



LAW REFORM
COMMISSION/COIMISIÚN UM
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LAW REFORM COMMISSION PUBLISHES ISSUES PAPER ON SUSPENDED SENTENCES

Tuesday 8th August 2017: The Law Reform Commission has today published an *Issues Paper on Suspended Sentences*. The Issues Paper forms part of the Commission's 4th Programme of Law Reform.

The suspended sentence is an important sentencing option available to the criminal courts, and the Commission considered it was a suitable topic for consideration in the current Programme of Law Reform because it had not previously been subject to any general review in Ireland.

The Paper seeks views on a range of issues concerning both the principles that apply to imposing suspended sentences and also the procedures that apply to them.

What is a suspended sentence and what are the typical conditions attached?

The Paper notes that the suspended sentence enables a court to mark the gravity of an offence while at the same time allowing for the specific circumstances of the offender to be taken into account. A suspended sentence means that a court will specify a term of imprisonment it considers appropriate for the offence of which an offender has been convicted and will then suspend the operation of the sentence on certain conditions for a specified period. The most important of these conditions is that the offender should not commit any further offence during the operational period. Thus, a court might impose a 3 year sentence but order that it be suspended for 2 years on condition that the offender is of good behaviour during that 2 year period, and also that he or she must abide by any further conditions specified by the court. Typical conditions are that the person must agree to be under the supervision of the Probation Service and, in some cases, must agree to stay away from a certain person or area or be subject to a night time house curfew. Failure to comply with these conditions means that the offender is brought back to court where sentence can be activated and the offender can be imprisoned.

Are there some offences where a suspended sentence is prohibited or otherwise not suitable?

For murder, legislation specifies a mandatory life sentence, and a suspended sentence is not permitted in any case. Similarly, legislation also prohibits a suspended sentence for certain drugs and firearms offences, where a presumptive minimum sentence applies (other than in exceptional cases).

In addition, the Paper refers to a series of decisions of the appeal courts in the last 20 years that have determined that for certain serious offences the suspended sentence is not suitable and that (other than in exceptional cases) a custodial sentence is required. These offences are:



- Manslaughter,
- Rape,
- Assault causing serious harm and
- Serious tax and social welfare fraud.

The Paper has also analysed sentencing information published by the Courts Service for the last 10 years. This confirms that, in general, the Circuit Court and the District Court impose custodial offences in the majority of cases involving serious offences. This means that suspended sentences are used less often in such cases and are more commonly used in less serious cases.

Paper seeks views on a range of issues concerning suspended sentences

The Commission is seeking views as to whether the general sentencing principles discussed in the Paper are being applied appropriately in the case of suspended sentences, and whether this area would benefit from the development of further sentencing guidance

The information published by the Courts Service, and other sentencing data discussed in the Commission's Paper, suggests a percentage decrease in the use of suspended sentences in recent years, but it is not clear the precise reasons for this. The Commission is therefore seeking the views of interested parties on this matter.

The Commission's Paper has also surveyed the use of suspended sentences concerning 2 corporate offences, namely convictions under competition law and under safety and health law. The Commission's research indicates that all sentences of imprisonment in those cases have been suspended and that no person has been imprisoned to date. Again, the Commission is seeking the views of interested parties on this.

On the question of the procedures for imposing the suspended sentence the Paper notes that a number of important changes have recently been enacted in the *Suspended Sentences Act 2017*. This was done in response to a High Court decision in 2016 that the activation process for the suspended sentence were unconstitutional. The Paper seeks views as to whether further reforms are required in relation to the procedures concerning suspended sentences, including the activation process.

For further information / interview with Commissioner Tom O'Malley or other Commission spokesperson contact:

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Background Notes for Editors

The Law Reform Commission is an independent statutory body whose main role is to keep the law under review and to make proposals for reform. To date, the Commission has published over 200 documents. These come in the form of consultative documents (working papers, consultation papers and, more recently, issues papers) the purpose of which is to provide a summary or outline of a project on which the Commission is embarking or on which work is already underway and to provide readers with an opportunity to express views and to make suggestions and comments on specific questions and final reports, which incorporate the



Commission's considered views and recommendations on the subject in question. The majority of these recommendations have influenced the drafting and content of reforming legislation. This Issues Paper will be available on the Commission's website, lawreform.ie, from the morning of Tuesday 8th August.