



# *Law Society of Ireland*

SUBMISSION OF THE  
*Law Society of Ireland*

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**CRIMINAL JUSTICE (COMMUNITY SANCTIONS) BILL 2014**

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9<sup>th</sup> April 2014  
Joint Oireachtas Committee on Justice, Defence and Equality

## Introduction

1. The Criminal Law Committee of the Law Society have considered the General Scheme and Heads of the Bill on behalf of the Society. Committee members practice in criminal law on both defence and prosecution sides. It is hoped that their expertise and opinion is of assistance in the consideration of this General Scheme.
2. The Law Society's submission should be read in conjunction with their contribution to the consideration by the Joint Oireachtas Committee on Justice, Defence and Equality of the Restorative Justice model, which is attached as Appendix A.

## Context

3. The General Scheme represents a radical overhaul of the manner in which the sentencing of offenders is dealt with before the courts, with particular reference to minor matters or matters where Judges believe alternatives to convictions should be considered.
4. The most significant changes proposed under the new scheme are that the Probation of Offenders Act, 1907 will be repealed and the court poor box will be replaced with a reparation fund. It will, to some extent, implement some recommendations of the Law Reform Commission in their 2005 Report entitled *The Court Poor Box: Probation of Offenders*,<sup>1</sup>(the "LRC 2005 Report")
5. The Society wishes to draw attention to the following key issues and to make recommendations in respect of each.

## **Heads 8 and 10: Potential confusion from use of the term 'binding over orders'**

6. The courts currently have the power to bind people over to the peace even in circumstances where they are not charged with a criminal offence. The use of the term 'binding over orders' may result in confusion between the two different types of orders which will be available. The LRC's 2005 Report suggests the use of terms such as 'full dismissal' or 'conditional dismissal'. It is possible that the inherent jurisdiction of the courts to dismiss a case on its merits may be diluted should the approach proposed by the General Scheme be adopted.

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<sup>1</sup> [\*The Court Poor Box: Probation of Offenders\*](#), Law Reform Commission Report, 2005

**Recommendation 1:**

The Society recommends the use of the terms 'full discharge order' and 'conditional discharge order' instead of the term 'discharge orders' and 'binding over orders' to avoid confusion.

**Head 34: Potential restriction of the range of options available to judges**

7. The General Scheme may have the effect of restricting the range of possible options available to judges. Currently the Courts may request the probation services to assess the suitability of a person for involvement with the probation services in circumstances other than those determined by statute. While the range of options available to the courts under the General Scheme will be extensive, there may occasionally be circumstances where the courts will desire the involvement of the probation services, but will be statutorily prohibited from doing so. As a result, the options before the Court may become rigid and there may be less opportunity for flexibility.
8. The General Scheme may put an end to the practice whereby the courts can seek the assistance of the probation services for persons in circumstances where no formal conviction has been made. In such circumstances the individual concerned may benefit from intervention by the probation services, for example, in respect of addiction issues or training and employment assistance. There are instances where probation officers, after a period of informal supervision, make recommendations that people should not be formally convicted.

**Recommendation 2:**

The General Scheme should not limit or restrict the range of options available to the courts. The judiciary should be allowed to order the involvement of the probation services in any circumstances where they believe their involvement would be beneficial.

**The treatment of discharge or binding over orders made under the General Scheme for the purposes of future Garda vetting**

9. The General Scheme provides no direction or clarity on the manner in which it is intended to record discharge and binding over orders made for the purposes of Garda vetting. Issues arise as to whether a notice of the making of either of these orders, which do not constitute a conviction, will be forwarded to An Garda Síochána for recording.

10. It is important to note that the Garda Vetting Unit does not currently operate pursuant to any specific statutory power. While the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 may resolve some of the issues about which the Society is concerned, this Act has not yet commenced.<sup>2</sup> Accordingly, the Society is very concerned that the current non-statutory procedure may interfere with the privacy rights of individuals, in particular those pursuant to Article 8 of the European Convention on Human Rights.
11. The Society believes that the General Scheme must be considered in the context of the manner in which orders made under the General Scheme, where there is no conviction, will be treated for the purposes of garda vetting both under the current non-statutory procedure for garda vetting and the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 should it be commenced.

**Recommendation 3:**

The Society recommends that discharge or binding over orders made pursuant to the General Scheme must be considered in the context of the privacy rights of individuals who have not been convicted.

