



Number 4 of 2017

Criminal Justice (Suspended Sentences of Imprisonment) Act 2017



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CONTENTS

Section

1. Definition
2. Amendment of section 99 of Criminal Justice Act 2006
3. Construction of references
4. Short title and commencement

0 [No. 4.] *Criminal Justice (Suspended Sentences of Imprisonment) Act 2017.* [2017.]

ACTS REFERRED TO

Criminal Justice (Theft and Fraud Offences) Act 2001 (No. 50)

Criminal Justice Act 1951 (No. 2)

Criminal Justice Act 1984 (No. 22)

Criminal Justice Act 2006 (No. 26)

Criminal Law Act 1976 (No. 32)

Interpretation Act 2005 (No. 23)



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CRIMINAL JUSTICE (SUSPENDED SENTENCES OF IMPRISONMENT) ACT 2017

An Act to amend section 99 of the Criminal Justice Act 2006 in certain respects; and to provide for related matters. [15th March, 2017]

Be it enacted by the Oireachtas as follows:

Definition

1. In this Act “Act of 2006” means the Criminal Justice Act 2006.

Amendment of section 99 of Criminal Justice Act 2006

2. Section 99 of the Act of 2006 is amended—

- (a) in subsection (7), by the insertion of “, by electronic or other means,” after “it shall cause a copy of the order to be given”,
- (b) in subsection (8), by the insertion of “, by electronic or other means,” after “it shall cause a copy of the order and the conditions to be given”,
- (c) by the insertion of the following subsections after subsection (8):

“(8A) (a) Where a person to whom an order under subsection (1) applies—

- (i) commits an offence after the making of that order and during the period of suspension of the sentence concerned (in this section referred to as the ‘triggering offence’), and
- (ii) subject to subsection (8B), is convicted of the triggering offence,

the court before which proceedings for the triggering offence are brought shall, after imposing sentence for that offence, remand the person in custody or on bail to a sitting of the court that made the said order to be held—

- (I) no later than 15 days after such remand, or
- (II) if there is no sitting of that court within that period, to the next sitting of that court thereafter,

and, if there is no sitting of that court on the day to which that person has been remanded, he or she shall stand so remanded to the sitting of that court next held after that day.

- (b) The remand of a person in custody or on bail under paragraph (a) to a sitting of the court that made the order under subsection (1) concerned applying to the person may be to a sitting of that court other than a sitting thereof referred to in paragraph (c).
- (c) Subject to paragraph (b), references in paragraph (a) to a sitting of a court shall be construed as references to a sitting of the court at a place and time appointed or fixed for sittings of that court by or under statute.
- (8B) Subsection (8A) applies to a conviction of a person for an offence if proceedings for the offence are instituted against the person during the period of suspension of the sentence concerned pursuant to the order under subsection (1) applying to the person and 12 months thereafter.
- (8C) Subject to subsection (8D), a court to which a person has been remanded under subsection (8A) shall revoke the order under subsection (1) concerned 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 the triggering offence) pending the revocation of the said order.
- (8D) Where a person appeals against conviction or sentence for the triggering offence, a court referred to in subsection (8C) may, upon application in that behalf by the person, adjourn the proceedings under that subsection for such period as the court considers appropriate to enable that person to bring the appeal and for it to be determined.
- (8E) If an appeal brought by the person concerned against conviction or sentence for the triggering offence is withdrawn or abandoned, the court referred to in subsection (8C) shall, in accordance with that subsection, consider the revocation of the order under subsection (1) concerned.
- (8F) On the determination of an appeal against conviction or sentence for the triggering offence brought by the person concerned—
 - (a) if the order of the court before which proceedings for that offence were brought is reversed insofar as it relates to the conviction for that offence or the conviction for that offence is quashed, the court referred to in subsection (8C) shall dismiss the proceedings under that subsection, and
 - (b) in all other cases, the court referred to in subsection (8C) shall, in accordance with that subsection, consider the revocation of the order under subsection (1) concerned.

(8G) When an appeal against conviction or sentence for the triggering offence is withdrawn, abandoned or determined, the person concerned shall, for the purposes of subsections (8E) and (8F), appear before the court referred to in subsection (8C) whenever he or she is required to do so by that court.

(8H) In subsections (8D) to (8G), references to an appeal against conviction or sentence for the triggering offence shall be construed as references to an appeal against conviction or sentence, as the case may be, for that offence, whether by way of rehearing, case stated or otherwise.”,

(d) by the deletion of subsection (10A),

(e) by the substitution of the following subsection for subsection (11):

“(11) (a) Where an order under subsection (1) applying to a person is revoked under subsection (8C), any period of imprisonment required to be served by the person as a result of that revocation shall be consecutive on any sentence of imprisonment (other than a sentence consisting of imprisonment for life) imposed on the person in respect of the triggering offence.

