Northern Ireland Assembly

Research and Library Service Bill Paper

15 November 2010

Ryan Molloy, Tim Moore, Michael Potter and Helena Maginness

Justice Bill 2010

NIAR 544-10

Analysis of the provisions of the Justice Bill 2010.

Paper 172/10 **15 November 2010**

Key Points

The Bill as introduced has been generally uncontroversial and widely welcomed as a positive piece of legislation with cross-community and cross-party support, albeit as an eclectic mix of provisions relating to a wide scope of justice.

During the second stage debate on the bill some Members did, however, express concerns as to proposals, such as the use of solicitor advocates, which did not form part of the bill.

Much of the content of the Bill mirrors legislation which already exists in Great Britain and concerns have been raised there that legislative reform has been driven by the interests of economy rather than justice.

In general terms, the research contained in this paper highlights issues not in relation to the legislative provisions themselves but rather in their application. The identification across agencies of victims and intimidated witnesses, for example, has been regarded as an ongoing problem in England and Wales. In relation to alternatives to prosecution, their use for what some consider to be inappropriate offences was identified as an issue, in spite of the existence of guidance. Implementation of the victim surcharge in England and Wales too was problematic, as HM Courts Service did not have computer systems capable of accounting for or keeping track of surcharges when the scheme was introduced.

As significant elements of the Bill mirror legislation already introduced in England and Wales, it might be expected, however, that knowledge of the existence of such problems in other jurisdictions will enable their prevention here.

Executive Summary

The Justice Bill 2010 was introduced in the Assembly on 18th October. It consists of nine parts and seven schedules. This paper provides information relating to the key provisions contained within the bill.

Offender Levy

The Bill provides for an offender levy which is to be imposed as a financial payment to acknowledge the suffering of victims and to contribute to a fund to assist victims of crime. The paper describes the operation of the levy as set out in the Bill and identifies similar charges in other jurisdictions. The paper notes the view, expressed by some consultees, that the offender levy is additional punishment and that the funding of services should be separate from a restorative approach of offenders acknowledging harm caused by their actions. The paper also notes the suggestion that the levy should not apply to what some refer to as victimless crime, such as minor road traffic offences. Once the principle of imposing a levy on offenders to support victims and witnesses has been accepted, however, questions relating to the application of the levy remain. The paper identifies variations in amounts of levy and breadth of application. The paper also highlights difficulties relating to the collection of the levy on its introduction in England & Wales.

Vulnerable and Intimidated Witnesses

The Bill introduces special measures which are to be used for vulnerable and intimidated witnesses, such as children, including the presence of a supporter during live links, video-recorded evidence and intermediaries. It also provides for the expansion of the use of live link facilities in courts to enable witnesses to give evidence from outside the court environment. The paper highlights findings from the 2006 Home Office report *Are special measures for vulnerable and intimidated witnesses working? Evidence from the criminal justice agencies*[1], which influenced development of the provision in England and Wales which are mirrored in the Justice Bill.

Live Links

The Bill sets out provisions to expand the use of live links in courts. The paper outlines concerns that their use might dilute defendant's evidence and impact on convictions.

[1] Home Office Online Report 01/06, Mandy Burton, Roger Evans, Andrew Sanders, Are special measures for vulnerable and intimidated witnesses working? Evidence from the criminal justice agencies; http://rds.homeoffice.gov.uk/rds/pdfs06/rdsolr0106.pdf

Policing and Community Safety Partnerships

The Bill merges the functions of District Policing Partnerships (DPPs) and Community Safety Partnerships (CSPs) into single bodies, as is the case in Britain and the Republic of Ireland. The provisions directly carry over those of the legislation which established the DPPs and CSPs. The paper outlines how these bodies compare with other jurisdictions and in particular, how those in England and Wales have stronger scrutiny powers than those envisaged in the Bill.

Sport

The Bill introduces several new offences:

- Offensive chanting
- Missile throwing
- Unauthorised pitch incursion
- Offences relating to having alcohol, bottles and flares and being drunk at sporting events and in transport to and from matches
- Ticket touting
- Football banning orders

The paper describes these new offences and how they are legislated for in England and Wales with relevant tables outlining numbers of arrests in relation to offences committed at or around certain football matches. It's not anticipated that these new offences will have the volume of arrests that have occurred in England and Wales. Issues raised include status of registered clubs inside grounds and possible commercial effects of an alcohol ban; definition of being drunk; problems with alcohol in the vicinity of grounds; the fact that ticket touting is not a particular problem for Northern Ireland compared with England and Wales; whether in regard to football banning orders, like the situation in England and Wales, the PPS or PSNI should be able to apply to courts for a banning order regardless of an offence being committed.

Alternatives to Prosecution

The Bill provides for the following alternatives to prosecution:

Fixed penalty notices

Conditional cautions

Penalty Notices for Disorder

The Bill sets out provisions for fixed penalty notices. The paper highlights a number of issues relating to their use including; characterisation as pay-as-you-go crime; concerns that they amount to sentencing but out of the public view without the benefit of independent, judicial scrutiny; inappropriate use in spite of guidance; and failure to address underlying problems of those committing crimes. The paper also notes evidence *suggesting that out-of-court penalties are expanding the number of offenders who are dealt with rather than being used as an alternative to prosecution*.

Legal Aid

The Bill makes provision for three reforms to legal aid:

- Enabling power to means test applicants' incomes;
- Enabling power for an order to recover costs of legal aid; and
- Repeal of prohibition on NILSC funding services under Litigation Funding Agreements.

The paper briefly outlines how similar provisions have worked in England and Wales and includes concerns from the legal profession regarding changes to Litigation Funding Agreements.

Miscellaneous Provisions

Changes to bail law in regard to repeat bail applications and applications for compassionate bail. The Bill also makes amendments to court membership in regard to the Crown Court Rules Committee and Court of Judicature Rules Committee. The Bill provides for Access NI to issue a copy of a criminal conviction certificate to an employer in addition to issuing the certificate to the applicant and the Northern Ireland Law Commission is no longer required to produce a full set of audited accounts

Contents

1 Victims and Witnesses: Clauses 1-13.

This opening section of the paper will outline provisions for the Offender Levy and Victims of Crime Fund as well as measures to protect vulnerable and intimidated witnesses.

1.1 The Offender Levy: Clauses 1-6

This initial section will examine the Offender Levy and Victims of Crime Fund provisions to be included in the Justice Bill (NI) 2010. The offender levy seeks to introduce a mechanism whereby offenders pay a financial levy which acknowledges the harm caused by the offence they have committed, although this is not intended as reparation. That offender levy is then directed to help finance support services to all victims and witnesses of crime before, during and after trial.

At present victims of crime, if eligible, can receive compensation from the Northern Ireland Compensation Agency or directly from an offender through Compensation Orders passed by the court. These compensation arrangements will still remain in place after the introduction of the levy.

This section also outlines how similar levies operate in England and Wales, New Zealand and Sweden to examine best practice and then assesses the principal themes of offender levies with examples from various jurisdictions.

1.2 Proposed Offender Levy for Northern Ireland

The provisions introducing an offender levy for Northern Ireland stem from a commitment outlined in the strategy – 'Bridging the Gap'. This strategy, published in 2007, seeks to improve criminal justice services to victims and witnesses of crime in Northern Ireland, with the ultimate aim of increasing satisfaction and confidence in the criminal justice system[2]. The Victim and Witness Task Force (VWTF) is responsible for managing and implementing the strategy through the Victim and Witness Strategic Action Plan 2010-11[3]. The VWTF is a sub-group of the Criminal Justice Board for Northern Ireland. It is chaired by the Department of Justice and is made up of representatives of the:

- Police Service of Northern Ireland;
- Public Prosecution Service;
- Northern Ireland Courts and Tribunals Service;
- Northern Ireland Prison Service;
- Probation Board for Northern Ireland;

[2] 'Offender Levy and Victims of Crime Fund: A Northern Ireland consultation' March 2010
http://www.dojni.gov.uk/index/public-consultations/archive-consultations/offender_levy_and-2.pdf
[3] Victim and Witness Strategic Action Plan 2010-11
http://www.cjsni.gov.uk/pubUploads/V&W%20Strategy.pdf.PDF

- Youth Justice Agency;
- Victim Support Northern Ireland; and
- National Society for the Prevention of Cruelty to Children.

The offender levy proposals will apply to the following court proposals and non-court based penalties:

- Immediate or suspended custody or detention;
- Community sentence;
- Court-imposed fine;
- Prosecutorial fine – these fines are to be introduced as part of the forthcoming 'Alternatives to Prosecution' policy measures. They will be applied by the Prosecutor at prosecutorial decision stage and used as a diversionary measure to prosecution through the court;
- Endorsable Fixed Penalty Notice (EFPN) for a road traffic offence;
- Conditional offer of fixed penalty (speed camera detections);
- Fixed penalty fine – these are on-the-spot fines also to be introduced as part of the forthcoming 'Alternatives to Prosecution' measures. They will assist police in dealing with a specified range of low level offences; and
- Fixed penalty notice for a Departmental type case (for example Driver Vehicle Agency which is introducing fixed penalties for road haulier offences).

This covers the full range of disposals that are currently available across the magistrates and Crown Courts as well as penalties that can be used outside of the court system through existing Fixed Penalty Notices and new alternatives to prosecution mechanisms which are also part of the provisions of the Bill.

Where the levy is applied for more than one sentence it will be attached to the principal (most serious) offence[4]. This means that the levy the offender is liable for will always be at the higher range of the scale. The levy will only be applicable to those aged 18 and over.

Offender levies can be applied as either a flat rate or a tiered rate across all disposals. The imposition of a flat or fixed rate would equate all disposals as the same for the purposes of the levy, meaning that more serious offences that caused more harm would be subject to the same levy as less serious offences.

The provisions for Northern Ireland are for a tiered system; the different tiers are set out below. The offender levy would be payable within 28 days; although where a monetary order (fine) is payable by instalment this would also apply to the offender levy[5].

[4] Offender Levy and Victims of Crime Fund: A Northern Ireland consultation' March 2010 http://www.dojni.gov.uk/index/public-consultations/archive-consultations/offender_levy_and-2.pdf

The Bill provides for the following levy rates:

- £5 for an endorsable Fixed Penalty Notice for a road traffic offence, a Conditional Offer of Fixed Penalty for a speeding offence and a Fixed Penalty Fine;
- £15 for court imposed fines and prosecutorial fines;
- £20 for community sentences; and
- £25 or £50 for a custodial sentence (immediate or suspended)

As a result of concerns raised in both the consultation and by the Justice Committee the value of the tiers were changed in line with the seriousness of the disposal. There will now be a two tier levy rate for custodial sentences: a £50 levy for those receiving indeterminate sentences and custodial sentences of more than two years and a lower rate of £25 being applied to those serving shorter sentences of less than two years. These amendments aim to reflect the severity of the disposal and the offence. It had previously been proposed that the offender levy for custodial offences would be £30.

Table 1 presents information on the number of disposals given to adult offenders in all courts in 2006[6]:

Table 1 Disposals given to adult offenders in all courts in 2006

Immediate custody	Suspended sentence	Community sentence	Fine	Total
2,115	2,304	1,755	17,119	**23,293**

Source: Northern Ireland Statistics and Research Branch

On the basis of the proposed rates of levy set out above and the information contained in Table 1, Table 2 indicates that, if the levy had been in use in 2006, potentially £250,000 could have been collected in relation to fines alone.

Table 2 Approx values of the levy if applicable to disposals collected by courts in 2006

Immediate custody	Suspended sentence	Community sentence	Fine	Total
£63,450	£69,120	£43,875	£256,785	**£433,230**

[5] Committee for Justice 'Departmental Briefing on Proposals for an Offender Levy and Victims of Crime Fund' – Official Report (Hansard) 3rd June 2010
http://www.niassembly.gov.uk/record/committees2009/Justice/100603Briefing%20on%20Proposals%20for%20an%20Offender%20Levy.pdf

[6] Offender Levy and Victims of Crime Fund: A Northern Ireland consultation' March 2010
http://www.dojni.gov.uk/index/public-consultations/archive-consultations/offender_levy_and-2.pdf

Figures relating to the new Fixed Penalty Notices in terms of the levy are not included in the data set out in Tables 1 and 2, as they are fines collected outside the court system as part of the alternatives to prosecution. These new alternatives to prosecution disposals, however, will be the subject of the proposed offender levy.

Given that over 37,000 fines remain uncollected[7] in the system from previous years, it may be necessary to treat these projected returns with caution until the effectiveness of the collection system can be assessed. In this context it is worth highlighting that the anticipated collection system for the levy will be same as that currently used to collect fines. In addition, projected start-up costs for the levy collection are in the region of £100,000 with running costs operating alongside the costs for fine collection[8].

With regard to the offender's ability to pay the levy, the proposals outline specific circumstances in which the court could reduce the amount of the levy or the fine where the offender has insufficient means to pay – these measures include:

- Where a compensation order is to be imposed and the court has determined that the offender does not have the means to pay both the compensation order and the levy, the amount of the levy may be reduced by the court (to nil) if necessary. This will help protect the amount of direct compensation awarded to the victim;
- Where a fine is imposed and the court has determined that the offender does not have the means to pay both the fine and the levy, the amount of the fine and **not the levy** will be reduced; and
- Where a compensation order and fine is imposed and the court has determined that the offender does not have the means to pay the compensation order, fine and the levy, the amount of the fine and **not the compensation order or levy** will be reduced.

The Departmental Briefing on an Offender Levy and Victims of Crime Fund outlined that the Payment Priority Order should be:

i. Compensation Order

ii. Levy

iii. Fine

iv. Court costs

This order is designed to place the needs of victims at the forefront in particular the individual victim, through the payment of compensation and then victims as a collective through the payment of the levy.

[7] Committee for Justice 'Departmental Briefing on an Proposals for an Offender Levy and Victims of Crime Fund' – Official Report (Hansard) 3rd June 2010
http://www.niassembly.gov.uk/record/committees2009/Justice/100603Briefing%20on%20Proposals%20for%20an%20Offender%20Levy.pdf

[8] See above

The Northern Ireland Courts and Tribunals Service (NICTS) will be responsible for the collection of the levy in the same way that fines are currently collected. Where the offender has been given a custodial sentence, the Northern Ireland Prison Service will be responsible for collection.

For those offenders serving a custodial sentence and who have an earning capacity of between £6 and £20 per week in prison then the levy will be deducted from their prison wages at a proposed rate of £1 per week[9]. The payment once collected will be transferred to the NICTS for processing.

The Northern Ireland Human Rights Commission (NIHRC) has highlighted that such deductions could impact negatively on a prisoner in terms of being able to purchase approved items like phone cards and supplementary food[10]. The NIHRC suggests that this may impact more significantly on prisoners who may not receive visits or are vulnerable or at risk. The paper will explore further below the full responses to the offender levy and victims of crime consultation paper.

NIHRC also raises the arguments of the effect of the European Prison Rules, in particular rule 105.5 which states that *'in the case of sentenced prisoners part of their remuneration or savings from this (prison work) may be used for reparative purposes if ordered by a court or if the prisoner concerned consents'*[11]. Although this is in contrast to European Prison Rule 26.1 which states that prison work should never be used as a punishment[12]. Therefore if the prison work being carried out is to fulfil payment of the levy is that against the European Prison Rules? The European Prison Rules are not binding in law either nationally or internationally but are intended to serve as guidelines for national administrations and courts[13].

The offender levy proposals outline that the levy is not to be applied to young offenders i.e. those offenders under the age of 18 years. This is due to the unique restorative approach and disposals available for young offenders in Northern Ireland through the use of Youth Conferencing Orders[14]. The NIHRC outlines that the policy of even fining children should be discontinued[15] – pointing out the large percentage of children in Northern Ireland that live in poverty; 38% in a report commissioned by Save the Children in 2007[16].

