

## Deferred Sentences

### Article 3 – Criminal Justice (Northern Ireland) Order 1996

#### Deferment of sentence

3.—(1) Subject to the provisions of this Article, the Crown Court or a magistrates' court may defer passing sentence on an offender for the purpose of enabling the court to have regard, in determining his sentence, to his conduct after conviction (including, where appropriate, the making by him of reparation for his offence) or to any change in his circumstances.

(2) Any deferment under this Article shall be until such date as may be specified by the court, not being more than 6 months after the date on which the deferment is announced by the court; and where the passing of sentence has been deferred under this Article it shall not be further deferred thereunder.

(3) The power conferred by this Article shall be exercisable only if the offender consents and the court is satisfied, having regard to the nature of the offence and the character and circumstances of the offender, that it would be in the interests of justice to exercise the power.

(4) A court which under this Article has deferred passing sentence on an offender may pass sentence on him before the expiration of the period of deferment if during that period he is convicted in Northern Ireland of any offence.

(5) If an offender on whom a court has under this Article deferred passing sentence in respect of one or more offences is during the period of deferment convicted in Northern Ireland of any offence ("the subsequent offence"), then, without prejudice to paragraph (4) but subject to paragraph (6), the court which (whether during that period or not) passes sentence on him for the subsequent offence may also, if this has not already been done, pass sentence on him for the first-mentioned offence or offences.

(6) The power conferred by paragraph (5) shall not be exercised by a magistrates' court if the court which deferred passing sentence was the Crown Court; and the Crown Court, in exercising that power in a case in which the court which deferred passing sentence was a magistrates' court, shall not pass any sentence which could not have been passed by a magistrates' court in exercising it.

(7) A court which under this Article has deferred passing sentence on an offender may issue a summons requiring him to appear before the court, or may issue a warrant for his arrest where—

- (a) the court proposes to sentence him, whether on the date originally specified by the court or by virtue of paragraph (4) before that date; or
- (b) the offender does not appear on the date so specified.

(8) In deferring the passing of sentence under this Article a magistrates' court shall be regarded as exercising the power of adjourning the trial which is conferred by Article 161(1) of the 1981 NI 26. Magistrates' Courts (Northern Ireland) Order 1981 and accordingly Articles 23 and 25(3) of that Order (non-appearance of the accused) apply (without prejudice to paragraph (7)) if the offender does not appear on the date specified in pursuance of paragraph (2).

(9) A court which under this Article defers passing sentence on an offender shall not on the same occasion remand him.

(10) Nothing in this Article shall affect the power of the Crown Court to bind over an offender to come up for judgment when called upon or the power of any court to defer passing sentence for any purpose for which it may lawfully do so apart from this Article.

(11) The power of a court under this Article to pass sentence on an offender in a case where the passing of sentence has been deferred thereunder includes power to deal with him in any way in which the court which deferred passing sentence could have dealt with him.

## **Deferring/Postponing/Adjourning**

1. Postponing or adjourning sentence is a general discretionary power, with the only limitation being that the decision must be exercised judicially for good and proper reasons. Deferring sentencing, is a statutory power, and can only be exercised under the terms of the 1996 Order.
2. Deferral must only relate to the offender's post-conviction conduct. If further information is required in respect of his ability to pay a fine or compensation order or his psychological or psychiatric condition, a court can only adjourn or postpone sentencing.
3. If the offender is to be remanded into custody, you cannot defer sentence (Article 3(9)) (see Articles 47 and 50 MC(NI) Order 1981 for adjournments).

## **Deferred Sentence**

4. The deferral must be for the specific purpose of enabling the court to have regard to the conduct of the offender after conviction.
5. Deferral should be to a specific date. In any event the date must be for no more than 6 months, (although it is still possible to adjourn thereafter for further periods). A failure to sentence within the 6 month period does not render any subsequent sentence void, but the delay between offences, and sentence is an accepted mitigating factor, and may impact on the proposed sentence.
6. In the Crown Court the offender is released on his continuing bail to return on that date. In the Magistrates' Court, the deferral is to be treated as an adjournment under Article 161(1) of the MC(NI) Order 1981 (Article 3 (8)). A summons can be issued requiring his attendance (Article 3(7)).
7. The offender must consent to the deferral (Article 3(3)). The consent should be obtained directly from the offender, rather than through his legal representative. A short adjournment, to enable him to seek advice, may be advisable in certain circumstances.