Consideration must be given to the proper treatment of records of discharge or binding over orders in the context of their future release pursuant to Garda vetting either under the current non-statutory regime or pursuant to the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 should it be commenced.

**Head 38: The maintenance of the privacy and confidentiality of recipients of probation services**

12. The General Scheme proposes changes to how the Probation Service operates. Under the General Scheme of the Bill the Minister may direct a designated person to investigate a complaint regarding the treatment of a person being dealt with by that service (Head 38(2)(b)). There does not appear to be a requirement that such investigations be made pursuant to a complaint being made by the recipient of the service.
13. Often persons who are under the care of the Probation Service disclose certain highly confidential and sensitive matters personal to them which may be of interest to other organs of the State. The procedure whereby the

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<sup>2</sup> The Society notes that the new statutory procedure, if commenced, would facilitate the disclosure of information relating to criminal offences and criminal records regarding non-successful prosecutions only where such information is specified by statute. The Court of Appeal case of *T, R (on the application of) v Greater Manchester Chief Constable & Ors* ([2013] eWCA Civ 25) is of particular relevance. This is particularly relevant where no conviction is the outcome of proceedings. There are implications for spent convictions legislation as well.

Minister can direct investigation by a designated person could result in the State coming into possession of highly sensitive and confidential information.

**Recommendation 4:**

The Society recommends that the procedure for the investigation of complaints be reviewed to consider the best approach to maintain confidentiality of recipients of probation services.

**Head 30: The use of monies paid into the reparation fund: the need to maintain the spirit of the poor box system and fund recidivism efforts in communities**

14. The General Scheme proposes that monies currently paid towards general community needs and charitable purposes through the 'poor box system' will be redirected exclusively to victim support and the funding of the Criminal Injuries Compensation Tribunal. Payments for compensation, reparation and assistance for the victims of crime are provided for, and the fund may not be used for any other purpose.
15. Local charities and organisations benefit from the poor box and they are likely to be affected by the proposed redirection of funds. This redirection will not assist recidivism efforts in communities as locally based front line organisations are unlikely to receive supports.
16. In 2005, the Law Reform Commission endorsed the view that the fund "should be used to assist programmes aimed at preventing offending behaviour since these would be of benefit to the offender and the victim in this specific case and to assist potential offenders and potential victims in society."<sup>3</sup>

**Recommendation 5:**

The Law Society recommends that the application of monies from the reparation fund be allocated to community recidivism initiatives, in line with Law Reform Commission proposals.

**The need for adequate resources**

17. Adequate resources must be allocated to the probation services to permit deliver of the service envisaged by the the General Scheme. An increase in demand for probation assessment reports is likely to ensue following implementation of the new community sanctions regime. Consequently, it is vital that there is no delay in finalising probation reports, due to increased

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<sup>3</sup> LRC 2005 Report at para. 4.20

workload on other ancillary professionals e.g. psychiatry, drug addiction and family counselling.

**Recommendation 6:**

The Law Society recommends that an impact assessment be carried out prior to the implementation of the General Scheme to identify the resources which will be required to give effect to the Scheme.

**Head 48: Welcome clarification and improvement of the operation of suspended sentences**

18. The General Scheme proposes replacing and restating section 99 of the Criminal Justice Act 2006, which provides the statutory basis for suspended sentences. It also improves the operation of that section in cases where the court wishes to impose Probation Service supervision as a condition of a suspended sentence.

19. The General Scheme envisages the complete substitution of section 99 in its entirety, in view of the numerous amendments proposed to be made to it by the Bill itself and other statutes<sup>4</sup>. The Committee welcomes the replacement of section 99 with a coherent and functional section after the previous attempts at amendment.

**The contribution of the expertise of solicitors through the Law Society**

20. The Society would welcome the opportunity to further participate in the development of this Bill. Solicitors who practice in criminal law have valuable experience and insights which they would happily make available to the process which the legislature is currently undertaking. The Society would welcome the opportunity to contribute to any oral hearings established by the Oireachtas Committee.

**For further information please contact:**

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<sup>4</sup> Amendments have already made to Section 99 of the 2006 Act by section 60 of the Criminal Justice Act 2007 and section 51 of the Criminal Justice (Miscellaneous Provisions) Act 2009

**APPENDIX – A**

**Law Society of Ireland submission on the Restorative Justice Model.**