EXPLANATORY MEMORANDUM TO

The Attorney General's Human Rights Guidance (Probation Board for Northern Ireland) Order (Northern Ireland) 2015

SR 2015 No. 51

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the the Attorney General for Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under the powers conferred by section 8(3)(c) of the Justice (Northern Ireland) Act 2004 and is subject to the negative resolution procedure.

2. Purpose

2.1. The Statutory Rule brings into operation human rights guidance for the Probation Board for Northern Ireland by the Attorney General for Northern Ireland on the exercise of Probation Board functions in a manner consistent with international human rights standards.

3. Background

3.1. Section 8(1) of the Justice (Northern Ireland) Act 2004 obliges the Attorney General for Northern Ireland to issue guidance for criminal justice organisations on the exercise of their functions in a manner consistent with international human rights standards. This Statutory Rule brings into operation guidance for the Probation Board for Northern Ireland as required by section 8(3)(c) of the 2004 Act.

4. Consultation

4.1. The Attorney General has consulted with the Advocate General pursuant to section 8(1A) and section 8(5A) of the Justice (Northern Ireland) Act 2004.

5. Equality Impact

5.1. The Attorney General for Northern Ireland is not listed as a public authority for the purpose of section 75 of the Northern Act 1998.

5.2. The Statutory Rule provides for the coming into force of the guidance under section 8 of the Justice (Northern Ireland) Act 2004. This guidance is based upon international human rights standards and therefore the principles of equality and non-discrimination form a central component of the guidance which the Statutory Rule brings into operation.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment is not required.

7. Financial Implications

7.1. Not applicable.

8. Section 24 of the Northern Ireland Act 1998

8.1. It is the view of the Attorney General that this Statutory Rule is compliant with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The Attorney General is making the Statutory Rule in fulfilment of a legal requirement under section 8 of the Justice (Northern Ireland) Act 2004.

10.2. The Statutory Rule applies to Northern Ireland only. There is no corresponding Great Britain Statutory Instrument.

11. Additional Information

11.1. The text of the guidance is attached to this Explanatory Memorandum at Annex A.

ANNEX A

HUMAN RIGHTS GUIDANCE FOR THE PROBATION BOARD FOR NORTHERN IRELAND

INTRODUCTION

1. Human rights standards are designed to make life better for individuals and communities and they should not be, and not be viewed as, burdens to competent professionals conscientiously carrying out their duties. When competent professionals are working diligently to the high standards set by their own disciplines they will almost invariably comply with human rights standards. This guidance is designed to assist professionals by offering them a framework within which their own professional standards can safely operate. By following this guidance those to whom it is addressed can be confident that their work is compliant with international human rights standards.

2. This guidance is without prejudice to the requirement on all public authorities to comply with their obligations under section 6 of the Human Rights Act 1998 and with EU Law.

THIS GUIDANCE IS ADDRESSED TO THE PROBATION BOARD FOR NORTHERN IRELAND

3. While based on international standards of human rights law, this guidance is intended to be focused on those areas of most relevance and assistance to the Probation Board for Northern Ireland (PBNI). Guidance under section 8 of the Justice (Northern Ireland) Act 2004 is not designed to be static or unduly rigid. It will be revised in light of adjustments in human rights standards and the experience both of those to whom it is addressed and the public.

INTERNATIONAL STANDARDS

4. This guidance is based on international human rights standards, in particular the:

    - European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);
    - Charter of Fundamental Rights of the European Union;
    - International Covenant on Civil and Political Rights;
    - United Nations Convention on the Rights of the Child;
    - United Nations Convention of the Rights of People with Disabilities;
    - Council of Europe Recommendation (2010) 1 on the Council of Europe Probation Rules;
    - United Nations standard minimum rules for non-custodial measures ('the Tokyo rules');
    - Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime;
    - United Nations Handbook on Probation Services Guidelines for practitioners and managers 1998;
    - Council of Europe Recommendation Rec (92)16 on the European Rules on community sanctions and measures;
    - Council of Europe Recommendation Rec (2003) 22 on conditional release (parole);
    - Council of Europe Recommendation Rec (2000) 22 on improving the implementation of the European Rules on community sanctions and measures;

- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules');
- Council of Europe Recommendation Rec (2006)8 on assistance to crime victims;
- United Nations Basic Principles on the use of restorative justice in criminal matters;
- European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders.