## **Sentencing in the event of intervening conviction**

8. In the event of a conviction in Northern Ireland (not a conviction elsewhere, or an arrest or report of misconduct) during the deferred period, a court can sentence the offender before the expiration of the deferred period.
9. The power to sentence is vested in the original court (Article 3 (4)) or the subsequent court (Article 4 (5)), although only a Crown Court can sentence for an offence previously before the Crown Court.
10. A summons can be issued to deal with the offender (Article 3(7)(a)), and in the event of non appearance a warrant can be issued for his arrest (Article 3(7)(b)).

11. There is no power to sentence during the deferral period in the event of any non-compliance of conditions set out in the reasons for deferral. In England & Wales such a power exists, although they have a much more formalised procedure for conditions – see Sections 1A – 1C PCC(S) Act 2000.

### **Recommended procedure**

12. “The power conferred by this Article shall only be exercisable only...if the court is satisfied...that it would be in the interests of justice to exercise the power.” (Article 3(3)).
13. The usual principles of a fair trial and legitimate expectation apply. Certain guidance is given by the E & W Court of Appeal in **George [1984] 1 WLR 1082**.

It should only be used

- at either the custody threshold or community sentence threshold
- if the future conduct of the offender will assist the court in determining the appropriate threshold
- if there is a real prospect that the offender can comply with any conditions that the court will suggest
- if achievement of the conditions can be determined with ease, and without scope for debate

It should not be used

- as an ‘easy option’ by the court to avoid passing sentence
- if the custody threshold is reached to indicate a shorter period in custody

Consideration should be given to achieving the court’s objectives by other means – Suspended Sentence, Probation Order, Conditional Discharge or Binding Over.

14. Once the court has decided to defer, it must explain to the offender what conduct is expected of him during the period, and if he satisfies the court as to his conduct, then he will receive a specific sentence. Whilst it is best practice that the same judge/magistrate should deal with the matter later, it should be recognised that this may not be possible, and a careful record should be kept of what is required of the offender to assist the subsequent court, and to avoid a dispute as to the terms of the conditions.
15. When the court deals with the offender after the deferred period, and the offender has complied with the conditions, the court should deal with him as had been indicated.

## Potential problems

16. In the absence of an order from the court, the PBNI cannot become involved, unless on a voluntary basis. In E & W, offenders are required to undertake to comply with conditions (e.g. attendance at an Anger Management class), and the court then appoints a person, usually a probation officer, but can be any person. This means that the offender has access to probation courses, with the added advantage that the court has an appointed person to monitor progress and report to the court, if required. There is also a power in E & W to sentence the offender during the deferred period in the event of breach. There is no such power in N.I.
17. Whilst the legislation actually refers to “making reparation for his offence” (Article 1(1)), the court should avoid getting into the role of a money collecting agency. That being said, it is recognised by many that allowing the offender time to raise money to compensate the victim, by maintaining his employment, can be an advantage.
18. In general, vague conditions should be avoided - e.g. “stay out of trouble for the next 6 months”.
19. If the condition requires the input of a third person – e.g. “on condition that you are reconciled with your partner”, the compliance may pass out of the hands of the offender.
20. If attendance at a course is to be a condition, difficulties may arise if there is an argument about the frequency of attendance, or the engagement with the staff and other participants.
21. There may be administrative problems with arranging dates, timetabling, and the availability of the sentencer.

## Alternatives

22. Adjournment or postponement.
23. Community Sentence is available if you want PBNI involvement, retaining the ability to deal with the offender if he breaches the orders, or offends during the period of the orders.
24. Conditional Discharge/Binding Over essentially disposes of the case in the same way as a ‘stay out of trouble over the next 6 months’ type condition.

## Appeals

25. A deferred Sentence is not subject to appeal, although the Attorney-General may refer a Crown Court decision to defer (**A-G’s Reference (No. 2 of 2002) [2002] NICA 40**)