

DETENTION IN YOUNG OFFENDERS' CENTRE (Pre-April 2009 Offences)

[Treatment of Offenders Act \(NI\) 1968](#)
[Criminal Justice \(NI\) Order 1996](#)

Description	Minimum Requirements	Permissible Duration/Conditions	Cases	Notes
<p>An order requiring D to be detained in the Young Offenders' Centre for a fixed term.</p>	<p>D must be aged not less than 16 but under 21. [s.5(1)]</p> <p>The offence must be punishable with imprisonment. [s.5(1)]</p> <p>The court must consider that D should serve a term of detention. [s.5(1)]</p> <p>D must not be serving a sentence of imprisonment at the date on which the order of detention is imposed. [s.1(3)]</p>	<p>Maximum of 4 years or the maximum penalty for the given offence, whichever is the lesser. [Art.5(1)]</p> <p>Art.20(2) of 1996 Order – An order of detention shall be:</p> <p>(a) for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence or the combination of the offence and one or more offences associated with it (a 'Commensurate Sentence'); or</p> <p>(b) where the offence is a violent or sexual offence, for such longer term (not exceeding the maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender (a 'Protective Sentence').</p> <p>Where the court forms a view that detention of 12months or more should be imposed, it must consider whether a 'Custody-Probation Order' would be appropriate. [Art.24(1) of 1996 Order]</p> <p>Art. 26(1) of 1996 Order – Where an order of detention is imposed for a 'sexual offence' the court may order D to be subject to a licence for the period during which he is released on remission.</p> <p>An order of detention can be imposed consecutively to another order of detention [s.5(4)]</p> <p>A court can impose an order of detention after having deferred sentencing [Art.3(11) of 1996 Order].</p> <p>An order of detention can be suspended [s.18].</p> <p>An order of detention can be imposed simultaneously with, inter alia, an order for costs, compensation, restitution, forfeiture, confiscation and disqualification. However, it is wrong in principle to impose it simultaneously with a suspended sentence, a probation order, a community service order or a fine.</p>	<p><i>Hamlyn v Pearce</i> [1962] 2 All ER 436 - Age at date of sentence</p> <p><u>AG's Ref (2 of 2008) (McGinn) [2008] NICA 40</u> - Reducing sentence to avoid D being sent to adult prison.</p> <p><u>R (McCann) v Belfast JJ [1978] NI 153</u> - Legal Aid</p> <p><i>R v Baker</i> [1998] NI 130 - Procedural requirements</p> <p><u>R v D [2002] NICA 10</u> - Procedural Requirements</p> <p><u>R v McColgan [2006] NICA 41</u> - Protective Sentences</p> <p><u>R v McArdle [2008] NICA 29</u> - Protective Sentences</p> <p><u>R v Brown [2002] NICA 45</u> -Requirement for a PSR</p> <p><u>AG's Ref (1 of 2004)(Pearson) [2004] NICA 6</u> - Requirement for a PSR</p> <p><u>R v Larmour [2001] NICA 29</u> - Release on licence for sexual offences.</p> <p><u>Re Cranston [2002] NI 1</u> - Deferred Sentence</p> <p><i>R v Sapiano</i> (1968) 52 Cr App R 674 - Simultaneous custodial sentence and suspended sentence.</p> <p><i>R v Emmett</i> (1969) 53 Cr App R 203 - Simultaneous custodial sentence and probation order.</p> <p><u>R v Armstrong [2001] NICA 33</u> - Simultaneous custodial sentence and fine.</p>	<p>A custodial sentence can not be imposed unless D has either applied for legal aid and been refused or he has refused to exercise his right to apply for legal aid [Art.18(1) of 1996 Order].</p> <p>The court must obtain and consider a PSR [Art.21(1) of 1996 Order] unless, in the circumstances of the case, it is of the opinion that a PSR is unnecessary. Where the court does not obtain a PSR, it shall state in open court that it is of that opinion and what the circumstances are [Art.21(2)]. NB. Difference if D under 18 [Art.21(3)].</p> <p>Art.23 of 1996 Order – Procedural requirements where D appears to suffer from a 'mental disorder'.</p> <p>Where a court orders detention in the YOC for a term which exceeds-</p> <p>(a) 18 months, in the case of a person who has previously served a sentence of imprisonment or a term of detention in the YOC;</p> <p>(b) 6 months, in any other case, it shall state the reason and cause it to be entered in the record of the proceedings along with the sentence. [s.5(2)]</p> <p>Where the Crown Court orders a person to be detained in the YOC for two or more terms of detention to run consecutively, the aggregate of those terms shall not exceed four years. [s.5(5)]</p> <p>Where a magistrates' court orders a person to be detained in the YOC for two or more terms of detention to run consecutively, the aggregate of those terms shall not exceed-</p> <p>(a) except as provided by paragraph (b) or any other enactment, 12 months;</p> <p>(b) in the case of terms of detention in respect of indictable offences tried summarily, eighteen months. [s.5(6)]</p>
<p style="text-align: center;"><u>Textbooks</u></p> <p>Valentine (Feb 2010), Folder 7, Pg.12-13</p> <p>Allen & McAleenan, 2.129-2.150</p>	<p>By virtue of Art.2(2) of the Criminal Justice (NI) Order 1996, detention in the YOC is a custodial sentence for the purposes of that Order. Therefore, a period of detention shall not be passed unless the court is satisfied: Art.19(2)(a) of 1996 Order - that the offence, or the combination of the offence and one or more offences associated with it, was so serious that only such a sentence can be justified for the offence; or</p> <p>Art.19(2)(b) of 1996 Order - where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him.</p> <p>OR</p> <p>Art.19(3) of 1996 Order - The offender has failed to express his willingness to comply with a proposed requirement in a probation order, supervision order, drug and rehabilitation order, a drug test or a youth conference order.</p> <p>Art.21(4) & 37 of 1996 Order – The Court's consideration of the 'seriousness' of the offence(s).</p>			

		<p>Where the court passes a Protective Sentence under Art. 20(2)(b) of the 1996 Order, it must state in open court that it is of the opinion that Art.20(2)(b) applies and why it is of that opinion; and explain to the offender in open court and in ordinary language why the sentence is for such a term.[Art.20(3)]</p>		
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