CAJ
Committee on the Administration of Justice

Promoting Justice / Protecting Rights

CAJ's submission no. S359

CAJ's submission
Department of Justice on its 'Sex offender notification and violent offender orders: Proposals for Legislation, a consultation paper'

October 2011

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What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Joseph Rowntree Charitable Trust and the Oak Foundation.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

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Submission to the Department of Justice on its 'Sex offender notification and violent offender orders: Proposals for Legislation, a consultation paper'

The Committee on the Administration of Justice ('CAJ') is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law. CAJ welcomes the opportunity to respond to the present consultation. We also welcome the summaries of the proposals at the beginning of each chapter as it makes the consultation more accessible.

The Proposals

In summary the Department proposes to:

- Change the law for persons who are presently required to remain on the 'sex offender register' for life by introducing a review mechanism whereby their names can be removed when the police decide there is no longer a risk to the public. Such a review can only occur 15 years after the person is released from prison;
- Change the law to allow the removal of persons from the register who were historically convicted of offences which are no longer crimes;
- Introduce a series of changes expanding the notification requirements for persons convicted of sexual offences who are required to register;
- Introduce 'violent offender orders', which will allow the police to seek a court order imposing similar notification requirements to those currently in place for many persons convicted of sex offences on those convicted of certain violent offences.

Proposal: introduce a review mechanism for persons currently subject to indefinite notification

The Department is proposing to change the law for persons who are presently required to remain on the 'sex offender register' for life by introducing a review

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mechanism whereby their names can be removed once the police decide there is no longer a risk to the public. Such persons can only apply to be removed from the register once they have been on it for 15 years since leaving prison.

CAJ acknowledges the complexity of the assessment that needs to be made in order to protect the rights of potential victims whilst paying due regard to the rehabilitative process of imprisonment. The ongoing harm suffered by the victims of sexual offences must also not be forgotten, caused not only by the offence itself, but also by the experience of having to report the crime and pursue a prosecution. Sexual offences are generally the most difficult to prosecute successfully, and there are enormous social and stigma barriers for individuals in coming forward. There is also a need to strike the appropriate balance between the need to protect the public, where necessary, on the one hand, whilst not discounting the situation of individuals who have served a sentence for their crimes and may not reoffend on the other. This is obviously a difficult balance to strike and CAJ does not presume to suggest that the solution is an easy one.

The development of review mechanisms for indefinite notification is required by the judgment in *R (F and Thompson) v. Secretary of State for the Home Department*.[1] As set out in the consultation document this judgement held that the indefinite notification period prescribed by s. 82 of the Sexual Offences Act 2003 for sentences of over 30 months, with no possibility of review, is incompatible with Article 8 of the European Convention on Human Rights (ECHR).

Notwithstanding the broader quality of the consultation document CAJ does note that there is relatively limited mention or analysis of the human rights framework within the document.[2] Considering the potential for misrepresentation of the implications of the human rights framework, we believe that there would have been benefit in wider analysis of the same within the proposals. The document records that the Supreme Court in the above judgement found the indefinite notification requirements incompatible with Article 8 of the ECHR, but does not set out the framework provided by Article 8 (the right to private and family life) and the test which must be met to ensure legislation is compatible with its provisions. Article 8 (2) provides, in summary that interference in private and family life is permitted

[1] [1] *R (F and Thompson) v Secretary of State for the Home Department* [2010] UKSC 17.

[2] In addition to the European Convention on Human Rights there are a range of other international standards, which should be considered in this process, including the *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* and the *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. There is a specific need here to protect children, and thus engage with Articles 3 and 19 of the *UN Convention on the Rights of the Child*.

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when it is adequately set out in law and is a proportionate to achieving one or more of the legitimate aims set out in the Article.[3] As set out in the Supreme Court judgement, the European Court of Human Rights in a separate case had already held that the notification requirements under the Sexual Offences Act 2003 did engage Article 8, were adequately set out in law and did pursue two of the legitimate aims namely the prevention of crime and the protection of the rights of others.[4] The issue before the court was therefore whether it was proportionate to apply the indefinite notification requirement to everyone who had a sentence of over 30 months. The Supreme Court reviewed the evidence and held that this was disproportionate.