GENERAL PRINCIPLES

5. The aim of probation services should be to reduce reoffending, and contribute to community safety, by establishing positive relationships with offenders in order to supervise, guide and assist them and to promote their successful social inclusion.

6. In all interventions by PBNI, due regard shall be given to the dignity, health, safety and well-being of the individual. Account should be taken of the characteristics, circumstances and needs of an individual and interventions should be carried out without discrimination on any prohibited ground.

7. Interventions should not impose any burden or restriction on the rights of an offender greater than that provided by the sentence and as required in an individual case by the seriousness of the offence or by the properly assessed risk of reoffending. As far as possible, the offender's informed consent and co-operation should be sought regarding interventions affecting him or her.

8. The offender's freedom of thought, conscience and religion should be respected.

9. An offender's freedom to practise his or her religion should be respected to the extent that it does not interfere with the rights and freedoms of others. Care should be taken in planning work that would restrict the offender's religious practices or observances; restriction should only be applied where necessary to protect the interests of order, public health, safety or decency.

TRAINING

10. PBNI staff should have initial and ongoing training throughout their career to develop, maintain, and improve the skills and knowledge appropriate to their role and level of professional responsibility. Training should support PBNI staff in rehabilitating the offender, ensuring the offender's rights and protecting society. It should also take into account, where practicable, any work-related needs expressed by PBNI staff.

11. Attention should be paid to offenders and, where applicable, victims, who may be particularly vulnerable or have distinct needs. This may include individuals with the following characteristics:

    a) Young offenders;

    b) Women;

    c) Those with a disability or special educational needs including difficulties understanding or communicating;

    d) Members of minority groups;

    e) Those who require an interpreter or translator; or

    f) Offenders who themselves have been victims of crime.

12. PBNI should ensure its organisational structure is suitable for the delivery of its services and that managers direct resources

appropriately to ensure the quality of probation work is of a high standard, and that good internal communication is achieved. A policy statement should be published, and updated as necessary, defining the general aim, principles, values and methods of the organisation. Staff welfare policies should be in place.

RELATIONSHIPS WITH OTHER AGENCIES

13. PBNI should develop and maintain good working relationships and contacts with other agencies, public authorities, the media, and the public to assist in achieving the objective of reducing offending and improving community safety.

14. In order to implement its tasks and duties effectively, PBNI should, as appropriate, liaise and co-operate with other criminal justice agencies. In particular, PBNI should work closely with the Northern Ireland Prison Service in order to contribute to a successful transition from life in prison to life in the community.

INFORMATION, COMMUNICATION AND DATA PROTECTION

15. The offender's right to privacy should be respected, as should the right to privacy of the offender's family.

16. PBNI should ensure the existence and application of clear policies regarding professional confidentiality, data protection and exchange of information with other competent authorities, agencies and partners.

PRE SENTENCE REPORTS

17. PBNI should, when ordered, provide timely reports on individual offenders to assist the court in deciding on the appropriate disposition.

18. Pre sentence reports that are current and verified when made available to the court should be based on clearly identified information and updated as necessary. This should include relevant social and personal information on the offender.

19. An offender should be given the opportunity to contribute to the preparation of the pre sentence report. The contents of any report should be communicated to him or her and/or his or her legal representative.

20. Generally, PBNI should communicate with the judicial authorities regarding the circumstances in which pre sentence reports would be useful.

COMMUNITY SERVICE

21. Community service is unpaid work undertaken for the benefit of the community as real or symbolic reparation for harm caused by the offender. It should not be stigmatising in nature. Rather, PBNI should seek to identify and use work tasks which supports the development of skills and social inclusion of offenders, and should not be unjust or oppressive. Community service should not be undertaken for the profit of PBNI, its staff or any associated commercial undertaking.

22. In identifying a community service scheme for a particular offender, PBNI should take into consideration the different skills and needs of the individual. In particular, care should be taken to ensure that there is appropriate work available for women offenders, offenders with disabilities, young adult offenders or elderly offenders and those from ethnic or linguistic minorities.

23. Offenders should be consulted about the type of work they could undertake. Particular attention should be paid to the

needs of those who are deemed unfit for work because of physical or mental illness.