---

[9] Committee for Justice 'Departmental Briefing on Proposals for an Offender Levy and Victims of Crime Fund' – Official Report (Hansard) 3rd June 2010
http://www.niassembly.gov.uk/record/committees2009/Justice/100603Briefing%20on%20Proposals%20for%20an%20Offender%20Levy.pdf

[10] Northern Ireland Human Rights Commission – 'Submission on Offender Levy and Victims of Crime Fund'
http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/114/Offender_Levy_and_Victims_of_Crime_Fund_-_Response_to_Dept_of_Justice_(May_2010).pdf

[11] European Prison Rules
http://www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_sexual_exploitation_of_children/1_pc-es/Rec_2006_2E%20on%20the%20European%20Prison%20Rules.pdf

[12] See above

[13] Prison Rules: A Working Guide
http://www.prisonreformtrust.org.uk/uploads/documents/prisonrulesworkingguide.pdf

[14] Offender Levy and Victims of Crime Fund: A Northern Ireland consultation' March 2010
http://www.dojni.gov.uk/index/public-consultations/archive-consultations/offender_levy_and-2.pdf

[15] Northern Ireland Human Rights Commission – 'Submission on Offender Levy and Victims of Crime Fund'

1.3 England and Wales – the Victim Surcharge

While Scotland and the Republic of Ireland do not have an offender levy, in England and Wales the Domestic Violence Crime and Victims Act 2004[17] legislated for the victim surcharge. Although the legislation creating the victim surcharge made provision for its use across all court and non-court disposals the victim surcharge is presently only attached to fines resulting from criminal conviction. The victim surcharge is set at a flat rate of £15 on all court-imposed fines.

The Ministry of Justice is giving consideration to extending the victim surcharge to other court-imposed disposals (custodial and community sentences), Fixed Penalty Notices (for defined road traffic offences) and Penalty Notices for Disorder[18]. This would make the victim surcharge more similar to the proposed offender levy for Northern Ireland. In England and Wales custodial (both immediate and suspended) and community sentences would attract a £30 surcharge if the provisions of the 2004 Act are enacted.

In instances where the offender is unable to pay a Compensation Order and the victim surcharge, statutory provision is in place to reduce the victim surcharge to 'nil'[19]. Furthermore where the offender is unable to pay both the fine and the victim surcharge, the **fine and not the victim surcharge** will be reduced[20]. Therefore the position in England and Wales in this regard is the same as the proposals for Northern Ireland.

The payment priority in England and Wales is the same as the proposals for Northern Ireland i.e.:

i. Compensation

ii. Levy

iii. Fine

iv. Court costs

A major argument against the victim surcharge in England and Wales is that by presently restricting its application to fines only, *'the scheme currently excludes those cases involving the more serious offender, who arguably cause greater harm to victims'*[21]. In light of this

http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/114/Offender_Levy_and_Victims_of_Crime_Fund_-_Response_to_Dept_of_Justice_(May_2010).pdf

[16] See above

[17] Domestic Violence Crime and Victims Act 2004
http://www.legislation.gov.uk/ukpga/2004/28/contents

[18] 'International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York
http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf

[19] Offender Levy and Victims of Crime Fund: A Northern Ireland consultation' March 2010
http://www.dojni.gov.uk/index/public-consultations/archive-consultations/offender_levy_and-2.pdf

[20] See above

[21] See above

concern the Ministry of Justice is considering widening the application of the victim surcharge to all other court and non-court disposals.

The victim surcharge serves two purposes:

> *First, it supports the (non-statutory) Victims' Fund which makes grants, on the basis of an open competition, to community and voluntary organisations providing victim support and services. A sum of £1.75m was allocated for this purpose in 2008-09. Secondly, revenue from the surcharge supports the delivery of a range of cross-cutting victim and witness related initiatives through grants administered by the Office for Criminal Justice Reform (part of the Ministry of Justice). In 2008-09 this included grants of £2.6m to support independent Domestic Violence Advisor services, £3m to the Crown Prosecution as a contribution to the costs of providing witness care units and £7m to the organisation Victim Support for creating a national centre*[22].

Revenue from the victim surcharge is used in two ways: firstly, part goes to the Victims' Fund (which was established to provide support services to victims of sexual offending and childhood sexual abuse operating as an open competition grant scheme); and secondly the remainder provides support *'via the Office for Criminal Justice Reform to government organisations providing services to victims.'*[23]

The Office for Criminal Justice Reform is responsible for victim surcharge policy and administering the Victims' Fund; the revenue from the victims surcharge *'goes into the Consolidated Fund but is ring-fenced through agreement with HM Treasury and the Attorney General's Office, the Ministry of Justice and the Home Office to ensure that it is solely used to support victim and witness related projects'*[24].

In response to a parliamentary question in the House of Commons, the Parliamentary Under-Secretary of State at the Ministry of Justice Lord Bach outlined that the victim surcharge raised £3.8m in 2007/08, the year of introduction, and £8m in 2008/09[25].

This total of £8m was 50% less than the amount that the government thought would be raised by the victim surcharge, as outlined in the Explanatory Memorandum to the Criminal Justice Act 2003 (Surcharge) Order 2007 No. 707 which states that:

---

[22] 'International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York
http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf

[23] 'International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York
http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf

[24] See above

[25] Parliamentary Question number 3617 (House of Commons) 21st May 2009
http://services.parliament.uk/hansard/Lords/ByDate/20090521/writtenanswers/part002.html

Once fully operational, it is estimated that levying the surcharge on fines or a combination of a fine and compensation order (in either case with or without costs) in this way will generate some £16m a year (net of the costs of collection). If the number of fines increases or decreases, the surcharge raised will be correspondingly more or less. Similarly, if the success of enforcement increases or decreases, the surcharge raised will be more or less[26]*.*

1.4 Offender Levies Internationally

This part of the paper examines the application of offender levies internationally to outline how they operate and how successful they have been (if this can be determined). Similarities or differences to the proposals for Northern Ireland are also identified.

New Zealand is assessed due its relatively recent introduction. The Sentencing (Offender Levy) Amendment Act 2009[27] introduced the offender levy in October 2009. All offenders sentenced in either the District or High Court must pay an offender levy of $NZ50 (approx £22.50)[28]. This is distinct from the Northern Ireland proposals as a flat levy is being employed as opposed to a tiered levy in Northern Ireland. An obvious criticism of a flat levy is that it treats all offenders equally.

A distinguishing feature of the levy in New Zealand is that *'the courts should not consider whether or not the levy would cause hardship or the financial capacity of the offender in determining the fine'*[29]*.* The proposals for Northern Ireland considered the possible adverse financial implications on offenders subject to the levy where a Compensation Order was also implemented and facilitated the court to reduce the levy as far as nil were applicable.

The levy is not applicable in the following instances[30]:

- Where an offender is discharged without conviction;
- When a youth is sentenced in the Youth Court;
- When anyone is sentenced in the Family Court;
- When an order is set by a Tribunal; or

[26] Explanatory Memorandum to the Criminal Justice Act 2003 (Surcharge) Order 2007 No. 707
http://www.opsi.gov.uk/si/si2007/em/uksiem_20070707_en.pdf
[27] Sentencing (Offender Levy) Amendment Act 2009
http://www.legislation.govt.nz/act/public/2009/0042/latest/DLM1826706.html
[28] 'International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York
http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf
[29] See above
[30] New Zealand Ministry of Justice
http://www.justice.govt.nz/fines/fines/offender-levy-q-a

- To people who have infringement fines (as they are not a sentence from a District or High Court nor do they result from a conviction)

The collection of the levy is similar to the proposals for Northern Ireland with centralised collection but with various district units, in much the same way that the Northern Ireland Courts and Tribunals Service operates centrally but with a presence for collection at regional courthouses. The levy will be collected within 28 days.

The levy in New Zealand will provide additional services to victims not catered for by the accident compensation scheme and revenue is expected to total $NZ13.6m (£6.12m) over the next four years[31].

In terms of the order of collection of the levy if other monetary orders have been made it's the same as Northern Ireland:

- Reparation;
- Offender levy; and
- Fine

In Sweden a Fund for Victims of Crime is funded by the offender levy; the Fund is non-statutory whilst the offender levy has a legal basis through the *'Decree on the Fund for Victims of Crime'*[32]. The Fund has specific aims *'to provide economic support to research, education and information concerning crime victims, development work and programmes aimed at improving the circumstances of crime victims'*[33]. These aims and objectives are quite similar to the aims of the proposed Victims Fund in Northern Ireland.

The offender levy in Sweden is only payable by offenders convicted of an offence punishable by imprisonment, with the offender levy fixed at 500 SEK (approx £44)[34]. In Sweden the offender levy takes precedence in terms of collection over both fines and compensation payable directly to the victim.

A centralised enforcement authority is responsible for the collection and enforcement of the levy. However, a novel aspect is that if the levy has not been paid within a specified time limit then *'an enforcement officer is empowered to collect money from a debtor's bank account, deduct money from wages or seize assets in lieu of payments'*[35]. In comparison to other jurisdictions these are quite wide-ranging powers of enforcement and can be used in the event of the offender having no extenuating circumstances for failure to pay the levy.

[31] See above
[32] 'International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York
http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf
[33] See above
[34] See above
[35] See above

Revenue from the levy is then allocated by the Crime Victim Compensation and Support Authority *'where it is processed and distributed twice a year on an application grant basis'*[36]. The most recent available data (2005) indicated that grants made by the Fund amounted to SEK 30m (£2.6m) – with 415 applications granted from 672 applications received[37].

1.5 Offender Levies: Principal Themes

This part of the paper will outline the principal themes implicit in the operation of offender levies with any relevant examples illustrated.

Imposing a levy on an offender places a requirement on that offender to make monetary reparation in addition to the punishment passed by the court. This levy is then used to contribute to services for victims and witnesses, providing a level of accountability to society and victims as a whole thus *'the criminal justice system is thereby seen to be more balanced in its treatment of victims relative to offenders'*[38]. The development of an offenders' levy has been described as *'a natural progression towards strengthening the position of the victim'*[39].

The scope of the offender levy can be either narrow or wide in terms of the offences and disposals covered. Sweden provides an example of the narrow application of the offender levy. In Sweden the levy is only applicable to those convicted of an offence punishable by imprisonment irrespective of whether or not a custodial sentence was passed; this is a reflection on *'the thinking that those convicted of crimes which carry a prison sentence as a punishment are more likely to have inflicted significant harm'*[40].

A further example of narrow application is the victim surcharge in England and Wales which is only attached to those offenders who have been fined by the courts. The United States illustrates broad application of the victim surcharge where all those convicted of an offence are subject to the surcharge and in a novel development the victim surcharge can also be applied to defendants other than individuals[41]. This makes it possible to impose the surcharge on corporations; this is significant in respect of corporations being guilty of criminal conduct in areas like financial services and the environment.

The rate structure of an offender levy or victim surcharge can vary between a fixed rate and a varied/tiered rate. A fixed rate is more simplistic to legislate for and easier to administer because it applies as the same regardless of offence or disposal. However a fixed rate may be interpreted as being unfair as it does not distinguish between the severity of the offence or disposal. In contrast a varied/tiered rate may be regarded as more equitable in terms of

[36] See above
[37] See above
[38] 'International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York
http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf
[39] See above
[40] See above
[41] See above

distinguishing between the severity of offences but it may be more complex and thus more costly to administer and enforce[42].

Offender levies contain the provision for judges to waive the payment, either in part or in total, where it is deemed that the offender does not have the means to pay. The only exception found to this waiver was in New Zealand (this is outlined at paragraph 26 above). An example of the levy being waivered extensively is in the province of New Brunswick in Canada where between 2000 and 2005, 66.2% of levies were waived[43]. This was despite no evidence being offered as to the offender's financial hardship which was a provision of the judge's right to waiver the levy. This may have the consequence of devaluing the levy. Where this situation arises potential solutions are to either limit the judge's ability to apply discretion or have more stringent mechanisms to outline financial hardship or lower the amount of the levy.

The prioritisation of payment of the offender levy varies between different jurisdictions. Where either the offender levy or compensation order takes precedence over a court fine, there is an implied correlation between harm caused by the offender and restitution either directly to the victim through compensation or to victims as a whole through payment of the levy[44]. In New South Wales, Australia and Sweden the levy takes precedence over fines and compensation, whereas in England and Wales and New Zealand compensation orders take precedence[45].

The collection and enforcement of levies and surcharges varies across jurisdictions. In England and Wales the surcharge is collected in the same form as fines and compensation orders. The significant challenge in making these collections for fines, surcharges and compensation orders was reflected in an answer to a parliamentary question in July 2010, where the Minister of State Mr Djanogly outlined that some £597,926,217 was outstanding in financial penalties in England and Wales[46].

In jurisdictions where an offender levy is imposed on those serving a custodial sentence, the method of collecting the levy from an inmate's wages is straightforward because of the relatively simple process of making deductions from those wages[47]. This forms part of the proposals for Northern Ireland. Some jurisdictions use either special purpose units or separate enforcement agencies to collect levies as well as fines. For example, the Fines Payment Unit in South Australia and Fine Recovery Unit in New Brunswick, Canada[48] have the advantage of clearly defined roles and responsibilities regarding collection.

[42] See above
[43] See above
[44] See above
[45] 'International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf
[46] http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100726/text/100726w0004.htm
[47] 'International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf

A number of factors affect the amount of money that is raised through a levy or surcharge namely its structure, value, waiver rate, collection and enforcement mechanisms with the amount of convicted offender's eligible directly affecting the levy.

In most jurisdictions the finances collected from the levy are paid into a Victim's Fund for distribution and allocation, general observations to be drawn from the organisation of victim funds are[49]:

- A fund dedicated to provision of services for the victims of crime is less vulnerable to fluctuations in contributions from tax revenue than a fund which also covers criminal injuries compensation as the proportion of funding from the Consolidated Fund is smaller;
- Victims' funds which include revenue from a proportion of fines paid, seizure of criminal assets, prison inmates' wages and other crime-related revenue in addition to the offenders' levy are equally consistent with the principle that the offender should be accountable to the victim;
- A separate victims' fund provides greater transparency and facilitates demonstration of the scale on which support is being provided to victims;
- If the offender surcharge is paid into the Consolidated Fund, steps should be taken to ensure that the funding for victims' services is protected so that its original purpose of making offenders accountable to victims is not lost; and

1.6 Summary commentary on consultation responses

This section of the paper provides summary commentary on the consultation responses to the offender levy and victims of crime consultation paper.

The majority of respondents were supportive of the principle of adopting an offender levy although two respondents expressed reservations, namely that the levy is an additional punishment and that the resourcing of improvements to victims' services should be separate from a restorative approach of offenders acknowledging harm caused by their actions.

In relation to the offender levy being used solely to support victims and witnesses of crime services – respondents concerns focused on the funding remaining additional as opposed to a replacement for existing provisions and that administration costs should not have to be covered by the fund.

With regard to the range of disposals and penalties that the levy will apply to, respondents expressed concern about the application of Fixed Penalty Notices and their financial impact on 'economically disadvantaged offenders' notwithstanding their potential inability to pay the

[48] 'International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York
http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf
[49] See above

offender levy. Two respondents highlighted that the levy should not be applied to fixed penalties for road traffic offences due to there being no victim and that this could be perceived as an additional tax on motorists.

In consideration of the levy rates opinion was divided. Two respondents thought that the more serious and violent the offence the higher the levy should be. One respondent thought that the rate of levy should be dependent on the offender's salary whilst another felt that the tiered rates could impact on an offenders ability to pay with the potential for fine default.

All respondents, except one, thought that the levy should apply only to the principal offence with one respondent suggesting that the levy should increase proportionately where there is more than one victim.

The majority of respondents were generally supportive of creating a statutory power so that the courts could reduce the offender levy where the offender has insufficient means to pay. Although issues flagged up included how the court would make the decision about the ability to pay, quality of information available and that reduction should only be employed as a last resort or in exceptional circumstances.

Although most respondents were broadly supportive of reducing the levy only when accompanied by a compensation order reservations were expressed by other respondents. The reasons included that the mechanism appeared potentially difficult to administer, that each case should be examined on its merits and that there should be statutory provision to allow the court to waive the levy in the interests of justice.

