

CRIMINAL JUSTICE (COMMUNITY SANCTIONS) BILL 2014

GENERAL SCHEME

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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.