In general measures can be found to be disproportionate when they are effectively arbitrary, i.e. when they are applied indiscriminately and in a blanket fashion, without allowing the opportunity to take into account different circumstances. In relation to assessing whether the present proposals meet this test, there are some aspects where further clarity would be beneficial. For instance, it is not clear on what basis it was decided that an application for the review of the notification requirements will only take place 15 years after an individual has been released from prison. There is also no evidence base provided (other than it is 'in line with proposals for England and Wales'[5]) as to why 8 years was chosen as the time period which must elapse before a further review can occur (the Assembly having initially considered five years.[6]) Similarly, it is unclear why 8 years was chosen as the timeframe deemed appropriate for an application of the review requirements for those who were under 18 at the time of conviction, nor on the circumstances in which the police can extend the period before a person can re-apply from 8 years up to 15 years. If the Department has arrived at these time periods for good reasons based on empirical data, this is not clear from the consultation. Further clarity on the thinking behind these elements of the proposals would therefore be welcome. If the Department does not have an evidence base for these proposals, CAJ would urge the examination of human rights compliant comparative data to this end.

[3] The full text of Article 8 ECHR is: **"**1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."
[4] Paragraph 27 of judgement citing *Adamson v United Kingdom* (1999) 28 EHRR CD 209.
[5] Para. 3. 22
[6] Para. 3. 22

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There does appear to be an underlying assumption in the proposals that the imprisonment of persons for sexual offences does not serve any rehabilitative or reformative purpose. Prison functions as both a method of protecting the public and rehabilitating individuals. There is a need to strike an appropriate balance between genuinely protecting the public and not unduly placing measures on individuals who have served their sentences and have been rehabilitated when there is no real public protection purpose in doing so. If the balance is not struck and far-reaching measures are applied, in practice, for no good reason, they risk losing legitimacy. CAJ requests that if the Department is relying upon data which suggests that there is a high rate of recidivism amongst persons convicted of sexual offences as a justification for its proposals, that such data be shared as part of the consultation.

CAJ would also urge consideration of a tiered or risk-assessment driven approach which, where relevant, takes into account the particular circumstances of individual cases and tailors appropriate measures accordingly. Blanket measures engage the test of proportionality. CAJ recognises that all sexual offences are inherently serious crimes but clearly an offence leading to a sentence of 10 years is even more serious than an offence that led to a sentence of 30 months. The courts already follow such an approach when sentencing, considering a number of factors, such as the circumstances surrounding the commission of the offence and the persons own previous criminal record. This allows the court to differentiate and pass what it considers to be an appropriate sentence in the circumstances of the case. Given that such differences play an important role in defining sentencing, they should also be considered in the operation of this scheme.

The proposals set out that the review of whether a person convicted of a sexual offence is still a risk to the public will be conducted by the PSNI, but that there will effectively be a right of 'appeal' to the Crown Court. This is important to, as noted in the consultation paper, meet any requirements under Article 6 ECHR for a fair trial by an independent and impartial tribunal. Further clarity would however be welcome as to the practical details of this mechanism including:

- Whether the Crown Court will be able to review how the police made their decision or whether proceedings will simply be limited to reapplying the same test?

- Will the applicant still have recourse to judicial review should the decision not be successfully appealed?

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- Whether the Department envisages legal aid being made available for this process?

Proposal: Change the law to allow the removal of persons from the register who were historically convicted of offences which are no longer crimes

The proposals would change the law to allow the removal of persons from the register who were historically convicted of offences that are no longer crimes. This would include those persons who had consensual sex with another person aged 16 or over. This proposal is in light of the age of consent having previously being higher and no consequential amendment having been made to an existing procedure which allows men previously convicted under nineteenth century legislation criminalising homosexuality an exemption from registration.[7] CAJ welcomes this proposal.

In relation to the procedure itself (under schedule 4 of Sexual Offences Act 2003) CAJ would urge further consideration of whether it is right for the onus to be placed upon the individual to have to apply to have the notification requirements removed, rather than their removal by an automatic review by the relevant authorities. Given that the removal of the notification requirement is as a result of a change in legislation, this may be more appropriate.

On a related matter, CAJ notes proposals (for England and Wales) contained in the Protection of Freedoms Bill currently progressing through Westminster which provide that historical criminal convictions or cautions under legislation which criminalised homosexuality between consenting males can be disregarded upon application to the Secretary of State.[8] If the Secretary of State decides that such a conviction should be disregarded, it is deleted from relevant records.[9] A person who has a disregarded conviction or caution is then to be treated for all purposes in law as if the person has not committed an offence, been charged with, or prosecuted for an offence, been convicted of an offence, been sentenced for an offence, or been cautioned for an offence.[10] CAJ would urge consideration of introducing a similar provision for Northern Ireland should there be persons in similar circumstances in this jurisdiction.[11] As highlighted above, consideration

[7] In schedule 4 of the Sexual Offence Act 2003 referring to section 61 of the Offences against the Person Act 1861 (c. 100) or section 11 of the Criminal Law Amendment Act 1885.
[8] Protection of Freedoms Bill (as amended in Public Bill Committee)., clause 88,
[9] As above, clause 91
[10] As above, clause 92
[11] It was not until after the judgment of the European Court of Human Rights in *Dudgeon v. United Kingdom* [1983] ECHR 7525/76 that male homosexuality was decriminalised in Northern Ireland.