In relation to the levy being deducted from prisoner earnings whilst the offender is in custody reservations suggested that deductions should only occur when the prisoner is in employment, the potential impact on prisoners' families and on staff/prisoner relations. Furthermore concern was expressed in relation to Rule 26 of the European Prison Rules re standards governing prison work, although not contending that the proposal contravened these rules, that as a prisoner's ability to earn money depended on their behaviour additional deductions may impact on rehabilitation.

Respondents supported the proposal that a statutory priority payment order should be provided to safeguard the allocation of payments to victims and victims of crime fund, although one respondent thought the proposal potentially unwieldy and difficult to administer.

In consideration of whether the rate of the levy should be uplifted alongside the value of the fixed penalty when registered as a court fine no predominant view emerged although two respondents agreed without reservation. Points of disagreement included not uplifting the levy if the offender was in custody, unemployed or economically inactive and that the offender's means to pay should be assessed before uplifting the fine or levy.

More than half the respondents felt that under 18s should be excluded from the paying the levy because generally the onus for payment fell on parents or guardians, with potentially greater impact on those on low incomes or benefits. Although one respondent highlighted the potential benefit on young offenders of recognising harm caused to victims by imposing a

reduced levy on those in custody or detention. Another view expressed was that where the offences were serious or repetitive there should be no exclusion and moreover that if young offenders were included then the levy payable should be proportionately lower than for adults.

In relation to equality concerns the consultation identified a greater impact on young males than any other section 75 category because they form the largest grouping in the offending population. Whilst three respondents believed an EQIA is necessary due to the high proportion of the female prisoner population who are in prison due to fine default.

1.7 Vulnerable and Intimidated Witnesses: Clauses 7 – 13

In 2006 the Home Office published a report, *Are special measures for vulnerable and intimidated witnesses working? Evidence from the criminal justice agencies*[50], in which several problems relating to the provision of special measures for vulnerable and intimidated witnesses in England and Wales were identified;

- Identification of Vulnerable and Intimidated Witnesses is cited as an ongoing problem in England and Wales:

  "Early identification by the police and the CPS is vital but the police continued to have difficulty in identifying VIWs, particularly those with learning disabilities, mental disorders or those who are intimidated."

- Cross-agency communication does not always take place which means that even if the police have identified a witness as vulnerable the other agencies working with the witness may not make this identification themselves:

  "The police are usually the first agency to provide VIWs with information about the measures available to them and ascertaining their views. They often did not flag up the vulnerability of witnesses to other agencies, thus preventing them from making their own assessment."

- Lack of existing infrastructure to facilitate special measures:

  "Video recordings were made of only a minority of VIW interviews, even with child witnesses. This may have been in part because some magistrates' courts did not have the facilities to use videos as evidence during the Phase 2 fieldwork."

- Guidance including a minimum period for advance notice of application for special measures may help prevent applications at a late stage. When applications for special measures are lodged at a late state there will not always be the opportunity to prepare the witness on how the proceedings will occur:

[50] Home Office Online Report 01/06, Mandy Burton, Roger Evans, Andrew Sanders, Are special measures for vulnerable and intimidated witnesses working? Evidence from the criminal justice agencies; http://rds.homeoffice.gov.uk/rds/pdfs06/rdsolr0106.pdf

"In many cases the CPS applied for special measures at a late stage, including on the day of the trial. This was accepted practice in relation to measures such as screens, clearing the public gallery and the removal of wigs and gowns. This ignored the value to VIWs of knowing what will happen in court well in advance of the hearing."

- The right to a fair trial versus the rights of the witness:

  "The CPS did not make applications for some prosecution witnesses because defendants were also VIW and they sought parity of treatment. If special measures were available to defendants this problem would not arise."

- Evidence may be needed to access the effectiveness of video recorded evidence versus live evidence:

  "Video recorded evidence and the live television link (CCTV) were highly regarded by practitioners and VIWs who used them. Some practitioners had reservations about televised evidence because they thought it was less convincing than 'live' evidence. There is no research evidence to indicate that acquittals are more likely using these methods, however."

- Alternatives to video recorded evidence may be preferable to the witness:

  "Screens were less highly regarded by most agencies. However, for VIWs themselves there were advantages – screens shield VIWs from the defendant's view whereas CCTV does not."

If the Bill is passed in its current form it will mean an addition to the Criminal Evidence (Northern Ireland) Order 1999 allowing for examination of the accused through an intermediary.

The Department for Justice set out proposals for supporting Vulnerable witnesses in their Victim and Witness Strategic Action Plan 2010-11 in which they committed to the following action points:

"Recognise, and be responsive to, victims' and witnesses' individual needs to ensure that the most appropriate level of support can be provided before, during and after court proceedings;

Developing a model for the provision of an Intermediaries Service to help vulnerable witnesses. Intermediaries will facilitate communication between the police, prosecution and defence legal teams and/or the court and a witness to ensure that the communication process is as complete, coherent and accurate as possible;

Extending the availability of special measures for vulnerable witnesses in criminal cases, both to protect them and to enhance the quality of their evidence."

The Department consulted on the proposed changes to the legislation on vulnerable and intimidated witnesses between March and May 2010. The responses to this consultation have been included in the following commentary[51].

1.7.1 Children[52]

Looking at the consultation responses to the Department of Justice consultation on the introduction of statutory special measures to assist vulnerable witnesses, raising the age limit from 17 to 18 to allow young witnesses to qualify for special measures received widespread support. This measure is in line with the upper age limit of a child as determined by the youth court and definition of a child in the United Nations Convention on the Rights of the Child.

In Scotland special measures automatically apply to children up to the age of 16 while in England and Wales special measures apply up to the age of 17. [53] [54]

Child witnesses would be provided with the opportunity to decline special measures, subject to the courts approval that this would not diminish their evidence. The Courts are given specific criteria in how they should determine whether or not the witness should be allowed to decline special measures. The Department have commented in the consultation response summary document that;

> *"In relation to the concerns raised about possible abuse of allowing for a more flexible system, it should be noted that the presumption will remain in the legislation that young witnesses will give video recorded evidence in chief and further evidence by live link."*

Again in response to the Department of Justice consultation this measure was given wide support in the context that it gives the witness a more flexible approach.

The age of a Child Complainant in the Criminal Evidence (Northern Ireland) Order 1999 will be amended by this Clause from '17' to '18'. This was given broad support by respondents to the Department's consultation.

1.7.2 Sexual Offences[55]

[51] Department of Justice, Summary of responses to the consultation on the statutory special measures to assist vulnerable and intimidated witnesses give their best evidence in criminal proceedings, September 2010; http://www.dojni.gov.uk/index/public-consultations/archive-consultations/the_department_of_justice_s_response_~_assist_vulnerable_and_intimidated_witnesses_give_their_best_evidence_in_criminal_proceedings.pdf

[52] Clauses 7, 8 and 13.

[53] Scottish Executive, Vulnerable Witnesses (Scotland) Act 2004, Information Guide, 2005; http://www.scotland.gov.uk/Resource/Doc/37432/0010040.pdf

[54] Youth Justice and Criminal Evidence Act 1999, Part 2 Chapter 1; http://www.legislation.gov.uk/ukpga/1999/23/contents

[55] Clause 9.

This provision allows for adult complainants to give video recorded evidence in chief with the exception of proceedings in a magistrates' court. There was overall support for this Clause as it might address the rate of complainant withdrawal from giving evidence. Some respondents were concerned that it may compromise the defendant's right to a fair trial.

1.7.3 Support, video evidence and intermediaries[56]

The presence of a supporter in the live link room is formalised in the legislation. Looking at the consultation responses to the Department of Justice consultation on the introduction of statutory special measures to assist vulnerable witnesses, this clause received widespread support. The Department commented that there would be guidance provided on who can act as a supporter; what skills are needed to fulfil this role; and what the required standards for the supporter's conduct are.

Restrictions are to be relaxed on giving evidence in addition to video evidence in chief which are contained within the Criminal Evidence (Northern Ireland) Order 1999;

> *(b) the witness may not give evidence in chief otherwise than by means of the recording—.*
>
> *(i) as to any matter which, in the opinion of the court, has been dealt with adequately in the witness's recorded testimony, or*
>
> *(ii) without the permission of the court, as to any other matter which, in the opinion of the court, is dealt with in that testimony.*[57]

This Article is amended so that issues which have already been dealt with in the recorded testimony are no longer restricted in terms of supplementary evidence in chief. There no longer needs to be a material change to the substance of the evidence for supplementary testimony to be approved by the court.

Some respondents to the Department's consultation were concerned that this amendment would impact on the defendant's right to a fair trial but the majority of respondents were content with this amendment.

The purpose of an intermediary is to act as a facilitator to communicate on behalf of the accused. If for reasons of age, mental health, learning impairment or social functioning, the witness is unable to participate effectively in the court proceedings then an intermediary may be used in order that the defendant receives a fair trial.

The intermediary can be discharged of at any time throughout the proceedings if it is thought to be unnecessary in order for the defendant to receive a fair trial; the intermediary can also be reinstated at any time.

[56] Clauses 10-12.
[57] The Criminal Evidence (Northern Ireland) Order 1999,

Respondents to the Department's consultation were broadly in favour of the establishment of an intermediaries' service but were particularly concerned about the need for guidance on the role of an intermediary, including who can act as an intermediary, their training and how this would be resourced.

2. Live Links: Clauses 14 – 19

This part of the Bill aims to expand the use of live link facilities in courts. Live link is where a room is provided outside the court to enable the witness to give evidence via a live television link to the courtroom. The witness will be able to see those in the courtroom and those inside, including the defendant, will be able to see the witness via the television screen. The proposals will enable live links to be used not only by witnesses but also by vulnerable defendants and patients with mental health problems.

Six provisions are included[58]:

- Providing live links between courts and psychiatric hospitals for patients detained under Part 3 of the Mental Health (Northern Ireland) Order 1986[59];
- Strengthening live links at preliminary hearings in the High Court by putting them on a statutory footing as opposed to the court's inherent jurisdiction;
- Extending live links at preliminary hearings on appeals to the county court where the appellant is likely to be in custody;
- Providing live links at sentencing hearings on appeals to the county court where the appellant is likely to be in custody;
- Extending the use of live links in the Court of Appeal in relation to specified criminal appeal proceedings if a party to those proceedings is likely to be in custody; and
- Making provision for an accused person of any age who has a physical disability or suffers from a mental disorder to make an application to the court to give evidence through a live link. This relates to proceedings in the magistrates' court, Crown Court and any appeals in the county court. The court must be satisfied as to the physical or mental disability and that it's in the interests of justice to provide a live link.

The six clauses as a package *'are designed to increase the use of live links in courts, prisons and now hospital psychiatric units providing a cost effective and secure means for patients/prisoners to participate in hearings'*[60]. These provisions do not prevent a defendant

[58] Justice Bill 2010 – Explanatory and Financial Memorandum
http://www.dojni.gov.uk/index/media-centre/justice_bill_efm.doc
[59] Mental Health (Northern Ireland) Order 1986
http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Primary&PageNumber=42&NavFrom=2&activeTextDocId=2934104
[60] Justice Bill 2010 – Explanatory and Financial Memorandum
http://www.dojni.gov.uk/index/media-centre/justice_bill_efm.doc

or patient from retaining the right to attend a hearing or consult privately with their legal representative before, during or after a live link.

At a recent Agenda NI conference (October 2010) 'Examining the Justice Bill', the Chair of the Bar Council, Adrian Colton QC, commented that the use of live links had the potential to dilute evidence and warned of the potential danger of live links becoming the norm for vulnerable witnesses. Mr Colton also outlined that video link evidence may have less impact on the jury and that vulnerable witnesses can be protected from unreasonable questioning by counsel due to the role of the trial judge.

3 Policing and Community Safety Partnerships: Clauses 20 - 35

Part 3 of the Bill proposes to merge the functions of the existing Community Safety Partnership (CSP) and District Policing Partnership (DPP) in each local authority area into a single Policing and Community Safety Partnership (PCSP) and sets out functions, duties and codes of practice of the new body.

Partnerships for policing have been introduced in a range of contexts following conflict as a mechanism for establishing new ways of working to deal with legacies attached to the role of police in conflict[61]. However, there is also a body of literature that promotes such partnership working between police and communities as a means for addressing local problems related to crime with local solutions devised by local people[62].

The DPPs and CSPs in Northern Ireland emerged from the Belfast Agreement 1998, where the DPPs were a recommendation of the Patten Review in 1999[63] and CSPs being developed from the Community Safety Strategy of 2002[64], following a recommendation in the Criminal Justice Review of 2000[65]. The former were established in legislation by the Police (Northern Ireland) Act 2000 (Sections 14-19) and the latter by the Justice (Northern Ireland) Act 2002 (Section 72). However, the Review and the Community Safety Strategy only saw the CSPs as an interim measure pending the implementation of the Review of Public Administration (RPA), suggesting they be merged with the DPPs, as has also been recommended by successive reports by Criminal Justice Inspection Northern Ireland[66].

61 See, for example, Bruce Baker, 'A Policing Partnership for Post-War Africa? Lessons from Liberia and southern Sudan' in Policing and Society (2009) 19:4 372-389; Monique Marks et al, 'Who should the police be? Finding a new narrative for community policing in South Africa' in Police Practice and Research (2009) 10:2 145-155.

62 For example, Carolyn Coggan and Laurie Gabites, 'Safety and local government partnerships and collaboration: How can all the intersections and actually do something about it' in Social Policy Journal of New Zealand (2007) 32 94-105; Daniel Gilling, 'Community safety and Social Policy' in European Journal on Criminal Policy and Research (2001) 9:4 381-400; Adam Cranford and Mario Motassa, Community Safety Structures: An International Review, March 2000.

63 Independent Review on Policing for Northern Ireland, A New Beginning: Policing in Northern Ireland (1999) Recommendation 27, p.113.

64 Community Safety Unit, Creating a Safer Northern Ireland through Partnership: A Strategy Document (2002) p.42.

65 Criminal Justice Review Group, Review of the Criminal Justice System in Northern Ireland (2000), Recommendation 196, p.425.

66 Criminal Justice Inspection Northern Ireland, A Inspection of Community safety Partnerships, November 2006, p.vii; Criminal Justice Inspection Northern Ireland, Policing with the Community: An Inspection of Policing with the Community in Northern Ireland, March 2009, p.ix.

The consultation document produced in 2010 proposed merging the DPPs and CSPs for the following reasons[67]:

- For a more joined up approach;
- To complement the introduction of community planning;
- Streamlining to make better use of resources; and
- There is a consensus to move to single partnerships

Indeed, responses to the consultation were generally in agreement with moving to single partnerships and the lack of implementation of the RPA was not seen as a hindrance to doing so[68].

Single partnerships are the norm elsewhere in these islands:

England[69] - Crime and Disorder Reduction Partnerships (CDRPs) are located within local authority areas for the development of strategies to reduce crime. These are established through the Crime and Disorder Act 1998[70] and the Police and Justice Act 2006. The Home Office has recently been consulting on 'removing unnecessary prescription' on the operation of CDRPs, proposing to repeal regulations governing them, to afford greater flexibility at the local level[71].

Wales[72] - Community Safety Partnerships (CSPs) in Wales are governed by the same legislation as in England and are likewise located at local authority level, but the devolved administration monitors the performance of CSPs in partnership with the Home Office, with which some of the devolved responsibilities overlap.

Scotland[73] - The Community Safety Partnerships (CSPs) in Scotland are similar to those in England and Wales at the local authority level, except they are not governed by the same legislation. Co-ordination and strategic guidance are undertaken by the Community Safety Unit in the Scottish administration.

Republic of Ireland[74] - Community safety is the remit of the Department of Justice and Law Reform. A National Crime Council report of 2003 recommended a structure of Crime Reduction Sub-Committees for each county and city area[75]. Joint Policing Committees were established in each local authority area by the Garda Síochána Act 2005[76] and a discussion

67 Northern Ireland Office, Local Partnership Working and Community Safety: A Consultation Paper, March 2010, p.7.
68 Department of Justice, Consultation on Local Partnerships Working on Policing and Community Safety: Report on Responses and Way Forward, September 2010, pp.8, 4.
69 http://webarchive.nationalarchives.gov.uk/+/http://www.homeoffice.gov.uk/crime-victims/reducing-crime/community-safety/.
70 Sections 5-6, 17.
71 Home Office, Policing in the 21st Century: Re-connecting Police and the People, July 2010, pp.38-9.
72 http://wales.gov.uk/topics/housingandcommunity/safety/?lang=en.
73 http://www.scotland.gov.uk/Topics/Justice/public-safety/17141.
74 http://www.justice.ie/en/JELR/Pages/Safety_and_security.
75 National Crime Council, A Crime Prevention Strategy for Northern Ireland: Tackling the Concerns of Local Communities (2003), p.32.
76 Sections 35-38.

document of 2009[77] and associated responses found this structure of local partnerships the most effective method of tackling crime[78].