(b) Paragraph (a) shall not apply if the execution of the sentence of imprisonment imposed on the person in respect of the triggering offence is wholly suspended under subsection (1).”,

(f) in subsection (13), by the substitution of “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” for “a person to whom an order under this section applies has contravened the condition referred to in subsection (2) he or she may apply”,

(g) by the insertion of the following subsection after subsection (13):

“(13A) The Director of Public Prosecutions may, if he or she has reasonable grounds for believing that a person to whom an order under subsection (1) applies has contravened a condition imposed under subsection (3), apply to the court to fix a date for the hearing of an application for an order revoking the order under subsection (1).”,

(h) in subsection (14), by the deletion of “(3) or” after “has contravened a condition imposed under subsection”,

(i) in subsection (15), by the substitution of “the hearing of an application referred to in subsection (13), (13A) or (14)” for “the hearing of an application referred to in subsection (13) or (14)”,

(j) by the insertion of the following subsection after subsection (18):

“(18A) Where, under subsection (8C) or (17), a court revokes an order under subsection (1) applying to a person and the person is required to serve a part of the sentence of imprisonment originally imposed on him or her, the court may make a further order suspending the execution of

the part of the sentence of imprisonment that is not required to be served by the person and such further order shall, for the purposes of this section, be regarded as an order made under subsection (1) applying to the person and that subsection shall apply accordingly.”,

(k) by the insertion of the following subsections after subsection (19):

“(19A) If, in relation to a person, the application of subsection (11) conflicts with any of the other consecutive sentencing provisions with regard to the sequence in which the following shall be served by the person, namely—

- (a) a sentence of a term of imprisonment imposed on the person for the triggering offence,
- (b) the period of imprisonment required to be served by the person under subsection (8C), and
- (c) a sentence of a term of imprisonment imposed on the person for another offence of which he or she is convicted,

the court referred to in subsection (8C) or any other court concerned may determine that sequence in such manner as it considers just, provided that the sentences of imprisonment referred to in paragraphs (a) and (c) and the period of imprisonment referred to in paragraph (b) shall be consecutive on each other.

(19B) Where a person is convicted of the triggering offence by the District Court and an order under subsection (1) applying to the person is revoked by the District Court under subsection (8C), the aggregate of—

- (a) a sentence of a term of imprisonment imposed on the person for the triggering offence,
- (b) the period of imprisonment required to be served by the person under subsection (8C), and
- (c) a sentence of a term of imprisonment for any other offence imposed on the person by the District Court that is required by any of the other consecutive sentencing provisions to be consecutive on the sentence of imprisonment referred to in paragraph (a) or the period of imprisonment referred to in paragraph (b) or vice versa,

shall not exceed 2 years.”,

and

(l) by the addition of the following subsections:

“(21) Where—

- (a) under subsection (8C), an order under subsection (1) applying to a person is revoked and the person is required to serve a part of the

sentence of imprisonment originally imposed on him or her under that subsection, and

- (b) a court imposes a sentence of a term of imprisonment on the person that is to be consecutive on the sentence of imprisonment referred to in paragraph (a),

the sentence of imprisonment referred to in paragraph (b) shall commence at the expiration of the period of imprisonment required to be served by the person under subsection (8C) referred to in paragraph (a).

- (22) Where an order under subsection (1) is made by a court on appeal from another court—

- (a) the reference in subsection (8A) to the court that made the order under subsection (1),
- (b) the references in subsections (8C), (8D), (8G), (13) to (17), (18A) and (19A) to the court that may exercise jurisdiction under each of those subsections, and
- (c) the reference in subsection (12) to the court that revoked the order under subsection (1),

shall be construed as references to the court from whose order or decision the appeal was taken.

- (23) In this section the ‘other consecutive sentencing provisions’ means—

- (a) section 5 of the Criminal Justice Act 1951,
- (b) section 13 of the Criminal Law Act 1976,
- (c) section 11 of the Criminal Justice Act 1984,
- (d) section 54A of the Criminal Justice (Theft and Fraud Offences) Act 2001, and
- (e) any other enactment that requires or permits a court to impose a consecutive sentence.”.

Construction of references

- 3. A reference in any enactment, within the meaning of the Interpretation Act 2005, to—

- (a) subsection (9) of section 99 of the Act of 2006 shall be construed as a reference to subsections (8A) and (8B) (inserted by *section 2(c)*) of the said section 99, and
- (b) subsection (10) of section 99 of the Act of 2006 shall be construed as a reference to subsection (8C) (inserted by *section 2(c)*) of the said section 99.

Short title and commencement

4. (1) This Act may be cited as the Criminal Justice (Suspended Sentences of Imprisonment) Act 2017.
- (2) This Act shall come into operation on such day or days as the Minister for Justice and Equality may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.