



**Northern Ireland
Assembly**

COMMITTEE FOR JUSTICE

**OFFICIAL REPORT
(Hansard)**

**Sexual Offences (Northern Ireland) Order
2008: Unduly Lenient Sentences**

28 November 2011

NORTHERN IRELAND ASSEMBLY

COMMITTEE FOR JUSTICE

Sexual Offences (Northern Ireland) Order 2008: Unduly Lenient Sentences

28 November 2011

Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Stewart Dickson
Mr Colum Eastwood
Mr Seán Lynch
Ms Jennifer McCann
Mr Alban Maginness
Mr Peter Weir

Witnesses:

Mr Tom Haire) Department of Justice
Mr Gareth Johnston)
Ms Amanda Patterson)

The Chairperson:

I welcome Gareth Johnston, deputy director of criminal justice policy and legislation; Tom Haire, head of the criminal law branch; and Amanda Patterson, head of the public protection unit. The session will be recorded by Hansard. I invite officials to give an outline briefing, and it will then be open to members to ask questions.

Mr Gareth Johnston (Department of Justice):

Chairman, we are coming to the Committee today with a fairly specific change to the list of offences that can be referred to the Court of Appeal for, potentially, having unduly lenient sentences. Our proposal today corrects an omission in earlier legislation. Although the

proposal is very specific, it might be helpful if I briefly set the background and then ask Amanda to deal with the specifics.

As the Committee will be aware, the Director of Public Prosecutions (DPP) has a power to refer to the Court of Appeal more serious cases on the basis that the sentence given by the trial judge may be unduly lenient. In a criminal case, the defendant has, of course, a right of appeal, and I guess, in some ways, this gives the state a right of appeal against a sentence.

The legislation extends to two classes of case. First, it extends to all offences that can be tried on indictment in the Crown Court, and it is the Criminal Justice Act 1988 that contains the provision. So, all indictable offences are covered, but certain hybrid offences — offences that are triable either way in the Crown Court or the Magistrates' Courts — are covered as well. Those particular hybrid offences are listed in the review of sentences order — the latest one is from 2006. So, all indictable offences are covered by the Act and certain hybrid offences are listed in the order.

Applications to the Court of Appeal need to be made within 28 days of sentencing, so there is a fairly tight timescale. It may also be worth emphasising that the intention of the legislation was to cover sentences that were not just lenient but unduly lenient. The Court of Appeal will ask whether a sentence falls outside the range of sentences that a judge, taking into account all relevant factors and having regard to sentencing guidelines, could reasonably consider appropriate.

As you said, Chairman, at the moment, the Director of Public Prosecutions has the power to refer such sentences. Members will be aware from our conversation of a few weeks ago that one of the issues that we are raising in the context of the review of the governance and accountability of the Public Prosecution Service (PPS) is whether it is best that that power lies with the Director of Public Prosecutions or whether it is one that might be returned to the Attorney General, where it was located before devolution.

With that introduction, let me ask Amanda to speak on the specifics.

Ms Amanda Patterson (Department of Justice):

Thank you, Gareth. The purpose of this SL1 is simply to make an amendment to the law. It is not a change in policy; its purpose is simply to put the law back to where it was before the Sexual Offences (Northern Ireland) Order 2008 changed the body of sexual offences for Northern Ireland in February 2009. It required an amendment to add the new offences to the

list of offences that could already be referred back if the sentence appears unduly lenient. This amendment to the law was not made at the time and is now an outstanding consequential amendment to the Sexual Offences Order 2008. It simply lists the offences in the 2008 order that replaced offences that were originally in the Sexual Offences Act 2003, and the Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006 included those offences. So, this SL1 will simply allow for any unduly lenient sentences passed in relation to offences committed under the Sexual Offences Order 2008 to be referred back to the courts. It is purely a consequential amendment and does not involve any change in policy.

The Chairperson:

Thank you very much.

Mr A Maginness:

Given what the officials have said, I think that it would be appropriate that we simply endorse this fundamentally technical change and move forward with the business. I cannot see anything that people could object to.

The Chairperson:

I agree. I have one query, and it is about the outcome of the consultation on governance of the PPS. There would, obviously, be no problem with us agreeing this and then, at a later point, saying that we feel that the Attorney General should have that role.

Mr Johnston:

No, because, at that stage, if there were agreement on a change, the complete list of offences extant at that time would be assigned to the Attorney General.

The Chairperson:

OK, members, if no one else has any questions, I will thank the officials for coming along today. Thank you very much.