The proposed legislation reflects some of the models from other contexts and feedback from the consultation process. The proposed model is at Figure 1.

3.1 Functions

Community Safety Partnerships (CSPs) and District Policing Partnerships (DPPs) are to be merged into Policing and Community Safety Partnerships (PCSPs), with District Policing and Community safety Partnership (DPCSP) in each policing district in Belfast[79]. This is in line with the situation elsewhere and with the majority of consultation responses, however, there were some concerns that the level of accountability of the police, for which the partnerships were envisaged, would be diluted by the reduction in the number of bodies[80]. The PCSPs are under the control of a joint committee of the Policing Board and the Department of Justice.

The functions of the PCSPs are[81]:

- Provide views on policing matters[82]
- Monitor performance of the police[83]
- Make arrangements for obtaining the co-operation of the public on crime prevention and community safety[84]
- Make arrangements for obtaining the views of the public on crime prevention and community safety[85]
- Act as a general forum for discussion[86]
- Prepare plans for reducing crime and enhancing community safety[87]
- Identify targets relating to plans[88]
- Provide financial or other support to initiatives to reduce crime and enhance community safety[89]

[77] Department for Justice, Equality and Law Reform, White Paper on Crime: Crime Prevention and Community Safety, July 2009.
[78] Department for Justice, Equality and Law Reform, White Paper on Crime: Crime Prevention and Community Safety – Summary of Submissions, February 2010.
[79] Clause 20.
[80] Mick Beyers, Committee on the Administration of Justice response to 'Local Partnership Working on Policing and Community safety: A Consultation Paper', 8 June 2010, p.2.
[81] Clause 21.
[82] DPP function, Police (NI) Act 2000, Section 16(1)(a).
[83] DPP function, Section 16(1)(b).
[84] DPP function, Section 16(1)(c)(ii).
[85] DPP function, Section 16(1)(c)(i).
[86] DPP function, Section 16(1)(d).
[87] CSP function, Justice (NI) Act 2002, Section 72(4)(b).
[88] CSP function, Section 72 (4)(c).

- Other functions conferred on the PCSPs by statutory provision[90]

The first three functions are 'restricted functions' for the policing committee of the PCSP, being the DPP functions that are not considered appropriate for the full Partnership. The CSP function to conduct research into the issues people in the area feel ought to be addressed[91] is missing from the list. The functions of the Irish Joint Committees are to review patterns of crime, give advice, arrange public meetings and the additional function to establish and co-ordinate local policing fora[92]. Partnerships in England and Wales have the additional function of making reports or recommendations to the local authority for action[93].

The functions listed above reflect the original functions of the DPPs and CSPs, as indicated in the Police (NI) Act 2000 and Justice (NI) Act 2002 respectively, to provide views, monitor performance, obtain views and co-operation of the public and make plans with targets. The legislation for England and Wales is stronger in the Police and Justice Act 2006, which empowers the equivalent committees to review or scrutinise decisions made or actions taken in relation to crime and disorder functions and to make reports or recommendations to the local authority[94]. In turn, the local authority is accountable to members of the public to provide answers, through the committee if applicable, on matters relating to crime and disorder[95]. The scrutiny powers and accountability to the public features of the Bill are therefore weaker than those in place in England and Wales.

The Bill is made more complex by the repetition of provisions for the Belfast PCSP with two DPCSPs[96]. However, this may facilitate the amalgamation of PCSPs in the event of the implementation of RPA, creating two tier systems, as has happened in England, where the merging of Partnerships for resource reasons has been possible at the strategic level, but there remains a necessity for closer local partnership for connection with communities on the ground. Figure 2 shows policing districts in Northern Ireland, with two districts for Belfast.

A code of practice for partnerships is to be issued by the joint committee, which may include the following[97]:

- Procedures for meetings
- Holding of public meetings
- Notice of meetings
- Submission of reports to the PCSP or DPCSP
- Arrangements for putting questions to the police

[89] CSP function, Section 72(4)(d).
[90] DPP function, Police (NI) Act 2000, Section 16(1)(e).
[91] Justice (NI) Act, Section 72(4)(a).
[92] Garda Síochána Act 2005, Section 36(2).
[93] Crime and Disorder Act 1998, Section 6(2)(c) and Police and Justice Act 2006, Section 19(1)(b).
[94] Section 19(1).
[95] Section 19(3).
[96] For example, Clause 22.
[97] Clause 23.

- Monitoring of the police by the policing committee
- Arrangements for consultation and discussion with the public
- Dealings with the Policing Board, department and joint committee

The same provisions are in the current legislation for DPPs[98]. There is no such code of practice in the Irish legislation, but that for England and Wales includes 'regulations' to be issued by the Secretary of State, which may include co-opting additional members, the frequency of scrutiny, information required to be provided, restrictions on information provided, arrangements to summon employees of the responsible authorities, referral of matters to the local authority and periods of reporting and receiving information[99].

Policing committees may make arrangements to facilitate consultation within local communities, for which bodies may be set up[100]. The Policing Board must give approval for such actions and may pay reasonable costs, or the Board may intervene itself if it is felt that insufficient consultation has taken place. This is a new function that may equate to the power of Irish Joint Policing Committees to establish local policing fora[101], although in this case with deference to the Policing Board.

Public bodies have a statutory duty to have due regard for the impact of actions on crime and disorder and to promote community safety[102]. Guidance on how to comply with this duty may be issued by the Department of Justice in consultation with other Departments. This is a new provision, which is already included in the legislation for England and Wales[103] and the Republic of Ireland[104], with the exception that the Northern Ireland legislation will impose a duty on all public bodies, the British and Irish provisions only covering local authorities.

Schedule 1 gives additional provisions of the PCSPs, with Schedule 2 providing the same for DPCSPs. This equates to Schedule 3 of the Police (NI) Act 2000, which sets out additional provisions for DPPs. Schedule 8 of the Police and Justice Act 2006 sets out further provisions for Partnerships in England and Wales, but is less prescriptive than that of the Bill, allowing for more flexibility at local authority level, and legislation for the Republic of Ireland gives suggestions for guidelines to be issued by the Minister for Justice and Law Reform[105].

Provisions cover interpretation of terminology, Partnership composition, appointment of political members, independent members, representatives of designated organisations, removal of members, disqualification, establishment of chair and vice-chair, procedure, constitution of the policing committee, procedure for the policing committee, other

[98] Police (NI) Act 2000, Section 19(4).
[99] Police and Justice Act 2006, Section 20(5).
[100] Clause 33.
[101] Garda Síochána Act 2005, Section 36(2)(d)-(e).
[102] Clause 34.
[103] Crime and Disorder Act 1998, Section 17.
[104] Garda Síochána Act 2005, Section 37.
[105] Garda Síochána Act 2005, Section 35(2).

committees, indemnities, insurance, finance, validity or proceedings, disclosure of interests, joint PCSPs and the Belfast PCSP.

3.2 Membership

PCSP composition is to be 8, 9 or 10 political members, the number of independent members to be one less than the number of political members and at least four representatives of organisations[106]. This gives a minimum composition of 19 members, compared with 15, 17 or 19 for the DPPs[107]. Representatives of organisations are a new addition, DPPs only having political and independent members. The policing committee will comprise the political and independent members only[108]. The composition is a reduction from the original proposed 32, in response to the suggested numbers of between 12 and 25 during the consultation[109]. Membership is shown at Figure 3.

Concerns raised during the consultation that certain groups need to be assured places in the PCSP, such as Trades Unions[110], minority groups[111] or women[112], are partly reflected in the necessity for the PCSP to be 'reflective of the community in the district'[113], but there is no specific provision for, say, a gender balance. The reduction in the number of bodies, which will reduce again in the event of the implementation of RPA, reduces the number of places available for diversity of representation.

3.3 Accountability and Oversight

PCSPs are required to issue annual reports within 3 months of the end of the financial year[114]. This is the same provision as the current legislation for both DPPs[115] and CSPs[116] and for the Irish Joint Policing Committees[117].

There are obligations for additional reporting by the PCSPs to the joint committee, Belfast PCSP to the joint committee, DPCSPs to the Belfast PCSP, policing committees to the Policing Board, the policing committee of the Belfast PCSP to the Policing Board and the policing committee of the DPCSPs to the policing committee of the Belfast PCSP when

[106] Schedule 1, Paragraphs 3, 4 and 7.
[107] Police (NI) Act 2000, Schedule 3, Paragraph 2.
[108] Schedule 1, Paragraph 12.
[109] Department of Justice, *Consultation on Local Partnerships Working on Policing and Community Safety: Report on Responses and Way Forward*, September 2010, p.10.
[110] NIPSA response to 'Local Partnership Working on Policing and Community safety: A Consultation Paper', 8 May 2010, p.1.
[111] Mick Beyers, Committee on the Administration of Justice response to 'Local Partnership Working on Policing and Community safety: A Consultation Paper', 8 June 2010, p.7.
[112] Women's Support Network response to 'Local Partnership Working on Policing and Community safety: A Consultation Paper' (2010).
[113] Schedule 1, Paragraph 4(3).
[114] Clauses 24-26.
[115] Police (NI) Act 2000, Section 17.
[116] Justice (NI) Act 2002, Section 72(4)(e).
[117] Garda Síochána Act 2005, Section 36(5).

required[118]. The reporting establishes a level of accountability of the Partnerships to the Policing Board and echoes the provisions for DPPs under the existing legislation[119], albeit under the more complex arrangements of the PCSPs, DPCSPs and associated policing committees. The British and Irish legislation does not contain this level of scrutiny of Partnerships, rather the focus is on the scrutiny by the Partnerships of the police.

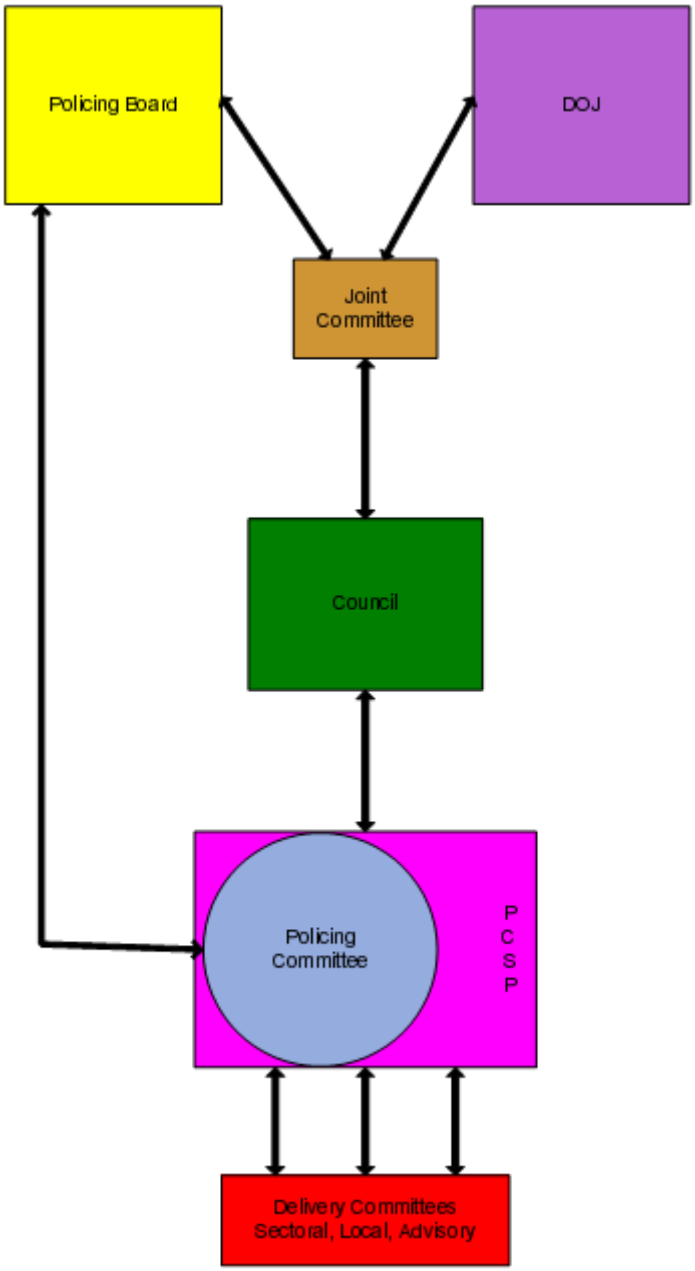
The joint committee must ascertain the level of public satisfaction with the Partnerships and the Policing Board must do the same with the policing committees[120]. This is a new level of scrutiny which is not contained in the British or Irish legislation.

Concerns were raised during the consultation that the proposed models appeared to reflect the more 'closed' model of the CSPs[121], rather than the more public DPPs, consultees generally in agreement that the functions of both Partnerships are retained[122]. The nested model of a policing committee within the wider Partnership appears to incorporate most functions of both, with some exceptions, such as the loss of the research function.

Accountability was also a theme raised in the consultation, with hopes of streamlining[123]. PCSPs will be located at local authority level, but will report to the joint committee, which comprises representatives of the Department and the Policing Board (see Figure 1). Funding will also be provided from both the Policing Board and the Department[124].

[118] Clauses 27-32.
[119] Police (NI) Act 2000, Section 18.
[120] Clause 35.
[121] See also the review of CSPs by Criminal Justice Inspection Northern Ireland, which confirms this view: Criminal Justice Inspection Northern Ireland, *An Inspection of Community safety Partnerships*, November 2006.
[122] Department of Justice, *Consultation on Local Partnerships Working on Policing and Community Safety: Report on Responses and Way Forward*, September 2010, p.12.
[123] Department of Justice, *Consultation on Local Partnerships Working on Policing and Community Safety: Report on Responses and Way Forward*, September 2010, p.11.
[124] Schedule 1, Paragraph 17.

Figure 1: The Proposed Model for Policing and Community Safety Partnerships[125]



[125] Department of Justice, *Consultation on Local Partnerships Working on Policing and Community Safety: Report on Responses and Way Forward*, September 2010, p.15.

Figure 2: Police Districts in Northern Ireland[126]

[126] From http://www.psni.police.uk/.

Figure 3: Policing and Community Safety Partnership Membership

4 Sport: Clauses 36 - 55

This paper assesses the sports law and spectator control provisions to be included in the Bill. Four different provisions will be assessed individually. The purpose of the proposals is to promote good behaviour by fans of certain sports in Northern Ireland, in particular Football, GAA sports and Rugby Union. The aims of the sports law and spectator control provisions *'are to create a safe and welcoming environment at major sporting matches and to tackle violence and bad behaviour'*[127].

Within each individual provision the position in England and Wales[128] will be assessed by looking at legislation, outlining incidents that have occurred within any given provision and presenting information in tables for the numbers of various offences committed (this will focus on football as it provides the most up to date and detailed data). The responses to the consultation document on sports law and spectator controls will also be considered. The purpose of the provisions is to provide new criminal laws to complement the sports ground safety regime enacted under the Safety of Sports Grounds (Northern Ireland) Order 2006 (The 2006 Order)[129]. The 2006 Order provides for:

[127] Committee for Justice 'Departmental Briefing on Proposals for Sports Law' – Official Report (Hansard) 3rd June 2010 http://www.niassembly.gov.uk/record/committees2009/Justice/100603Briefing%20on%20Proposals%20for%20Sports%20Law.pdf

[128] In the Republic of Ireland, public order legislation, such as the Criminal Justice (Public Order) Act 1994, regulates behaviour at sporting events, along with a code of practice, which references this legislation: Department of Education, *Code of Practice for Safety at Sports Grounds*, January 1996, pp.151-155; likewise in Scotland, legislation such as the Police, Public Order and Criminal Justice (Scotland) 2006 impacts on conduct during sporting events.