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should be given in such circumstances as to whether the onus should on the individual to have to apply to have a conviction disregarded.

Proposals: changes to notification requirements in relation to persons convicted of sex offences

Notification of foreign travel

The proposal would either require all persons on the register to notify at a police station of all travel outside the UK (including to the Republic of Ireland) or alternatively to do so if the period of travel is for more than 2 days, for which the latter option is preferred. There is also a proposal for a mechanism to notify of a recurring commitment to travel for employment or family connections. At present there is an existing requirement to notify travel of more than three days.

CAJ acknowledges the difficulties in tracking persons on the register and the particular issues which can occur in relation to travel outside the jurisdiction. We also note the practical difficulties that would be faced by the PSNI if persons convicted of sexual offences in Northern Ireland were required to report every time they wished to cross the border into the Republic of Ireland. In relation to the 2 day stipulation, again it is not clear as to what the evidence base was which led to this proposal becoming the preferred option and hence what actual benefit would be offered by reducing the time period for which notification is required from 3 to 2 days. It is not clear also whether other or complementary measures have been considered to increase cooperation between the relevant authorities in the constituent parts of the 'Common Travel Area' (the UK, Ireland, Isle of Man and Channel Islands) relating to this measure, or if there is broader tie-in to evolving international human rights developments. In relation to the second proposal, CAJ would suggest that the phrase 'recurring commitment' is further teased out to help to avoid any ambiguity or uncertainty in the operation of the requirement.

Arrangements to require offenders to notify weekly of where they can be found if they have no fixed abode

The proposal means a person who is homeless or otherwise has no fixed address would need to tell the police every week, rather than annually (or when a change occurred) where they can be regularly found.

Although this case notes that from 1972-1980 no private prosecutions were brought there may have been convictions relating to other periods.

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The difficulties faced by the police in relation to the enforcement of notification for those who are homeless or without a fixed address have been set out. This proposal however does not address the underlying issue of homelessness which may occur on release from prison. It would be beneficial to include within this measure a more holistic approach to the issue, for instance, a commitment to work with the Probation Service, Housing Executive and Housing Associations and all other relevant agencies. This approach would also have benefit from the perspective of public protection, as if more appropriate services are provided to homeless persons convicted of sexual offences then it will be easier for the PSNI to conduct monitoring.

Arrangements to require offenders to notify if they are living in a household where there is a child under 18

This proposal would require a person on the register to notify police of any time they are staying in a house where there is also a child.

The Department regards the proposal as a 'proportionate step to protect those children who may be at risk of serious harm' and argues that that the additional requirement would 'add very little burden, either to sex offenders or to police forces'.[12] However whilst it appears relatively straightforward for this type of information to be provided within the standard change of address notifications, it is less clear what will happen in situations where children are subsequently present at a property (temporarily or otherwise) and the person convicted of a sexual offence was unaware of this fact at the time of notification. In these circumstances this could constitute a considerable additional undertaking, particularly if there is a blanket requirement rather than a tiered risk assessed approach based on the particular circumstance (e.g. if the original offence involved children). What is also not set out is how the PSNI would use this information and how they would be able to protect vulnerable children in this way. For instance, it is not clear if the PSNI would inform the householder that the individual was a person convicted of a sexual offence and how the potential repercussions of this would be handled. Further consideration should therefore be given to the rationale behind this proposal, its detail and how the proposal would operate in practice. Finally, to afford legal certainty, it would be beneficial for the terms 'reside' and 'stay' to be defined in relation to both children and the person convicted of a sexual offence.

[12] Para. 7.2.

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Offenders to notify additional information to police

This proposal would require persons to give the police details of passports, bank accounts and credit cards and to produce some identification at every notification visit. There are therefore data protection implications for the police with regard to the storage, use and eventual destruction of this information. The objectives of this proposal are:

- to use the data to help trace offenders;
- to use bank and credit card details in investigations regarding accessing indecent images.