24. The safety of those in the community, the beneficiaries of the work, and of the offender should be taken in to account when considering and implementing a community service scheme. Adequate health and safety precautions should be in place.

SUPERVISION

25. PBNI supervision of offenders should be seen as a means of advising, assisting and motivating offenders among other purposes. Supervision by PBNI should be combined, where appropriate, with other interventions intended to reduce an offender's risk of reoffending.

26. PBNI should assess offenders before and during supervision. The assessment should consider the individual's circumstances, including the risks, needs and interventions required to address those needs, as well as the offender's likely and actual responsiveness to these interventions. Offenders should be able to contribute to the assessment, and due weight should be given to their contribution. Offenders should be made aware of the process and the outcomes.

27. Where appropriate, a work plan should be prepared by PBNI and included in the offender's case record. This should guide PBNI in its work and enable staff and offenders to assess progress. The plan should be negotiated and, as far as possible, agreed with the offender.

28. PBNI should ensure that any proposed intervention is proportionate to the aims of rehabilitation and preventing reoffending.

29. PBNI should co-ordinate interventions and evaluate the progress of the offender at regular intervals. A final evaluation should be made and recorded in the offender's case record. Offenders should be made aware that this evaluation will remain in their case records and may be referred to in the future.

30. PBNI should work to ensure the active compliance of offenders with supervision and any conditions imposed on them. Offenders should be made fully aware of what is required of them and of the consequences of non-compliance. Where an offender fails to comply, PBNI staff should respond actively and promptly.

31. Current and accurate records of work should be kept. These should typically include relevant personal details, records of contacts with PBNI, work undertaken, and records of assessments, planning, interventions and evaluation.

32. These records should be used as a means of ensuring the accountability of PBNI and its staff.

33. Individuals should have access to the information kept about them in accordance with domestic law and to the extent that it does not infringe the privacy of others. An offender should have the right to challenge the contents of the records held about him or her.

PREPARATION FOR RELEASE FROM PRISON AND RESETTLEMENT

34. Where PBNI is responsible for supervising offenders after release from prison, it should co-operate with prison authorities, the offender, and, where appropriate, the offender's family and community to facilitate release and reintegration into society.

The preparation for conditional release should be concluded before the end of the minimum or fixed period of imprisonment.

35. As far as practicable, and in co-operation with other agencies, PBNI should ensure the offender's resettlement with the aim of ensuring compliance with any licence conditions and to reduce the risk of reoffending.

ELECTRONIC MONITORING

36. Where PBNI have an input into the ordering of electronic monitoring as a condition of licence for an offender, PBNI should assist in ensuring that this monitoring is combined with other rehabilitative interventions.

FOREIGN NATIONALS

37. PBNI should provide services to offenders of foreign nationality and co-operate with probation agencies in the offender's country of origin to facilitate, where appropriate, the necessary supervisory arrangements on the return of the offender to his or her country of origin.

WORK WITH VICTIMS

38. All victims should be treated with dignity and respect, and should expect to be so treated by PBNI.

39. Some victims and witnesses may be particularly vulnerable as a result of their personal characteristics and the nature, or circumstances of the crime. Individuals are also vulnerable where they are at risk of secondary and repeat victimisation, intimidation or retaliation.

40. PBNI staff coming into personal contact with victims or providing services to victims should receive initial and ongoing

training to assist victims to deal with consequences of the offence committed, at a level appropriate to their contact with them. This should include training on:

a) Treating victims and vulnerable witnesses with respect and in a sensitive manner, tailored, as far as possible, to their individual needs in order to reduce the risk of further victimisation by the victim's engagement with PBNI;

b) Awareness of the negative effect of crime on victims;

c) Understanding that certain victims and witnesses are more likely to be vulnerable because of their personal characteristics, and the nature and circumstances of the crime;

d) Understanding their role in co-operating with other agencies to provide support to victims and witnesses; and

e) Equality and non-discrimination.

