation order when D is near end of custodial sentence.</p> <p><i>Gilding v DPP</i> (29 April 1998)(EWHC) – Can not imposed Probation Order at same time as Community Service Order.</p>	<p>Art.10(3) - Before making a probation order, the court shall-</p> <p>(a) state in open court that it is of the opinion that Art.8(2)(a) and (b) apply and why it is of that opinion; and</p> <p>(b) explain to the offender in ordinary language-</p> <p>(i) why it is making a probation order;</p> <p>(ii) the effect of the order;</p> <p>(iii) the consequences if he fails to comply with any of the requirements of the order; and</p> <p>(iv) that the court has power to review the order on the application either of the offender or of the supervising officer.</p> <p>(A magistrates’ court is required to have such reasons entered in the Order Book. [Art.10(7)])</p> <p>Where, upon an application, the court considers the continuation of the probation order is no longer appropriate, it may substitute the order with a conditional discharge for the remainder of the probation period. [Art.12]</p> <p>Sch.3 to the Criminal Justice Act 1991 – Ability to impose probation order where D resides in E&W or Scotland.</p>
<p style="text-align: center;"><u>Textbooks</u></p> <p>Blackstone (2010), E9.23-9.25, E9.33-9.47</p> <p>Valentine, Folder 7, pg.29-31</p> <p>Allen & McAleenan, 1.164-1.200</p>	<p>The court must be of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence. [Art.8(1)]</p> <p>The court must obtain and consider a PSR [Art.9(3)] unless, in the circumstances of the case, it is of the opinion that a PSR is unnecessary. Where the court does not obtain a PSR, it shall state in open court that it is of that opinion and what the circumstances are [Art.9(4)]. NB. Difference if D under 18 [Art.9(5)].</p> <p>If D is over 14, he must express his willingness to comply with the requirements of the order [Art.10(3)]. If D fails to express his willingness, the court may consider the imposition of a custodial sentence [Art.19(3)].</p>	<p>A probation order may in addition require the offender to comply with such requirements as the court, having regard to the circumstances of the case, considers desirable in the interests of-</p> <p>(a) securing the rehabilitation of the offender; or</p> <p>(b) protecting the public from harm from him or preventing the commission by him of further offences;</p> <p>and may include those requirements stipulated in Sch.1 to the 1996 Order. However, a requirement to pay damages or compensation can not be an additional requirement of the order (but a separate Compensation Order can be made).[Art.11]</p> <p>Can not impose a probation order together with a community service order unless they both form part of a ‘Combination Order’ [Art.8(3)], but can be imposed at the same time as a fine, an order for costs, a forfeiture order, a restitution order or an order of disqualification [Art.10(10)].</p> <p>If D is under 18, then can be imposed at same</p>		

		<p>time as a recognizance to be or good behaviour. [Art.7]</p> <p>s.18(2) of Treatment of Offenders Act (NI) 1968- Can not make a probation order at the same time as making a suspended sentence for another offence.</p>		
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