In relation to the proposals relating to bank account and credit card details, the effectiveness and hence proportionality of introducing a blanket requirement (rather than risk assessed provision) deserves further examination. In exploring the full implications of the proposals, further clarity on the circumstances in which police will be able to access and monitor bank and credit card accounts would be helpful. CAJ also believes that in practical terms the details of any assessment of the risk of this requirement being counterproductive would be helpful.[13]

CAJ has no objection *per se* to persons having to produce their identification documents at every notification visit. However not all persons possess the forms of ID which are routinely requested such as passports and driving licences. Such forms of ID can be expensive and complex to obtain although there are alternatives for many persons, such as the electoral identity card. However there will be categories of persons, for example those who are homeless, who would have difficulty in obtaining most forms of ID. In specifying the forms of acceptable identification for this new requirement, care will need to be taken not to unduly restrict the forms of identification which will acceptable, nor to place a requirement which marginalised individuals are unlikely to meet. A circumstance whereby an individual commits an offence for not having a form of identification, which they have no reasonable prospect of obtaining, needs to be avoided.

[13] Relating to the risk that offenders will not declare credit cards or may seek to purchase indecent images in other ways upon becoming aware that such a card is now being surveyed by the police.

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Extension of Sexual Offences Prevention Order (SOPO) provisions to include positive actions not just prohibitive conditions

The proposal would allow the courts, through a SOPO, to require a sex offender to take some specified action to help protect the public. Presently a SOPO can *prohibit* an offender from doing something (e.g. owning a computer) but not *require* them to do something (e.g. attend a rehabilitation programme). CAJ acknowledges that the addition of required positive actions to SOPO could assist in the rehabilitation process of a person convicted of a sexual offence. However proportionality questions are likely to arise with regards to some positive measures, such as a requirement to reside in a particular house, which should be reflected in the framework. It is important that the development of options is done in conjunction with the Probation Service, ensuring that the measures devised are both proportionate and productive.

Offenders to notify all details of travel within the UK

This proposal would require notification of travel within the UK of more than three days. Whilst CAJ can envisage circumstances whereby such a requirement could be justified, there are proportionality questions as to whether it is necessary to introduce a blanket requirement. An alternative would be to apply the measure only to those who the police reasonably believe pose a significant risk. Further information could be given on the evidence base for this proposal and whether there will be a differentiation between travel within Northern Ireland and travel to Great Britain (and hence to other police service areas.)

Proposal: Introduce the Violent Offender Order (VOO)

This proposal would allow the courts to make a VOO, placing conditions on the behaviour of a violent offender in the community to help manage the risk that person poses to the public. A VOO would impose similar notification requirements as those placed on sexual offenders on violent offenders.

CAJ has concerns regarding this proposal and how it would interact with the current sentencing arrangements in relation to persons convicted of violent offences, many of whom will be released from prison on licence. A period spent on licence is a period where the person convicted of an offence is released from custody, subject to certain conditions, such as supervision by the Probation Service. The person released is under a duty to abide by the conditions of the licence.[14] The proposal describes

[14] Criminal Justice (Northern Ireland) Order 2008, art. 27

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how in England and Wales, VOOs are used to place restrictions on those offenders who continue to pose a risk of serious violent harm to the public even after their release from prison and when their licence period has expired. The rationale behind these orders may not pay due regard therefore to the idea that efforts should be made to rehabilitate violent offenders before their licence period has expired, minimizing the risk of serious violent harm. CAJ notes that VOOs can only come into force in England and Wales once statutory licence conditions in relation to an offence have expired. However, the consultation states that 'key stakeholders within the criminal justice system'[15] have requested that VOOs in Northern Ireland should instead come into effect when the offender leaves prison. The need for this is questionable, given that as highlighted above, violent offenders may already be subject to licence requirements when they leave prison.

The Criminal Justice (Northern Ireland) Order 2008 provides for the imposition of life sentences, indeterminate custodial sentences and extended custodial sentences in respect of persons convicted of violent offences. When persons convicted of violent offences are released from custody under these provisions, they are released on licence. Such licences generally contain standard conditions such as those set out in the Criminal Justice (Sentencing) (Licence Conditions) (Northern Ireland) Rules 2009. Examples of these conditions are that the offender must not behave in a way which undermines the purposes of their release on licence, which are the protection of the public, the prevention of re-offending and the rehabilitation of the offender. The offender is also subject to the conditions not to commit any offence, to reside at an address approved by their probation officer and not to change address without the permission of their probation officer. They cannot travel outside of the United Kingdom, the Channel Islands or the Isle of Man without the permission of their probation officer.[16] Licenses can also contain further special conditions such as restricting the contact the person who is subject to the licence can have with other persons, imposing a curfew upon the offender or restricting their freedom of movement.[17] The 2008 Order also provides that an electronic monitoring requirement can be imposed as a condition of release on licence.[18] Licences therefore can already impose similar restrictions as those which are suggested in the proposal. Licences can be revoked and the person convicted of a violent offence can be recalled to serve the rest of their sentence, presumably if it is concluded that the person released on licence still poses a risk to the public.[19]