41. PBNI should take into account the diverse needs of individual victims and be aware that individuals with the following characteristics are more likely to be vulnerable and require support:

a) Children;

b) Women;

c) Those with a disability or special educational needs including difficulties understanding or communicating;

d) Members of minority groups;

e) Those who require an interpreter or translator;

f) Victims of trafficking;

g) Victims of gender-identity based crime;

h) Victims of domestic and sexual violence;

i) Victims of violent crime including bereaved families;

j) Victims of hate crime; or

k) Victims or witnesses of terrorism or organised crime.

42. Where PBNI is in contact with a victim and seeks his or her view, the victim should be clearly informed that sentencing decisions are taken on the basis of a number of factors and not only the harm done to a particular victim.

43. In all work with offenders, whether or not victims are directly involved in the work, PBNI should aim to increase offenders' awareness of the harm caused to victims.

RESTORATIVE JUSTICE

44. Where PBNI is involved in delivering restorative justice programmes or supporting other agencies in providing such programmes, PBNI should ensure that restorative processes are used only with the free and informed consent of the parties. Agreements should be arrived at voluntarily and be reasonable and proportionate. Disparities leading to power imbalances, and the safety of the parties should be taken into account when considering recourse to a restorative justice scheme, and before agreeing to participate parties should:

- have access to legal advice;
- be fully informed about the nature of the process;
- be fully informed about their rights; and

- be fully informed about the possible consequences of their decision.

CRIME PREVENTION

45. So far as practicable, PBNI should use its knowledge, expertise and experience to assist in developing crime reduction strategies.

MONITORING

46. PBNI should ensure there are reliable systems in place to monitor and improve its own practice and ensure it meets internal standards. PBNI should co-operate fully with the relevant government or independent authorities to facilitate inspection and monitoring.

47. Probation practice should, as far as possible, be evidence-based. Revision of policy and practice should be based on sound scientific knowledge and research.

48. PBNI should provide the media and public with factual information about the work it carries out in order to encourage understanding of PBNI's role in society.

49. PBNI statements of policy and practice should be made available to other agencies and the public in order to promote confidence and improve service delivery.

50. PBNI should ensure there is a clear and effective procedure for investigation and responding to complaints regarding its practice. The procedure should be fair and impartial and the complainant should be duly informed of the process and findings of any investigation.

DELAY

51. Timeliness is at the centre of a properly functioning justice system and is a requirement of international human rights standards. It is recognised that PBNI's involvement in the criminal justice system usually begins following conviction, and as such, for PBNI, the application of these principles should take the following form:

    a) All persons in PBNI whose work may affect the timeliness of court proceedings, including sentencing, should carry out their work with due care and efficiency, and in accordance with any timetable set by a court.

    b) All persons in PBNI whose work could impact on the length of time a convicted offender spends in prison should carry out their work with due care and efficiency to ensure that no prejudice arises to any prisoner by reason of any action or inaction by PBNI.

CHILDREN

52. Effective policies should be in place to ensure that appropriate action, including referral to other agencies, is taken where there are concerns regarding the welfare of children with whom PBNI comes into contact. The best interests of any affected child should be a primary consideration.

DISABILITY

53. Individuals with a disability have a right to respect for their inherent dignity, autonomy and personal independence. PBNI should ensure that its facilities enable offenders, and others in contact with PBNI, to fully and effectively participate in programmes of work. In line with its obligations under the Disability Discrimination Act 1995, facilities should be

accessible for people with disabilities. Training should be provided that is appropriate for the level of direct or indirect contact between PBNI staff and offenders or the public in order to prevent discrimination on the basis of an individual's disability.

GENERAL

54. PBNI should ensure that this guidance is circulated to all staff to ensure awareness.

55. PBNI should also make this guidance available to other agencies with responsibility for provision of services for offenders to make them aware of the standards to which PBNI is held, and to ensure a co-ordinated approach in attaining these standards.

56. It is similarly important that the general public is aware of this guidance. This guidance should be made available to others who may have an interest in, or who may be affected by, the work of PBNI.

57. Regard must be had to this guidance when making or reviewing contractual or other agreements with other statutory agencies.

REVIEW AND MONITORING

58. Difficulties encountered in the application of this guidance by PBNI should be notified to the Attorney General as soon as possible.

59. The Attorney General will first formally seek the views of PBNI on the review or amendment of this guidance after one year of operation. It is open to PBNI to suggest revision or amendment of this guidance at any time.

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Attorney General for Northern Ireland