[129] Safety of Sports Grounds (Northern Ireland) Order 2006 http://www.opsi.gov.uk/si/si2006/20060313.htm

a mandatory sports ground certification scheme to increase safety at Northern Ireland's major sporting events. Alongside the focus on safety at grounds, a key element of the order is the promotion of good behaviour and the combating of misbehaviour among spectators[130].

4.1 New offences of offensive chanting, missile-throwing and unauthorised pitch incursion: Clauses 37-39

The Bill provides that offences should be created covering offensive chanting, missile-throwing and unauthorised pitch incursion. Chanting is considered offensive if it consists of or includes matter which is threatening, abusive or insulting to a person by reason of that person's colour, race, nationality (including citizenship), ethnic or national origins, religious belief, sexual orientation or disability[131]. The new offence is designed to deal with particular instances of chanting by a spectator or section of a crowd inside grounds; the provision being needed due to the possibility of offensive chanting leading to crowd-control problems which would be counter-productive to the aims of creating a safe and welcoming sporting environment.

The 2006 Order makes provision for spectators to move from spectator areas onto the playing pitch in the event of an emergency, incumbent on this is the removal of barriers that are designed to keep spectators off the playing pitch. The Bill seeks to make it an offence for spectators to enter the playing pitch unauthorised.

In relation to missile-throwing the Bill seeks to allow persons to be prosecuted for throwing missiles or objects onto the playing pitch, whether targeted or thrown aimlessly[132].

Under the provisions, the offences above would be triable summarily in a magistrates' court where the maximum sentence available would be a fine of £1,000. These offences would apply to designated football, GAA and Rugby Union matches[133]. In relation to football, according to the consultation document, this would apply to matches played in Northern Ireland by teams in the Irish Premier League, First Division, Setanta Cup, any Northern Ireland team playing in the Eircom League (e.g. Derry City at present) and the Northern Ireland international team[134]. With regard to GAA and rugby union, designated matches are those matches played at venues in Northern Ireland designated as requiring a safety

[130] Committee for Justice 'Departmental Briefing on Proposals for Sports Law' – Official Report (Hansard) 3rd June 2010 http://www.niassembly.gov.uk/record/committees2009/Justice/100603Briefing%20on%20Proposals%20for%20Sports%20Law.pdf

[131] The draft Public Assemblies, Parades and Protests Bill also seeks to forbid language that is "threatening, abusive, sectarian, obscene or racist" in a proposed Code of Conduct for all 'public assemblies'.

[132] Committee for Justice 'Departmental Briefing on Proposals for Sports Law' – Official Report (Hansard) 3rd June 2010 http://www.niassembly.gov.uk/record/committees2009/Justice/100603Briefing%20on%20Proposals%20for%20Sports%20Law.pdf.

[133] See Schedule 3 of the Bill.

[134] Northern Ireland Office consultation – 'Sports law and spectator controls' July 2009 http://www.nio.gov.uk/sports_law_and_spectator_controls_-_a_consultation_undertaken_by_the_northern_ireland_office.pdf-2.pdf

certificate or with a stand requiring a safety certificate under the 2006 Order; these are grounds that accommodate at least 5,000 people[135].

In England and Wales The Football (Offences) Act 1991[136] makes provision for the offences of indecent or racialist chanting, missile-throwing and going onto the playing area (pitch incursion). The legislation is set out as follows[137]:

Section 2 Throwing of missiles

It is an offence for a person at a designated football match to throw anything at or towards –

(a) the playing area, or any area adjacent to the playing area to which spectators are not generally admitted, or

(b) any area in which spectators or other persons are or may be present, without lawful authority or lawful excuse (which shall be for him to prove)

Section 3 Indecent or racialist chanting

(1) It is an offence to take part at a designated football match in chanting of an indecent or racialist nature.

(2) For this purpose –

(a) "chanting" means the repeated uttering of any words or sounds in concert with one or more others; and

(b) "of a racialist nature" means consisting of or including matter which is threatening, abusive or insulting to a person by reason of his colour, race, nationality (including citizenship) or ethnic or national origins.

Section 4 Going onto the playing area

It is an offence for a person at a designated football match to go onto the playing area, or any area adjacent to the playing area to which spectators are not generally admitted, without lawful authority or lawful exercise (which shall be for him to prove).

A high profile example of offensive chanting occurred in England at a Premier League match between Portsmouth and Tottenham at Fratton Park, Portsmouth in September 2008. Former Tottenham defender Sol Campbell was subjected to racist and homophobic chanting from a section of the Tottenham crowd, contrary to the Football Offences Act 1991. Four defendants admitted their role in the chanting by

[135] Committee for Culture, Arts and Leisure 'Sports law and spectator safety' – Official Report (Hansard) 22nd October 2009 http://www.niassembly.gov.uk/record/committees2009/CAL/091022_SportsLawSpectatorSafety.pdf
[136] Football (Offences) Act 1991 http://www.opsi.gov.uk/acts/acts1991/Ukpga_19910019_en_1
[137] See above

pleading guilty and were handed a three-year football banning order, fined £370, ordered to pay £120 in costs and £15 towards a victim surcharge fund[138]. Magistrate Susan Wardle said:

> *There were families present, very young children. We also heard from witnesses who found the behaviour disgusting and embarrassing…Whether or not Mr Campbell was offended, decent members of the public found this very offensive and so did the bench. Anyone who indulges in this disgusting behaviour will be dealt with very severely by the courts[139].*

The comments above from the Magistrate highlight that the offensiveness of the chanting need not merely apply to the individual concerned but can constitute a criminal offence where members of the public are present or indeed offended.

An example of the courts passing sentence in relation to missile-throwing stemmed from an English Championship match between Cardiff City and Swansea at Ninian Park, Cardiff in April 2009. A 'supporter' pleaded guilty to throwing a missile (piece of chewing gum) onto the playing area contrary to the Football Offences Act 1991 for which he received a three year banning order, £200 fine, ordered to pay £60 costs and pay a victim surcharge of £15[140]. In the same match the referee was injured by a coin thrown from the crowd. This highlights that the courts may impose penalties regardless of the type of missile thrown or previous character of the offender[141].

In relation to pitch incursion a Sheffield Wednesday supporter was found guilty of entering the playing area contrary to section 4 of the Football (Offences) Act 1991; he was fined £150 and ordered to pay £85 in costs and a £15 victim surcharge.

4.2 New offences relating to having alcohol, bottles and flares and being drunk at sporting events and in transport to and from matches: Clauses 41-44

According to the consultation document, the Bill seeks to make it an offence *'to bring throw-able drink containers such as bottles and cans into grounds or to try to gain entry with these items'*[142]. Furthermore the provisions exclude the admittance or possession of flares inside grounds. However the use and possession of fireworks are already regulated under existing law in Northern Ireland.

[138] 'Four banned from matches over abusive chants against Sol Campbell' The Guardian 20th January 2009 http://www.guardian.co.uk/uk/blog/2009/jan/20/sol-campbell-abusive-chanting
[139] See above
[140] 'Supporter handed three-year ban for missile-throwing incident' The Guardian 20th April 2009 http://www.guardian.co.uk/football/2009/apr/20/supporter-banned-cardiff-city-swansea-missile
[141] See above
[142] Northern Ireland Office consultation – 'Sports law and spectator controls' July 2009 http://www.nio.gov.uk/sports_law_and_spectator_controls_-_a_consultation_undertaken_by_the_northern_ireland_office.pdf-2.pdf

The main focus of this section of the Bill is to control the carrying and consumption of alcohol at certain sports events[143]. This will be applicable not only to the possession of alcohol inside grounds but also on hired transport en route to and from grounds[144]. This would apply to specially hired motor vehicles able to carry 9 passengers or more that are being used to attend a designated match. In relation to public transport under the Northern Ireland Railways By-Laws, it is already an offence *'to be intoxicated or to take alcohol onto trains'*[145]. The new offence of being drunk inside a sports ground is also created under this part of the provisions.

In relation to the possession and consumption of alcohol at sports grounds, this *'would include periods before, during and after matches, because alcohol can be a key ingredient in exacerbating disorder on the part of fans, especially at some crucial matches'*[146]. Furthermore the Bill sets out to provide that:

> *Possession of alcohol within the ground and in sight of the pitch would be banned from two hours before the game until one hour after the game. Possession of alcohol in private viewing facilities would have a lesser restriction, with the ban starting 15 minutes before the game and lasting until 15 minutes after the game*[147].

In relation to *'private viewing facilities'* this relates to corporate boxes which provide corporate entertainment and where spectators can consume alcohol from behind a screen which is not in sight of the playing pitch[148].

The offences would be triable summarily in a magistrates court with maximum penalties as follows:

- Knowingly allowing alcohol on a vehicle, a level 4 fine which is currently a maximum fine of £2,500
- Being in possession of alcohol, flares, etc, either a level 3 fine (currently a maximum fine of £1,000) or three months imprisonment or both
- Being drunk at a ground or in a vehicle, (including travelling outside of Northern Ireland) a level 2 fine (currently a maximum of £500)

[143] Similar provisions for the control of alcohol were proposed in the draft Public Assemblies, Parades and Protests Bill (Clauses 40-43); in the Republic of Ireland, legislation regarding intoxicating liquor and disposable containers at 'events' is referred to in Sections 20-22 of the Criminal Justice (Public Order) Act 1994.

[144] Committee for Justice 'Departmental Briefing on Proposals for Sports Law' – Official Report (Hansard) 3rd June 2010 http://www.niassembly.gov.uk/record/committees2009/Justice/100603Briefing%20on%20Proposals%20for%20Sports%20Law.pdf

[145] Northern Ireland Office consultation – 'Sports law and spectator controls' July 2009 http://www.nio.gov.uk/sports_law_and_spectator_controls_-_a_consultation_undertaken_by_the_northern_ireland_office.pdf-2.pdf

[146] Committee for Justice 'Departmental Briefing on Proposals for Sports Law' – Official Report (Hansard) 3rd June 2010 http://www.niassembly.gov.uk/record/committees2009/Justice/100603Briefing%20on%20Proposals%20for%20Sports%20Law.pdf

[147] See above

[148] Committee for Culture, Arts and Leisure 'Sports law and spectator safety' – Official Report (Hansard) 22nd October 2009 http://www.niassembly.gov.uk/record/committees2009/CAL/091022_SportsLawSpectatorSafety.pdf

These offences would apply to designated football, GAA and Rugby Union matches. These designated matches are those that are outlined above.

In relation to offences of alcohol in transport to and from matches played outside Northern Ireland, the provisions include the designated football matches listed above, GAA matches involving county teams and Rugby Union matches involving the Ulster or Ireland rugby team.

Provision for these offences in England and Wales is legislated for by Sporting Events (Control of Alcohol etc) Act 1985[149]. In summary the legislation is:

> *An Act to make provision for punishing those who cause or permit intoxicating liquor to be carried on public service vehicles and railway vehicles carrying passengers to or from designated sporting events or who possess intoxicating liquor on such vehicles and those who possess intoxicating liquor or certain articles capable of causing injury at designated sports grounds during the period of designated sporting events, for punishing drunkenness on such vehicles and, during the period of designated sporting events, at such grounds and, where licensed premises or premises in respect of a club is registered (for the purposes of the Licensing Act 1964) are within designated sports grounds, to make provision for regulating the sale or supply of intoxicating liquor and for the closure of bars[150].*

The tables below present information on arrests of football supporters by selected offences (i.e. those discussed above) for the 2008/09 season (the most recent data available):

Table 3 Arrests by selected offence England and Wales International matches 2008/09

Type of offence	International matches (Home)	International matches (Away)
Violent Disorder	4	6
Public Disorder	11	0
Missile Throwing	0	3
Racist Chanting	0	0
Pitch Incursion	0	0
Alcohol Offences	5	0

[149] Sporting Events (Control of Alcohol etc) Act 1985.
http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1985/cukpga_19850057_en_1
[150] See above

Possession of Offensive Weapon	0	0
Breach of Banning Order	2	0
TOTAL	**22**	**9**

Source: Home Office[151]

Table 4 Arrests by selected offence European Club Competition matches 2008/09

Type of offence	**European Club matches (in England and Wales)**	**European Club matches (outside of England and Wales)**
Violent Disorder	13	8
Public Disorder	53	9
Missile Throwing	2	0
Racist Chanting	3	0
Pitch Incursion	6	2
Alcohol Offences	21	8
Possession of Offensive Weapon	3	2
Breach of Banning Order	0	0
TOTAL	**101**	**29**

Source: Home Office[152]

Table 5 Arrests by selected offence in Premier League 2008/09

Type of Offence	**Number of arrests**
Violent Disorder	135

[151] Home Office – Statistics on arrests and banning orders 2008-09
http://www.homeoffice.gov.uk/crime/football-banning-orders/
[152] See above

Public Disorder	604
Missile Throwing	19
Racist Chanting	20
Pitch Incursion	92
Alcohol Offences	658
Possession of Offensive Weapon	10
Breach of Banning Order	29
TOTAL	**1567**

Source: Home Office[153]

Table 6 Arrests by selected offence in Championship 2008/09

Type of Offence	**Number of arrests**
Violent Disorder	122
Public Disorder	454
Missile Throwing	12
Racist Chanting	8
Pitch Incursion	62
Alcohol Offences	272
Possession of Offensive Weapon	4
Breach of Banning Order	24
TOTAL	**958**

Source: Home Office[154]

[153] Home Office – Statistics on arrests and banning orders 2008-09
http://www.homeoffice.gov.uk/crime/football-banning-orders/

Table 7 Arrests by selected offence in League 1 2008/09

Type of Offence	Number of arrests
Violent Disorder	48
Public Disorder	244
Missile Throwing	13
Racist Chanting	5
Pitch Incursion	52
Alcohol Offences	139
Possession of Offensive Weapon	3
Breach of Banning Order	16
TOTAL	**520**

Source: Home Office[155]

Table 8 Arrests by selected offence in League 2 2008/09

Type of Offence	Number of arrests
Violent Disorder	17
Public Disorder	169
Missile Throwing	2
Racist Chanting	3
Pitch Incursion	25
Alcohol Offences	67
Possession of Offensive Weapon	7

[154] See above
[155] Home Office – Statistics on arrests and banning orders 2008-09
http://www.homeoffice.gov.uk/crime/football-banning-orders/

Breach of Banning Order	8
TOTAL	**298**

Source: Home Office[156]

4.3 Ticket Touting: Clause 45

A new offence of ticket touting for certain football matches to be played inside and outside Northern Ireland will also be created. This is to ensure that fans are properly segregated in football grounds and kept apart if necessary; although this is not widely recognised as being a particular problem for Northern Ireland[157]. These certain football matches include the Irish Premier League, Irish League First Division, any Northern Ireland team playing in the top two leagues in the Republic of Ireland (e.g. Derry City at present), the Northern Ireland international team as well as European club competition matches sanctioned by UEFA. There are currently no plans to add other sports beyond football; however should the need arise, it was stated in the consultation document that *'other sports could be added to the offence and penalty by way of subordinate legislation'*[158].

The offence of ticket touting would be triable summarily with a maximum penalty of a £5,000 (level 5) fine.

The offence of ticket touting in England and Wales is legislated for by section 166 of the Criminal Justice and Public Order Act 1994[159] -

> **Section 166 Sale of tickets by unauthorised persons**
>
> (1) It is an offence for an unauthorised person to sell, or offer or expose for sale, a ticket for a designated football match in any public place or place to which the public has access or, in the course of a trade or business, in any other place.
>
> (2) For this purpose –
>
> > (a) a person is "unauthorised" unless he is authorised in writing to sell tickets for the match by the home club or by organisers of the match

[156] Home Office – Statistics on arrests and banning orders 2008-09
http://www.homeoffice.gov.uk/crime/football-banning-orders/
[157] Committee for Justice 'Departmental Briefing on Proposals for Sports Law' – Official Report (Hansard) 3rd June 2010
http://www.niassembly.gov.uk/record/committees2009/Justice/100603Briefing%20on%20Proposals%20for%20Sports%20Law.pdf
[158] Northern Ireland Office consultation – 'Sports law and spectator controls' July 2009
http://www.nio.gov.uk/sports_law_and_spectator_controls_-_a_consultation_undertaken_by_the_northern_ireland_office.pdf-2.pdf
[159] Criminal Justice and Public Order Act 1994
http://www.opsi.gov.uk/acts/acts1994/ukpga_19940033_en_1

(b) a "ticket" means anything that purports to be a ticket; and

(c) a "designated football match" means a football match, or football match of a description, for the time being designated under section 1(1) of the Football (Offences) Act 1991

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale (£5000).