[15] Para. 12. 10.
[16] Criminal Justice (Sentencing) (Licence Conditions) (Northern Ireland) Rules 2009, r. 2
[17] Criminal Justice (Sentencing) (Licence Conditions) (Northern Ireland) Rules 2009, r. 3
[18] Criminal Justice (Northern Ireland) Order 2008, art. 35
[19] Criminal Justice (Northern Ireland) Order 2008, art. 28

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Where a life sentence is imposed on a person convicted of a violent offence, the licence applies upon their release for the rest of their life.[20] Where an indeterminate custodial sentence is imposed on a person convicted of a violent offence, the licence conditions apply for the rest of that person's life, unless the Parole Commissioners direct the licence to cease once the person has been at liberty for at least ten years.[21] Where the offender is serving an extended custodial sentence, the sentencing judge imposes a period for the offender to spend on licence, which can be up to five years.[22] Given that a person convicted of a violent offence may already be subject to these licence conditions, CAJ questions the need for a measure such as a VOO to also be imposed.

CAJ would also have concerns that a VOO could be employed to effectively extend the period a person is subject to their licence requirements, without paying due regard to the discretion exercised by the sentencing judge. If there are concerns regarding sentencing and the length of licence periods that are being set by the judiciary, they should be addressed directly, rather than indirectly by the proposed measure. VOOs have the potential to lead to uncertainty and ambiguity as to what restrictions are placed on a person's right to liberty once they are released from prison.

CAJ believes that further clarification is also required regarding the procedure by which a VOO could be applied for. The proposal outlines how in England and Wales a VOO is a civil preventative sanction, applied for in the Magistrates Court by the police. In England and Wales, breach of the order is a criminal offence, which attracts a maximum penalty of 5 years imprisonment. However, no detail is provided regarding what the court has to be satisfied of before a VOO can be made, on whom the onus of proof lies in showing that a VOO is or is not necessary, nor on whether the relevant standard of proof in proceedings where a VOO is sought will be the civil standard of the balance of probabilities or the criminal standard of proof beyond a reasonable doubt. If, as is the case in England and Wales, a civil order is applied for with a criminal sanction attached if the order is breached, this could raise concerns regarding the right to a fair trial under Article 6 of the ECHR, if the standard of proof required is the civil standard. In *R (McCann) v. Crown Court at Manchester*[23] the House of Lords held that in civil proceedings where an anti-social behaviour order was sought (the breach of which was also a criminal offence punishable by five years imprisonment) there were good reasons, in the interests of fairness, for applying the

[20] Life Sentences (Northern Ireland) Order 2001, art. 8
[21] Criminal Justice (Northern Ireland) Order 2008, art. 22
[22] Criminal Justice (Northern Ireland) Order 2008, art. 14
[23] *R (McCann) v. Crown Court at Manchester* [2002] 4 All E.R. 593

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higher standard of proof beyond a reasonable doubt when allegations were made of criminal or quasi-criminal conduct which, if proved, would have serious consequences for the person against whom they were made.

Further, if a VOO is sought on the basis that a person continues to pose a risk of serious violent harm to the public, no detail is provided in the proposal as to how this level of future risk would be assessed. It should also be remembered that the Parole Commissioners do not direct the release of persons convicted of violent offences serving life, indeterminate or extended custodial sentences on licence, unless they are satisfied that it is no longer necessary for the protection of the public from serious harm that the person should be confined.[24] In circumstances where the Parole Commissioners have determined that the person can be released on licence, it would seem incongruous to then apply to the court for a VOO on the basis that the person continues to pose a risk of serious violent harm to the public. Further clarification is therefore required regarding in what circumstances an application for a VOO would be made, how such proceedings would be conducted, whether the person against whom the order is made would have a mechanism to appeal against the making of the order and how the rights of the accused to a fair trial would be guaranteed. Consideration should also be given as to how the imposition of a VOO would interact with the current functions of the Parole Commissioners.