Currently "designated football matches" for these purposes are Premier League, Football League, European (UEFA) and international matches played at major grounds. Section 53 of Violent Crime Reduction Act 2006 states:[160] *'updated ticket touting provisions in connection with football to cover unauthorised internet ticket sales and other ticket touting practices designed to circumvent prosecution under pre-existing provisions'*[161].

Ticket touting can cause a myriad of problems as outlined by Detective Sergeant Will Hodgson, of the Metropolitan Police's public order crime team:

> *Ticket touting is not only illegal but can lead to an increase in violence at football games through segregation breakdowns…People who buy from touts run the risk of finding themselves among opposing supporters, being ejected from grounds or not receiving their tickets at all*[162].

Fears of violence and hooliganism from unsegregated football supporters are the main considerations behind ticket touting legislation. Financial considerations, in terms of lost revenue, for clubs and associations are also important.

A recent major 'ticket touting' case in England that went before the courts in October 2009 resulted in the defendant being sentenced to 8 months imprisonment and ordered to pay £12,400 within two months. It was alleged during proceedings that the defendant made hundreds of thousands of pounds selling tickets for Premier League and international football matches[163].

Table 9 below presents information on the number of people arrested in connection with Ticket Touting in the 2008/09 football season:

[160] Violent Crime and Reduction Act 2006
http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060038_en.pdf
[161] Ticket Touting (Briefing Paper) – House of Commons Home Affairs Section, Philip Ward 22nd April 2009
http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snha-04715.pdf
[162] 'Police crack down on football ticket touts' The Guardian 6th March 2008
http://www.guardian.co.uk/uk/2008/mar/06/ukcrime1
[163] Metropolitan Police – Premier League ticket tout jailed
http://cms.met.police.uk/news/convictions/premier_league_ticket_tout_jailed

Table 9 arrests for ticket touting in 2008/09

Type of match/competition	Number of arrests
England and Wales internationals	4
European club competitions	15
Premier League	61
Championship	3
League 1	0
League 2	1
TOTAL	**84**

Source: Home Office[164]

4.4 Football banning regime to ban individuals from attending major football matches in Northern Ireland and abroad: Clauses 46-54

Football banning orders would be available to the courts to deal with persons convicted of a football-related offence. The court could impose a penalty for the original offence as well considering implementing a football banning order which could result in that person being banned from football matches for up to 10 years[165]. The ban would apply to matches involving local teams as well as teams playing in Great Britain where football banning orders are already in place, no equivalent exists in the Republic of Ireland[166].

The football banning order would require the person subject to the order to report to a police station when the designated matches were taking place. There would be no requirement unlike Great Britain for the person to surrender their passport; this would not be an effective control as the result of the number of Northern Ireland residents in possession of a passport from another jurisdiction[167] namely the Republic of Ireland. A football banning order or regime is only effective internationally where other jurisdictions have similar provisions in place. Indeed it has been suggested that further work should be done at European Union level to

[164] Home Office – Statistics on arrests and banning orders 2008-09
http://www.homeoffice.gov.uk/crime/football-banning-orders/
[165] Committee for Justice 'Departmental Briefing on Proposals for Sports Law' – Official Report (Hansard) 3rd June 2010
http://www.niassembly.gov.uk/record/committees2009/Justice/100603Briefing%20on%20Proposals%20for%20Sports%20Law.pdf
[166] See above
[167] Northern Ireland Office consultation – 'Sports law and spectator controls' July 2009
http://www.nio.gov.uk/sports_law_and_spectator_controls_-_a_consultation_undertaken_by_the_northern_ireland_office.pdf-2.pdf

develop cross-jurisdictional responses to travelling gangs of supporters who may be subject to banning orders in their own country[168].

Breaching a banning order would be triable summarily with a maximum penalty on conviction of six months' imprisonment, a level 5 fine (maximum £5,000) or both.

In England and Wales under the Football Spectators Act 1989[169] (the 1989 Act), the courts have the power to impose football banning orders to help prevent violence and disorder, although this has historically been on a different scale to Northern Ireland[170]. In England and Wales the person subject to the order may have their passport and/or identity card confiscated temporarily when a match is taking place abroad as well as having to report to a police station at the time of the match[171].

Where a person is found guilty of a relevant offence, usually connected to violence or disorder, listed in the 1989 Act although not necessarily linked to football and having been sentenced the courts must also consider imposing a football banning order[172]. The person retains the right to appeal to a higher court.

Furthermore in England and Wales a civil route exists for police to apply to the courts to impose a football banning order, this is not proposed for Northern Ireland nor is a separate authority (the Football Banning Order Authority) to deal with football banning orders unlike England and Wales.

A football banning order may have effect for up to ten years although the person subject to the banning order can appeal to the courts for its termination after two thirds has been served. The banning order can also prohibit the person from using public transport on match days and *'from visiting other potential hotspots, such as town centres, pubs and bars during risk periods'*[173]*.* As of July 2009 there were 3160 individuals subject to football banning orders, 2922 linked to a conviction for violence and disorder and 238 issued on a police complaint[174].

[168] See above
[169] Football Spectators Act 1989
http://www.opsi.gov.uk/acts/acts1989/ukpga_19890037_en_1
[170] In Scotland, where there have been similar issues associated with football matches as in Northern Ireland, banning orders were introduced in Part 2of the Police, Public Order and Criminal Justice (Scotland) Act 2006.
[171] Northern Ireland Office consultation – 'Sports law and spectator controls' July 2009
http://www.nio.gov.uk/sports_law_and_spectator_controls_-_a_consultation_undertaken_by_the_northern_ireland_office.pdf-2.pdf
[172] See above
[173] Northern Ireland Office consultation – 'Sports law and spectator controls' July 2009
http://www.nio.gov.uk/sports_law_and_spectator_controls_-_a_consultation_undertaken_by_the_northern_ireland_office.pdf-2.pdf
[174] See above

4.5 Commentary on responses to sports law and spectator controls consultation

This part of the paper will examine the consultation responses to the various provisions of the sports law and spectator controls proposals contained in the Justice Bill (NI) 2010.

4.5.1 Offensive chanting, missile throwing and unauthorised pitch incursion

These three proposals were welcomed by all respondents. In relation to offensive chanting one respondent queried the omission of flags and other forms of visual material. It was also suggested that the government should set parameters for what amounted to offensive chanting with agreement in advance from stakeholders like DCAL and the PSNI[175].

With regard to unauthorised pitch incursion there was general support for the proposal. Issues raised included fans being allowed onto the playing area to erect banners before a match began; implications for organisers with regard to insurance and emergency procedures; that the new law should reflect different degrees of incursion for example a distinction between spontaneity and maliciousness and that legislation should be set alongside education and self regulation[176].

In reference to the responses the Minister outlined that he would consider the interface with flags and emblems legislation. In relation to differing degrees of incursion the Minister determined that pitch incursion of whatever nature should become unauthorised and therefore an offence. The Minister recognised the parallel importance of education and self regulation as well as the importance of the PSNI, clubs, association and stewards in the delivery of the proposed new powers[177].

4.5.2 Offences relating to alcohol, being drunk, having bottles and flares at sporting events and in transport to and from matches

Points of contention from respondents related to the status of registered clubs inside grounds, definition of being drunk and clarification on meaning of private viewing facilities. Respondents highlighted that problems with alcohol were as prominent in the vicinity of grounds and whether possession of alcohol outside grounds could be made an offence? A number of respondents outlined potential commercial harm to clubs of an alcohol ban contrasting the situation in England and Wales regarding rugby where no additional liquor related restrictions were in place. Other issues detailed include allowing drinking of alcohol in

[175] Department of Justice – Consultation on proposals for new sports law and spectator controls: Report on responses and way forward. August 2010
http://www.dojni.gov.uk/index/public-consultations/archive-consultations/sports_response_doc_as_sent_to_po_11_aug_2010.pdf
[176] See above
[177] See above

grounds subject to appropriate controls; more effective controls on bars and pubs in the vicinity of matches and flexibility for corporate facilities regarding alcohol consumption[178].

In reference to banning alcohol on special transport there was broad support. However some respondents outlined that owing to travel times in NI being fairly short the focus should be on drinking in pubs around match venues; difficulty for vehicle operators to comply in practice with proposals in relation to transport to matches and that other match journeys should be included namely RoI international football matches, club GAA matches, all-Ireland rugby matches and matches in GB[179].

Some respondents challenged the suggestion that possession of fireworks is already adequately controlled by legislation in NI. Regarding flares a respondent thought they added to a spectacle and called for investigation into use of flares in controlled area and in reference to drink containers two respondents suggested they should be excluded as a condition of entry as opposed to being an offence[180].

In reply to the responses the Minister outlines that he recognises that the risk of disorder varies between sports and that whilst creating the offence of possession and consumption of alcohol inside grounds there will be a measured and flexible approach to it application. The Minister reinforced the original proposals that in reference to executive boxes or registered club premises the prohibition would only apply 15 minutes before a match starts until 15 minutes after the match finishes. Furthermore the Minister outlined that prohibition periods, after consultation and tailoring to needs, may be amendable by subordinate legislation. Possession of fireworks as well as flares would be made illegal at designated sports matches[181].

4.5.3 Ticket touting

Respondents supported the creation of the offence. Although respondents indicated that it did not cause a particular problem in NI. One respondent indicated that the offence should be extended to GAA and rugby matches with another respondent suggesting an enabling power to extend the offence to other areas like concert tickets if deemed appropriate[182].

In response the Minister confirmed that the offence would only be applicable to football matches. The offence aimed at preventing crowd disorder by keeping supporters separated[183].

---

[178] See above

[179] Department of Justice – Consultation on proposals for new sports law and spectator controls: Report on responses and way forward. August 2010
http://www.dojni.gov.uk/index/public-consultations/archive-consultations/sports_response_doc_as_sent_to_po_11_aug_2010.pdf

[180] See above

[181] See above

[182] See above

[183] See above

4.5.4 Football Banning Orders

Some respondents argued that the banning orders should apply to sports other than football. A respondent contended that the banning order should only be triggered by an offence of violence and not disorder as well. A further respondent queried whether offences committed outside the UK would count. Two respondents felt that the avenue available in England and Wales should be open in NI were an application can be made by the PSNI or PPS to the courts for a banning order without the person having been convicted in NI. One respondent felt that the banning order should have a maximum lifetime term instead of the proposed 10 years maximum. Respondents also outlined that there should be Football Banning Authority either a separate entity or by extending the powers of the body in GB. The effectiveness of good liaison was also highlighted to ensure compliance and consistency[184].

5 Treatment of Offenders: Clauses 56 - 63

This part of the Justice Bill (NI) 2010 makes amendments to sentences for existing offences under the collective term of Treatment of Offenders. In relation to common assault the Bill amends section 42 of the Offences against the Person Act 1861[185] to increase the maximum penalty on conviction from three months to six months. This is in part a response to the increased level of assaults on healthcare workers in the course of their duties.

In 2008 sentencing provision in relation to knife crime and possession of weapons was increased to a maximum of 12 months imprisonment on summary conviction in the magistrates' court, a fine not exceeding the statutory maximum or both and four years imprisonment on conviction on indictment in the Crown court, an unlimited fine or both. However at the time two offences were overlooked namely possession with intent and possession on school premises. The Bill now makes provision for these two offences to be subject to the same maximum penalties both summarily and on indictment. The original increases were as the result of knife crime becoming an increasing problem.

The Bill proposes to make the offence of hijacking under section 2 of the Criminal Jurisdiction Act 1975[186] eligible for both indeterminate and extended custodial sentences under the provisions of the Criminal Justice (Northern Ireland) Order 2008[187]. This relates to the

[184] Department of Justice – Consultation on proposals for new sports law and spectator controls: Report on responses and way forward. August 2010
http://www.dojni.gov.uk/index/public-consultations/archive-consultations/sports_response_doc_as_sent_to_po_11_aug_2010.pdf

[185] Offences against the Person Act 1861
http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&PageNumber=0&NavFrom=0&activeTextDocId=1043854

[186] Criminal Jurisdiction Act 1975
http://www.legislation.gov.uk/ukpga/1975/59

[187] Criminal Justice (Northern Ireland) Order 1975
http://www.opsi.gov.uk/si/si2008/draft/ukdsi_9780110800875_en_1

hijacking of both vehicles and ships and serves to strengthen public protection by now including the offences in the public protection sentences regime.

The maximum period of deferment of sentence will be increased from six months to 12 months except in a case where an interim driving ban is also being imposed. In this instance the maximum would remain at six months. These proposals afford the courts *'a greater chance of seeing if the offender has shown marked and persistent improvement in conduct before sentencing'*[188].

The Bill also proposes to add the offences of money laundering, corruption and fraud to the list of offences which can receive a Financial Reporting Order as well as introducing Supervised Activity Orders (SAOs) in respect of certain financial penalties. SAOs *'are available to magistrates' courts in respect of anyone who has had a financial penalty imposed elsewhere in the EU, who then returns or moves to Northern Ireland without having paid the fine, and in respect of whom the penalty is transferred to Northern Ireland'*[189].

Two clauses make improvements to sex offending law. Article 27 of the Criminal Justice (Northern Ireland) Order 1996[190] is amended *'so that if a person breaches the conditions of their licence and have no known address in Northern Ireland they can be brought before the court which made the original order'*[191].

The Sexual Offences Act 2003[192] is amended to ensure that a district judge (magistrates' court), rather than as at present a Lay Magistrate or district judge, will hear applications relating to closure orders which can close premises being used for activities relating to certain prostitution or pornography offences for up to three months.

6 Alternatives to Prosecution: Clauses 64 - 84

This section of the paper will outline the alternatives to prosecution provided for in the Bill. Two new disposals which aim to provide effective ways to deal with certain types of uncontested non-habitual minor crimes are provided for[193]. The two disposals are: police-issued fixed penalty notices and conditional cautions. In regard to each disposal, the offender will still retain the right to ask for the offence to be prosecuted at court instead. There is no explicit reference to victim's rights in the Bill. The new disposals will only apply to those over

[188] Justice Bill 2010 – Explanatory and Financial Memorandum
http://www.dojni.gov.uk/index/media-centre/justice_bill_efm.doc
[189] See above
[190] Criminal Justice (Northern Ireland) Order 1996
http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&PageNumber=0&NavFrom=0&activeTextDocId=2920901
[191] Justice Bill 2010 – Explanatory and Financial Memorandum
http://www.dojni.gov.uk/index/media-centre/justice_bill_efm.doc
[192] The Sexual Offences Act 2003
http://www.legislation.gov.uk/ukpga/2003/42/contents
[194] Consultation on proposed Justice Bill (NI) 2010
http://www.dojni.gov.uk/index/public-consultations/current-consultations/justice_bill_eqia.pdf

18. The provisions mirror legislation already in place in England and Wales and the paper considers the arguments for their introduction there and information on their operation.

The UK government's case for the introduction and use of alternatives to prosecution was that the courts would be presented with fewer relatively minor offenders. Furthermore the police and CPS could deal with minor offences more effectively and speedily. The then Director of Public Prosecutions (DPP), as Head of the Crown Prosecution Service, Sir Ken McDonald, argued that court time could be freed up by the removal of less serious offences from court lists enabling sentencers to concentrate on more serious offending. Subsequently this could reduce delay in dealing with more serious offenders, shortening periods on remand whilst reducing the prison population with the potential for making overall savings.

The Magistrates' Association, however, has expressed concern that considerable power was being transferred from the courts to prosecutors, stating that:

> *Whilst the Association accepts the use of fixed penalty and penalty notices for disorder for minor offences, where all who accept them receive the same punishment, it has always believed that where a choice of sentence has to be made, that it is a judicial decision and not one that should be reserved to an arm of the executive*[194]*.*

Similarly, Lord Justice Leveson contended, in a public lecture delivered to the Centre for Crime and Justice Studies, Kings College London in 2007 that since the enactment of the Police Justice Act 2006, public scrutiny has been eroded due to magistrates no longer possessing certain powers of enforcement. The 2006 Act extended the provisions for conditional cautions from, for example, writing a letter of apology or payment of a compensation order, to payment of a financial penalty or doing unpaid work not exceeding 20 hours Lord Justice Leveson stated that:

> *I do not believe that I am alone in expressing concern about these powers. It is not a question of not trusting the police or the CPS, or challenging the will of parliament. It goes back to the origins of our system of summary justice, carried out in public by members of the public, appointed as magistrates, whose decisions can be scrutinised by the public, can be subject of public debate and, if appropriate, appeal to the court in public*[195]*.*

In a report by the House of Commons Justice Committee '*The Crown Prosecution Service: Gatekeeper of the Criminal Justice System'* the DPP in giving evidence to the House of Commons inquiry indicated that conditional cautions would not have the effect of usurping the court and argued that alternatives to prosecution were effective provided that they were

[194] House of Commons Justice Committee Report – 'The Crown Prosecution Service: Gatekeeper of the Criminal Justice System' August 2009
http://www.publications.parliament.uk/pa/cm200809/cmselect/cmjust/186/186.pdf

[195] 'Summary justice Fast – but fair?' Professor Rod Morgan Centre for Crime and Justice Studies
http://www.crimeandjustice.org.uk/opus784/Summary-justice.pdf

transparent and had safeguards built in[196]. The Chief Inspector of the CPS, who is independent of the Service, outlined that prosecution was only one means of enforcement and using alternatives to prosecution brought benefits to the criminal justice system by taking cases out of the system if there was be a fair and just penalty.

In the same House of Commons Justice Committee report, the Chief Inspector of the CPS made the following criticisms of alternatives to prosecution:

- the inconsistency of approach in use of disposals and their operation in reference to geographical application
- inconsistencies regarding the level of penalty for offences that have different levels of severity
- the lack of scrutiny of the disposals to assess how the powers are being used

In particular, he noted that:

> *'such powers are less subject to judicial processes…I am not satisfied that the present level of checks and balances is sufficient to retain public confidence'*[197]

The report by the House of Commons Justice Committee *'The Crown Prosecution Service: Gatekeeper of the Criminal Justice System'* concluded by commenting that the use of alternatives to prosecution had transformed the role of the prosecutor and had made a material difference to how the state punishes people. It also noted that if their use prevented people entering or being drawn further into the criminal justice system then this would have benefits not only to potential victims but also to society as a whole if re-offending is subsequently reduced. The report, however, also argued that *'the growth of out-of-court disposals represents a fundamental change to our concept of a criminal justice system and raises a number of concerns about consistency and transparency in the application of punishment'*[198]*.*

6.1 Police-issued fixed penalty notices: Clauses 64-75

The Bill contains provisions which mean that, without direction from the Public Prosecution Service (PPS), the police would be able to issue fixed penalty notices to discharge a person's liability for certain offences by paying a fixed penalty within 28 days. The proposed offences are:

- Simple drunk;

[196] House of Commons Justice Committee Report – 'The Crown Prosecution Service: Gatekeeper of the Criminal Justice System' August 2009
http://www.publications.parliament.uk/pa/cm200809/cmselect/cmjust/186/186.pdf
[197] House of Commons Justice Committee Report – 'The Crown Prosecution Service: Gatekeeper of the Criminal Justice System' August 2009
http://www.publications.parliament.uk/pa/cm200809/cmselect/cmjust/186/186.pdf
[198] See above

- Breach of the peace;
- Disorderly behaviour;
- Obstructing police;
- Indecent behaviour (urinating on the street);
- Low value criminal damage; and
- Petty shoplifting (for first-time offences involving goods of up to £100 recovered in a re-saleable condition).

The offences would have a fixed penalty of either £40 or £80 and if paid on time a record of its issue would be maintained on a database and this would influence decisions on the issuing of fixed penalties for any future offences. However, if not paid within 28 days, the fixed penalty would be uplifted by 50% and registered as a court fine with enforcement through existing fine default mechanisms; by registering the fixed penalty as a court fine it would be recorded on the criminal record. Fixed Penalty Notices will be available to police for issue to individuals aged 18 years and over. A Fixed Penalty Notice would not result in a criminal record unless the individual defaults on payment and fixed penalty notice becomes court registered. The Bill does not provide for the issuing of penalty notices to only first time and non-habitual offenders although this may be subject to guidance.

Tables 10 and 11 below provide information on the number of relevant disposals in both the Magistrates' Court and Crown Court for the years 2007, 2008 and 2009. The offences of purchasing alcohol for a minor and selling alcohol to a minor have been dropped from the original proposals – this could be due to the low level of convictions for these offences within the last three years.

Table 10 – Number of charges disposed of in the Magistrates' Court

Offence	**Number of charges 2007**	**Number of charges 2008**	**Number of charges 2009**
Simple Drunk	158	136	125
Behaviour likely to cause breach of the peace	95	78	80
Disorderly behaviour	3909	3350	3983
Obstructing police	1141	1033	110
Purchasing intoxicating liquor for a minor	0	1	8

Selling intoxicating liquor to a minor	3	1	0
Indecent behaviour[199]	461	389	503
Criminal Damage[200]	3834	4219	4158
Theft – Shoplifting[201]	1091	1330	1771
TOTAL	**10692**	**10537**	**11728**

Source: Northern Ireland Courts and Tribunals Service

The figures in Table 1 are based on defendants disposed of in 2007, 2008 and 2009 and defendants may be charged with a combination of offences

2007: 10692 charges relates to 8607 defendants

2008: 10537 charges relates to 8277 defendants

2009: 11728 charges relates to 9369 defendants

Table 11 – Number of charges disposed of in the Crown Court

Offence	Number of charges 2007	Number of charges 2008	Number of charges 2009
Simple Drunk	0	0	0
Behaviour likely to cause breach of the peace	0	0	1
Disorderly Behaviour	1	0	0
Obstructing Police	43	25	35
Purchasing intoxicating liquor for a minor	0	0	0

[199] *This relates to all Indecent Behaviour not just urinating on the street*

[200] *This relates to all Criminal Damage not just low-level Criminal Damage*

[201] *This relates to all shoplifting not just for first time offences involving goods of up to £100 recovered in a re-saleable condition*

Selling intoxicating liquor to a minor	0	0	0
Indecent Behaviour[202]	0	0	0
Criminal Damage[203]	150	160	150
Theft – Shoplifting[204]	4	10	5
TOTAL	**198**	**195**	**191**

Source: Northern Ireland Courts and Tribunals Service

The figures in Table 2 are based on defendants disposed of in 2007, 2008 and 2009 and defendants may be charged with a combination of offences

2007: 198 charges relates to 142 defendants

2008: 195 charges relates to 138 defendants

2009: 191 charges relates to 132 defendants

6.2 Use of Penalty Notice for Disorder (PND) in England & Wales

The provisions contained within the Bill relating to penalty notices mirror provisions contained within the Criminal Justice and Police Act 2001.[205] This part of the paper, therefore, outlines the use of Penalty Notices for Disorder (PNDs) in England and Wales and provides statistical information on their use for a number of police force areas.

PNDs have been applicable since January 2004 to offenders aged 16 years and over for a specified range of low level public disorder offences. They have been used by all 43 police forces in England and Wales and currently apply to 25 offences for example drunk and disorderly and causing harassment, alarm or distress and can be issued for incidents of criminal damage up to £500 and retail theft up to £200[206]. Under section 6 of the Criminal Justice and Police Act 2001, the Secretary of State has the power to issue guidance to the police on the issuing of penalty notices with the latest version being issued in March 2005. This decreased the thresholds for which PNDs could be issued in relation to criminal damage from £500 to £300 and retail theft from £200 to £100. Furthermore the Penalties for Disorderly Behaviour (Amendment of Minimum Age) Order 2004 enabled penalty notices for disorder to be given to 10 to 15 year olds.

[202] *This relates to all Indecent Behaviour not just urinating on the street*
[203] *This relates to all Criminal Damage not just low-level Criminal Damage*
[204] *This relates to all shoplifting not just for first time offences involving goods of up to £100 recovered in a re-saleable condition*
[205] Criminal Justice and Police Act 2001
http://www.legislation.gov.uk/ukpga/2001/16/contents
[206] 'Alternatives to Prosecution' NIO Consultation March 2008
http://www.nio.gov.uk/alternatives_to_prosecution_-_a_discussion_paper.pdf

PNDs can be for either £50 or £80 depending on the level of offence and are issued at the police officer's discretion working to strict operating guidelines. PNDs must be paid within 21 days and failure to do so will result in court registration as a fine. When a PND is issued the offender must consent to having a DNA sample and fingerprints taken; the offender may refuse the PND with the effect that the offence may be prosecuted through the courts[207].

Included at Appendix 1 are tables presenting information on the numbers of PNDs by individual constabularies in England and Wales. The tables highlight that theft (retail under £200) and drunk and disorderly had the most numerous PNDs in four out of the five constabularies featured. The exception was Greater Manchester Police which had a disproportionately higher number of PNDs for criminal damage (under £500) than the other four constabularies but still a large numbers of PNDs for theft.

In percentage terms there constabularies had drunk and disorderly PNDs as their highest – Northumbria 76%, West Midlands 71% and West Yorkshire 63% whilst the other two constabularies had retail theft (under £200) as their highest percentage – Greater Manchester 60% and Northamptonshire 57%.

On the floor of the House of Commons various issues have been raised in connection with PNDs. In response to a parliamentary question on out-of-court disposals being used for serious offences like grievous bodily harm (GBH), Home Office Minister David Hanson outlined what the government was seeking to achieve through their use. This was swift and effective justice in order to reduce police bureaucracy whilst at the same time not criminalising young people with the process having a positive benefit for victims as their views will be taken into account and notices will not be appropriate where the victim is not compliant[208].

In July 2010, Mr Dominic Rabb MP asked the Parliamentary Under-Secretary of State for Justice (Mr Jonathan Djanogly) whether the government intended to *'reverse Labour's pay-as-you go crime policy'*[209] that had led to fewer than half of offenders being brought to justice or passing through the dock of the court. Mr Rabb quoted two incidents: a serial thief being issued with a dozen on-the-spot fines and a man being cautioned for assaulting a pub landlady with a glass. In response Mr Djanogly stated:

> *The number of out-of-court disposals administered each year has risen by 135% since 2003. Such disposals now account for 40% of all offences brought to justice. However, during the same period, the number of convictions at court has remained broadly stable, suggesting that out-of-court penalties are expanding the number of offenders who are dealt with rather than being used as an alternative to prosecution*[210].

[207] See above
[208] This provision is not reflected in the Bill.
[209] House of Commons 20th July 2010 – Responding Minister David Djanogly MP to Dominic Raab MP http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100720/debtext/100720-0001.htm#10072029000454
[210] House of Commons 20th July 2010 – Responding Minister David Djanogly MP to Dominic Raab MP http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100720/debtext/100720-0001.htm#10072029000454

Another area of contention surrounds the inappropriate use of alternatives to prosecution (by police and CPS) which leaves victims dissatisfied with the outcome. This was raised by Alan Beith MP Chairman of the House of Commons Justice Committee who was concerned to know what measures were being taken to deal with the problem of out-of-court disposals being used mistakenly. In reply, the Solicitor-General, Vera Baird MP stated that:

> *I am aware of at least one Chief Prosecutor who has already started to make representations about what he regards as the overuse of fixed penalty notices when he feels prosecutions would be appropriate*[211].

6.3 Conditional Cautions: Clauses 76-84

Conditional cautions are the second new alternative to prosecution this is contained in the Bill. Conditional cautions powers, which will be applied by the PPS, will enable prosecutors to apply conditions (either rehabilitative or reparative) to a caution to which the offender must comply or face reconsideration of the original offence. Conditional cautions target different types of offenders from fixed penalty notices, namely individuals who have some history of minor offending. An example of a rehabilitative condition would be enrolment and participation on a programme that addresses offending behaviour e.g. drugs or alcohol misuse programme. An example of a reparative condition would be an apology to the victim or an agreed course of action to make good the harm caused. Conditional cautions would be an additional diversionary disposal available to prosecutors to use alongside adult and juvenile cautions, youth conferencing and Community Based Restorative Justice referrals. Five requirements must be met for a conditional caution to be issued[212]:

- The authorised person has evidence that the offender committed an offence, other than an offence only triable by indictment;
- That a Public Prosecutor decides there is sufficient evidence to charge the offender with the offence and that a conditional caution should be given to the offender;
- That the offender admits to the authorised person that they committed the offence;
- The authorised person explains the effect of a conditional caution and that failure to comply may result in the offender being prosecuted for the offence; and
- The offender must sign a document detailing the offence, admitting the offence, consenting to be given a conditional caution and outlining the conditions attached to the caution.

With regard to the introduction of conditional cautions in England and Wales, the Magistrates' Association indicated that the CPS had taken on the role of sentencers because prosecutors decided whether to use conditional cautions, with the effect being a shift in power from the

[211] House of Commons 26th November 2009 – Responding Minister Vera Baird MP to Alan Beith MP
http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm091126/debtext/91126-0003.htm
[212] Justice Bill 2010 – Explanatory and Financial Memorandum
http://www.dojni.gov.uk/index/media-centre/justice_bill_efm.doc

courts to prosecutors. In the House of Commons Justice Committee report an academic from University of Dundee asserted that the shift to the use of out-of-court disposals represented *'the most important change in criminal procedure in all parts of the UK for the past 100 years or more, but it seems to be largely unnoticed'*[213]. This was described as a paradigm shift with the effect that:

> *Reasons for using (alternatives to prosecution) have expanded from coping with numerous minor regulatory offences by routinisation, to asserting that many "real crimes" (including assaults, breaches of the peace and thefts), simply do not justify a court appearance*[214].

The mistaken use of alternatives to prosecution is a concern where the offence committed is serious and this issue has been raised in House of Commons by Dominic Grieve MP. He referred to two serious offences that resulted in a caution; namely a 15 year old boy cautioned for rape and a man cautioned for assaulting a woman in a pub with a glass object and asked whether this was the Minister's idea of summary justice. The Minister responded by stating:

> *We have made it absolutely clear that there is a place for out-of-court disposals and for cautions. They are not for serious, violent offences, and that is why my Right Hon. Friend the Justice Secretary has announced a review of the circumstances in which out-of-court disposals are used, and whether they are being used appropriately. If they are being used for serious, violent offences, as has been stated over the past few days that is exactly why we need to review them*[215].

Table 19 shows the type and number of conditional caution issued under legislation in England and Wales over a twelve-month period. The figures indicate a decline in the number of conditional cautions issued in comparison with the previous twelve-month period and that over 50% of such conditions have been the payment of compensation.