CAJ would also have concerns regarding the potential compatibility of VOOs with Article 7 of the ECHR. Article 7 prohibits the use of punishment without law, and provides that a heavier penalty shall not be imposed on a person for a criminal offence than then one that was applicable at the time the criminal offence was committed. The proposal describes how in England and Wales, VOOs are civil, preventative orders 'which can place restrictions on offenders who continue to pose a risk of serious violent harm, by prohibiting behaviour in a limited number of areas: their access to certain places, premises, events or people to whom they pose the highest risk'.[25] Whilst described as civil orders, the potential for VOOs to restrict an individual's liberty and the imposition of a criminal sanction for breach of the order could lead to the argument that VOOs themselves are a criminal sanction. This in turn could lead to the argument that a VOO imposes a heavier penalty than what was applicable at the time the criminal offence was committed, which could be considered to be a breach of Article 7.

[24] The Life Sentences (Northern Ireland) Order 2001, art. 6 applies in relation to the release of life sentence prisoners on licence. The Criminal Justice (Northern Ireland) Order 2008, art. 18 applies in relation to the release of priosners serving indeterminate or extended custodial sentences on licence. The release of a person serving an extended custodial sentence must also be directed by the Parole Commissioners when that person has served the whole of the appropriate custodial term.
[25] Para. 12. 5.

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CAJ also has concerns at the ideas put forward that a VOO should be applied for in relation to a broader range of offences than in England and Wales. The offences for which a VOO can be sought in England and Wales are manslaughter, soliciting murder, wounding with intent to cause grievous bodily harm, malicious wounding and attempt or conspiracy to murder. However, the proposals made by the 'key stakeholders in the criminal justice system' are that the minimum qualifying offence should be set at assault occasioning actual bodily harm, or that a series of multiple offences of a lesser nature should be considered sufficient, which would require lowering the sentencing threshold under which a VOO can be sought. Given that the stated aim of VOOs is to protect the public from a risk of further serious violent harm, it would seem disproportionate to seek the orders more generally against those persons who have not been convicted of causing serious violent harm. Whilst CAJ supports the stated intention behind these proposals, which is to tackle domestic violence, it would be more prudent to consider a specifically tailored legislative measure to do so. CAJ notes that there are already civil remedies in place which aim to protect against domestic violence, such as occupation orders, non-molestation orders or even potentially injunctions under the Protection from Harassment (Northern Ireland) Order 1997. If it is felt that these remedies are ineffective and that reform is needed in this area of the law, legislation should be proposed that is specifically designed to do so, rather than attempting to adapt measures that are not necessarily appropriate for the task.

CAJ would also question whether the aim of VOOs should be to prevent an escalation to serious harm. Violent Offender Orders are imposed in England and Wales after serious violent harm has occurred and are aimed at preventing the risk of further serious violent harm. To impose a similar order on an individual who has been convicted of causing less serious harm would overlook the facts of their individual case, which by their nature meant they were not charged with a more serious violent offence. Widening the criteria under which such orders could be sought could also be viewed as disproportionate.

CAJ believes that further information should be provided on the background to this proposal. For instance, Violent Offender Orders have been an option in England Wales since July 2009, but no information is supplied as to the levels of their success and whether they have made a real and valid contribution to the reduction of violent re-offending. It would also be beneficial to include all of the views of the criminal justice agencies, as outlined at paragraph 12.10, together with the evidence presented by this group. This could assist in understanding why the criminal justice agencies want VOOs to be introduced 'quickly'[26] . It is not clear at present how a

[26] Para. 12. 11.

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VOO could actually help in the prevention of crime and the protection the public. CAJ would welcome clearer and more in-depth information on this aspect of the proposals.

Resourcing

CAJ disagree that these proposals will not have a major resource implication for the PSNI. The increased requirements for reporting and the associated breadth of the reporting will place a burden on the PSNI as they will have to collect, store and act upon this information. There is a risk that the increase in reporting requirements, without the police having the ability or resources to adequately process the data and then take appropriate consequent action will give the illusion of protection without the reality. CAJ would welcome a commitment from the PSNI that they are happy to accept this burden.

Equality

The proposals conclude that no equality issues were identified in the equality screening. However, given the concerns highlighted above that these proposals could be viewed as disproportionate, the true equality impact may only be known once the proposals are implemented in practice. CAJ, as noted above, is concerned that not enough differentiation has been applied between categories of offenders. As a result, these measures may have adverse impacts on different groups.

5th October, 2011

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