Table 19: Type of Condition Attached to Cautions over a 12-Month Period – 2009-2010 and 2008-2009

Type of Conditional Caution		Oct 2009-Sep 2010	Oct 2008-Sep 2009
Rehabilitative	Drug intervention programme	612	1078

[213] House of Commons Justice Committee Report – 'The Crown Prosecution Service: Gatekeeper of the Criminal Justice System' August 2009
http://www.publications.parliament.uk/pa/cm200809/cmselect/cmjust/186/186.pdf
[214] See above
[215] House of Commons 10th November 2009 – Responding Minister Claire Ward MP to Dominic Grieve MP
http://www.parliament.the-stationery-office.co.uk/pa/cm200809/cmhansrd/cm091110/debtext/91110-0002.htm

	Alcohol-related	659	822
	Other	476	520
Reparative	Restorative justice	266	288
	Compensation	6458	6882
	Letter of apology	1907	2257
	Other	175	234
Restrictive		411	730
Total		**11114**	**12811**

Source: Crown Prosecution Service[216]

6.4 Consultation responses to Alternatives to Prosecution consultation

The consultation by the Northern Ireland Office which concluded in July 2008 document sought views on the potential impact of fixed penalty notices and conditional cautions in Northern Ireland in terms of both general principles and some specific issues[217]. There were a total of 29 respondents. Respondents felt that introducing alternatives to prosecution could help reduce time required to process a case and a reduction in bureaucracy could potentially free up police resources[218]. Respondents highlighted the benefits of not criminalising low level offenders and young offenders for committing low level offences that should be dealt with outside the formal court system. Some respondents felt that alternatives to prosecution should operate with limited bureaucracy but with clear guidelines and protocols, as this would allow for a standardised approach across geographical areas. Respondents favoured the introduction of PNDs and viewed them as a useful tool to tackle anti-social behaviour, particularly in relation to alcohol consumption, without criminalising first-time offenders. Other points highlighted include:

- Preparation and resourcing of implementation measures
- Consistency in application

[216] Crown Prosecution Service, Conditional Cautioning Data Quarter 3 2009/2010 to Quarter 2 2010/2011.
[217] 'Alternatives to Prosecution' A Discussion Paper – Northern Ireland Office
http://www.nio.gov.uk/alternatives_to_prosecution_-_a_discussion_paper.pdf
[218] Summary of responses to 'Alternatives to Prosecution' A Discussion Paper – Northern Ireland Office
http://www.nio.gov.uk/alternatives_to_prosecution_consultation_-_summary_of_responses_october_2009.pdf

- The role of guidelines, training and quality assurance

Concerns centred on the impact of PNDs on those on low incomes and whether other local enforcement bodies should have similar powers.

A general view held by respondents was that conditional cautions needed to have adequate resourcing and appropriate programmes in order to be successful. Positive responses include the following:

- Potential for conditional cautions to address victims' needs
- Restitution for victims of criminal damage
- Opportunities to address offenders' underlying problems e.g. addiction to alcohol or drugs

Reservations concerned individual's ability to pay associated compensation and consequences of defaulting on payment.

Several respondents suggested that any revenue generated by alternatives to prosecution should be allocated for community safety programmes and the needs of victims should be a priority in the development of alternatives to prosecution. Some respondents highlighted the benefits for victims of restorative justice and youth conferencing.

In relation to autonomy of the PSNI in issuing PNDs, some respondents saw the advantage of allowing the PSNI to make a quick decision whilst others felt that such autonomy could undermine public confidence in policing. Most respondents thought the PSNI should be provided with clear guidance on the issuing of PNDs and the arrangements subject to safeguards and scrutiny. The advantage of allowing the PPS to focus on more serious crimes also featured.

With regard to potential implementation issues respondents felt these could be addressed by adequate training for police officers and measures to monitor, evaluate and ensure consistency and individual accountability. Other issues surrounded making offenders aware of the longer term consequences of providing DNA samples and fingerprints.

Potential operational difficulties include potential level of default with the need for appropriate mechanisms to deal with this issue, with a number of respondents suggesting diversionary rather financial penalties to be more appropriate for those on low incomes. Respondents also felt that alternatives to prosecution should not be seen as trivialising offences or a 'soft option'.

Respondents thought there was a need for close monitoring of alternatives to prosecution to ensure consistency of application across community and geographical boundaries. Some respondents felt compiling comprehensive statistics would help to identify any unintended impacts. A few respondents were concerned

about an individual's right to liberty in the event of significant restrictions being attached to a conditional caution.

All respondents were in favour of revenue raised through alternatives to prosecution being directed to fund victims' and rehabilitative services, with a general recognition that rehabilitative services can help to reduce crime.

In relation to human rights and equality there was a consensus that any limitation of rights created by alternatives to prosecution would be proportionate whilst a transparent and accountable system should guard against any perceptions of inequality.

Respondents felt it was important to recognise the impact of punitive action on women offenders and the potentially disproportionate impact on a family where women are fined for more minor offences. Furthermore respondents thought that diversionary penalties as opposed to financial penalties would have a less detrimental effect on women offenders.

6.5 Guidance

Difficulties highlighted above due to application highlight the important role of guidance for the police and prosecutors.

Under section 6 of the Criminal Justice and Police Act 2001, the Secretary of State has the power to issue guidance to the police on the issuing of penalty notices. The latest version of the guidance was issued in March 2005. Clause 69 of the Bill contains a similar provision but relating to the Department of Justice. The operational guidance in England and Wales outlines that officers may only issue a penalty **only** where[219]:

- They have reason to believe a person has committed a penalty offence and they have sufficient evidence to support a successful prosecution;
- The offence is not too serious and is of a nature suitable for being dealt with by a penalty notice;
- The suspect is suitable, compliant and able to understand what is going on;
- A second or subsequent offence, which is known, does not overlap with the penalty notice offence;
- The offence (s) involve (s) no one below the age of 16;

[219] Home Office (Criminal Justice and Police Act 2001) Penalty Notices for Disorder – Police Operational Guidance http://www.homeoffice.gov.uk/publications/police/operational-policing/penalty-notices-guidance/penalty-notices-police-guidance?view=Binary

- Sufficient evidence as to the suspect's age, identity and place of residence exists.

In March 2006, the Secretary of State issued guidance to the police on the issuing of penalty notices. However, in view of concerns raised over the inappropriate use of PNDs, the Ministry of Justice issued strengthened revised guidance on retail theft and criminal damage. The guidance indicates that, in relation to retail theft, the use of PNDs should be restricted to first-time offenders who are not substance mis-users and where the value of goods stolen is less than £100 or where damage caused is less than £300. The definition of retail theft has also been tightened to ensure that the disposal can only be considered for cases of shoplifting where normally the goods recovered are fit for re-sale.

Under section 25 of the Criminal Justice Act 2003 (the 2003 Act), the Secretary of State has the power to issue a code of practice to the police on the issuing of conditional cautions and this is published with the consent of the Attorney General. The latest version of the code of practice was issued this year. Clause 82 of the Bill contains a similar provision requiring the Department of Justice to prepare a code of practice in relation to conditional cautions but relating to the Department of Justice. In making decisions on imposing conditional cautions prosecutors will take into account[220]:

- The seriousness of the offence;
- The circumstances of the offence;
- Any views expressed by the victim;
- Any wider neighbourhood or community considerations or concerns;
- The background, circumstances and previous offending history of the offender;
- The willingness of the offender to comply with possible conditions;
- The likely effect of the conditional caution; and
- The likely outcome if the case is proceeded to court.

7 Legal Aid: Clauses 85-91

The Bill will make provision for an enabling power to means test applicants' incomes. After the completion of a consultation exercise no thresholds have been established although rules

[220] Criminal Justice System – Revised Code of Practice for Conditional Cautions Adults http://frontline.cjsonline.gov.uk/_includes/downloads/guidance/out-of-court-disposals/Code_of_Practice_for_Conditional_Cautions_revised.pdf

will prescribe the financial eligibility limits[221]. The grant of criminal legal aid in Northern Ireland is currently governed by the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981[222]. There are two tests to be met to receive legal aid in criminal proceedings:

- The means test; and
- Interests of Justice Test

However under the current legislation there are no prescribed financial limits for the means test for criminal legal aid.

Means testing was introduced in England and Wales for those applicants earning between £12,475 and £22,325 with those exceeding the upper threshold being exempt unless they can prove hardship. Applicants on prescribed benefits are pass-ported through the tests but still must pass an interest of justice test. In 2008-09, 562,000 people passed the means test and the Interest of Justice test – 93 per cent of those who applied for criminal legal aid. For 2008-09, the Commission calculated that the means test achieved a gross saving of £51.8 million at a cost of £20.3 million; a net saving of £31.5 million[223].

The Bill will also provide an enabling power for an order to recover costs of legal aid. This would enable the courts to make an order to recover the defence costs or proportion of costs of a legally aided defendant where the court considers that the defendant has sufficient means to pay. This would be known as a recovery of defence costs order (RDCOs). Initially RDCOs would be restricted to grants of legal aid under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 for cases in the Crown Court, though it may be extended to grants under the Criminal Appeal (Northern Ireland) Act 1980[224] for cases in the Court of Appeal at a later date.

In England and Wales the RDCO scheme collects legal aid costs for representation in the Crown Court and it applies only to defendants in cases where the new system of Crown Court means testing has not applied[225]. Crown Court means testing was introduced in England and Wales in January 2010 being fully operational in all Crown Courts by July 2010 with RDCOs only being used for old cases. At the end of a trial a judge can make a RDCO if they decide the defendant could and should pay for their defence.

[221] Remuneration of Defence Representation in the Crown Court – Consultation Document NICTS) http://www.courtsni.gov.uk/NR/rdonlyres/D399C077-450F-4230-94E0-60782851C5FA/0/FINALCrownCourtRemunerationConsultationPaper240910.pdf

[222] Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&PageNumber=0&NavFrom=0&activeTextDocId=2983879

[223] The Procurement of Criminal Legal Aid in England and Wales by the Legal Services Commission – National Audit Office November 2009 http://www.nao.org.uk/publications/0910/procurement_of_legal_aid.aspx

[224] Criminal Appeal (Northern Ireland) Act 1980 http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Primary&PageNumber=48&NavFrom=2&activeTextDocId=1354055

[225] Legal Services Commission England and Wales http://www.legalservices.gov.uk/criminal/getting_legal_aid/recovery_defence_cost_orders.asp

RDCOs do not apply to cases that are:[226]

- Committals for sentence
- Appeals against sentence

Only defendants with:[227]

- An annual income in excess of £22,235
- Capital in excess of £3,000
- Or equity in their home of over £100,000

can receive a RDCO.

Defendants in receipt of 'pass-ported' benefits and those under the age of 18, for example income based job seekers allowance, are removed from the scope of the Order

The Bill contains provisions to repeal Article 41 of the Access to Justice (Northern Ireland) Order 2003[228] (prohibition on Northern Ireland Legal Services Commission funding services under Litigation Funding Agreements LFAs). LFAs are:

> *A type of agreement that allows litigants to pursue money damages cases, including personal injury litigation, on the basis that they would not be liable for their legal costs if their case was unsuccessful. If a client, funded by way of an LFA, was successful in his claim for damages, then either a success fee obtained from the losing side, or a portion of the client's award (or both) would be paid into a central fund. This fund would then help meet the cost of legal fees in unsuccessful cases[229].*

At a recent conference hosted by Agenda NI Adrian Colton QC, Chair of the Bar Council, commented that there was no information to confirm how such a scheme would work in this jurisdiction and that the pitfalls should be examined in advance to consider whether such a scheme would work in Northern Ireland. Furthermore there was the danger, he suggested, of cases being cherry-picked, with the most feasible and winnable cases being favoured. Another point of possible contention concerns the impact in relation to claims for serious injuries and injuries to children where money has to be given back into the fund through the LFA. This might instances where the claim award is made to cover long-term medical treatment and care responsibilities.

The remaining provisions in relation to legal aid include[230]:

---

[226] Legal Services Commission England and Wales
http://www.legalservices.gov.uk/criminal/getting_legal_aid/recovery_defence_cost_orders.asp
[227] See above
[228] Access to Justice (Northern Ireland) Order 2003
http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Primary&PageNumber=1&BrowseLetter=A&NavFrom=1&activeTextDocId=2921779
[229] Justice Bill 2010 – Explanatory and Financial Memorandum
http://www.dojni.gov.uk/index/media-centre/justice_bill_efm.doc
[230] Justice Bill 2010 – Explanatory and Financial Memorandum

- Having a single legal aid certificate process for bail applications made initially in the magistrates' court and subsequently made to the Crown Court as repeat bail applications;
- Allowing a compassionate bail application to be made to a magistrates' court after an assisted person has been returned for trial at the Crown Court;
- The inclusion of applicants in receipt of the guarantee credit element of the State Pension Credit as automatically meeting, in certain circumstances, the financial eligibility tests for civil legal aid;
- Amending the Access to Justice (Northern Ireland) Order 2003[231] to provide that the power of the court or the Northern Ireland Legal Services Commission to grant criminal legal aid may only be exercised following an assessment of the applicant's means to be provided for in regulations; and
- A series of miscellaneous amendments must of which relate to extending the scope of civil legal services.

8 Miscellaneous provisions: Clauses 92-101

This part of Bill provides for improvements to a range of miscellaneous powers available to the courts. There are two changes in relation to Bail; it's proposed that repeat bail applications can now be heard by the Crown Court whereas currently these are heard by the High Court under its inherent jurisdiction and a proposal to allow the magistrates' court the power to grant defendants compassionate bail. Hearings for the granting of compassionate bail are currently the preserve of the High Court or Crown Court.

The Bill provides for court rules to be made on disclosure of information relating to family proceedings concerning children without the need for a court order authorising the disclosure. The disclosure will be between specified persons and in specified circumstances.

Amendments are also made to court Membership – providing for a public prosecutor (nominated by the DPP) and a person nominated by the Attorney General for NI to be included within the membership of the Crown Court Rules Committee and also for the Attorney General for NI or a person nominated by the Attorney General for NI to be included within the membership of the Court of Judicature Rules Committee[232].

Provision is also made to bring the powers of the magistrates' court into line with the Crown Court in relation to consideration of applications for third party disclosure in respect on any

http://www.dojni.gov.uk/index/media-centre/justice_bill_efm.doc

[231] Access to Justice (Northern Ireland) Order 2003
http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Primary&PageNumber=1&BrowseLetter=A&NavFrom=1&activeTextDocId=2921779

[232] Justice Bill 2010 – Explanatory and Financial Memorandum
http://www.dojni.gov.uk/index/media-centre/justice_bill_efm.doc

evidence that may be of use to a party to the proceedings in presenting their case. It's envisaged that this will relieve the burden of such applications to the Crown Court.

The Bill provides for Access NI to issue a copy of a criminal conviction certificate to an employer in addition to issuing the certificate to the applicant – this will help reduce delay in employers completing pre-employment checks on job applicants.

The Northern Ireland Law Commission is no longer required to produce a full set of audited accounts although a requirement will remain to include a financial summary within their annual report.

Appendix 1 – Tables presenting information on numbers of Penalty Notices for Disorder issued by individual constabularies in England

Table 12 Penalty Notices for Disorder issued by Greater Manchester Police by offence type

Type of Penalty Notice for Disorder	Number of Penalty Notices for Disorder
Drunk and Disorderly	812
Criminal Damage (under £500)	913
Theft (retail under £200)	2,961
Sale of alcohol to person under 18	135
Purchase alcohol for person under 18	40
Total	**4,861**

Table 13 Penalty Notices for Disorder issued by Northamptonshire Police by offence type

Type of Penalty Notice for Disorder	Number of Penalty Notices for Disorder
Drunk and Disorderly	266
Criminal Damage (under £500)	188
Theft (retail under £200)	667
Sale of alcohol to person under 18	24
Purchase alcohol for person under 18	7
Total	**1,152**

Table 14 Penalty Notices for Disorder issued by Northumbria Police by offence type

Type of Penalty Notice for Disorder	Number of Penalty Notices for Disorder
Drunk and Disorderly	5,075
Criminal Damage (under £500)	525
Theft (retail under £200)	959
Sale of alcohol to person under 18	35
Purchase alcohol for person under 18	20
Total	**6,614**

Table 15 Penalty Notices for Disorder issued by West Midlands Police by offence type

Type of Penalty Notice for Disorder	Number of Penalty Notices for Disorder
Drunk and Disorderly	3,237
Criminal Damage (under £500)	320
Theft (retail under £200)	918
Sale of alcohol to person under 18	77
Purchase alcohol for person under 18	3
Total	**4,555**

Table 16 Penalty Notices for Disorder issued by West Yorkshire Police by offence type

Type of Penalty Notice for Disorder	Number of Penalty Notices for Disorder
Drunk and Disorderly	1,648

Criminal Damage (under £500)	389
Theft (retail under £200)	431
Sale of alcohol to person under 18	122
Purchase alcohol for person under 18	15
Total	**2,605**