



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Violent Offender Orders: DOJ Policy
Development Update

24 January 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Alex Easton
Mr Tom Elliott
Mr Alban Maginness
Ms Rosaleen McCorley

Witnesses:

Ms Lorraine Ferguson	Department of Justice
Mr Gareth Johnston	Department of Justice
Ms Amanda Patterson	Department of Justice

The Chairperson: I welcome Mr Gareth Johnston, head of criminal justice policy and the legislation division; Amanda Patterson, head of criminal policy branch; and Lorraine Ferguson from the criminal policy branch in the Department of Justice. This session will be recorded and published in the Hansard report in due course. Gareth, I invite you to take us through the proposals, and then members may have some questions.

Mr Gareth Johnston (Department of Justice): Thank you, Chairman. I will ask Amanda to introduce the proposals.

Ms Amanda Patterson (Department of Justice): Thank you, Gareth. Chair, the paper that you have in front of you was provided to the Committee on 15 November, and then there were some oral briefings, so I thought that today I would just give you a little bit of background to the proposals and go through the details of what the proposed orders will do and will contain.

A violent offender order is a risk-management tool. It is a civil order, and we are proposing that it can be made in cases of a range of violent offences. Violent offender orders were originally introduced in England and Wales in 2009 by the Criminal Justice and Immigration Act 2008. The legislation was not extended at the time to Northern Ireland, mainly because changes in the sentencing framework were forthcoming at the time. As a result, the consultation was carried out on the proposals in 2011, in the same document as the sex offender notification proposals, which the Committee has just scrutinised for the Criminal Justice Bill.

The proposal for the violent offender order is to introduce a new civil order to Northern Ireland. We had originally anticipated that this would be based largely on the violent offender order in England and Wales. However, the consultation and the proposals that are in the paper in front of you have made the order much more akin to the sexual offences prevention order (SOPO), with which you are fairly familiar, rather than the violent offender order in England and Wales. Both are designed to manage

the risk of serious harm being perpetrated by offenders who are living in the community, and both attach notification requirements to the offender, which, in the case of sex offenders, is not so different, because they are subject to notification in any event as a result of their conviction. For violent offenders, the notification requirements would be attached only if there was a violent offender order made in respect of that individual.

I wondered whether it might be useful to go through some of the detail of the orders and to point out how we are comparing what we are proposing in the violent offender order for Northern Ireland with the existing violent offender order in England and Wales and with the SOPO so that you can see where the differences and similarities are. First, for the violent offender order and the SOPO, the order can be made only when it is necessary for the purpose of protecting the public from the risk of serious harm. The definition of "serious harm" remains the same right across the board; that is, a current risk of serious physical or psychological harm caused by that person committing one or more of the specified, in this case, violent offences.

The offences that we are specifying have changed somewhat from those originally proposed in the paper that you have. In England and Wales, the violent offender order is very focused on the very top end, you might say, of the violent offenders, the critical few. It is available only for those convicted of five very serious offences — manslaughter, soliciting murder, wounding with intent to cause grievous bodily harm, malicious wounding, and attempting or conspiring to murder. We propose that the order should be available for a much longer list of violent offences. It would be the same as the list of violent offences in the Criminal Justice (Northern Ireland) Order 2008, which allows public protection sentences to be given for a range of violent offences. We are suggesting that the violent offender order should be available for that same list of offences, and I will come back to that later. That is more or less a similar approach to the SOPO, which, again, is available for convictions for all sexual offences.

In England and Wales, there is a minimum sentence of 12 months, and unless a 12-month sentence is given, there cannot be a violent offender order. We suggest that that is not particularly appropriate, and that a violent offender order should be available, no matter what sentence is passed, if there is a current risk of serious harm posed by the individual. We also suggest the inclusion of a lower-level offence of assault occasioning actual bodily harm, but only in specific circumstances when that conviction is related to an offence in domestic or family circumstances, involves a child or a vulnerable adult, or is motivated by hostility. That offence is not included in the England and Wales version of the violent offender order.

We are also suggesting — and this, again, is slightly different to the paper in front of you — that there should be no age restriction on when a violent offender order is applied. In England and Wales, it is for over-18s, but there is no age restriction in the SOPO, and we suggest it should be the same for the Northern Ireland version.

Another difference from the order in England and Wales is that we suggest that it should be made available on conviction, so that the court can make the order when someone has been convicted of a specific offence and that it can run concurrently with other statutory provisions. That is a difference from England and Wales. As I said earlier, this is being targeted at higher-level offenders at the end of their sentence, when nothing else can be done and there continues to be a risk to the community. In England and Wales, they cannot run the order at the same time as licence conditions are in place. The SOPO, however, is totally different from that and operates across the UK and in Northern Ireland on the basis that if it is necessary as well as licence conditions, it can be made.

We suggest that the duration of the licence should be the same as the violent offender order in England and Wales, which is between a minimum of two and a maximum of five years, when it can then be renewed, if the police wish to present another case to the court. The SOPO is, of course, for a minimum of five years and can run indefinitely. We think that there is a difference in the longevity of risk for sex offenders and violent offenders.

Another difference is in the conditions that can be applied by the order. In England and Wales, they are very limited conditions; limited to prohibiting access to places, premises, events and people. With the SOPO, there is no limit on the restrictions that can be included, other than that they must be necessary to protect the public from serious violent harm. You may recall that, in the proposals for the Criminal Justice Bill, we proposed that the conditions of a SOPO could be extended to allow for positive conditions to be included. In line with that, we propose that the violent offender order for Northern Ireland should be allowed to contain positive conditions.

Finally, on the detail of the order, we propose that the notification requirements attached by an order should give the police powers of entry and search, in order to search an offender's home for the purpose of assessing the risks that they happen to be posing at that time. That would be the same as the notification requirements attached to a SOPO.

Those are the details of the order. In summary, it is a new civil order, more akin to the SOPO than the England and Wales violent offender order. To put that into context, there is a difference in policy justification for that. In England and Wales, the orders allow the police, in conjunction with the courts, to make sure that there are suitable controls over those offenders who need it after their sentence is finished. The order allows the police to manage dangerous violent offenders beyond the period of their sentence. We suggest that violent offender orders would be a key tool in protecting the public from violent offenders who are in the community, usually following a custodial sentence, but not necessarily, and where there is evidence that there is a real risk of that person causing serious violent harm. The refinements since the paper was written are to remove the age restriction; extend the list of violent offences to the schedule to the Criminal Justice Order (Northern Ireland) 2008; include the aggravated-by-hostility offences in the assault occasioning actual bodily harm category; remove any offence of common assault, as that is a very low-level offence; and give the police the power of entry in the notification requirements. That is a very quick rundown of the detailed provisions for the orders, which the Department would like to include in the faster, fairer justice Bill.

The Chairperson: Thank you very much. The order is certainly something I look forward to seeing brought forward and included in the Bill. I do not have too many questions; I am happy to get the precise detail when the order comes forward again to the Committee.

Initially, the plan was that there would be no time limit for the orders, neither a minimum nor a maximum; that would be left for the courts to determine. Why have you come up with the two-year minimum and five-year maximum?

Ms Patterson: That came about really as a result of discussions with the police and the Probation Service, who thought that that probably was just about right for the violent offender in that it would be more difficult to make a case to the court for a violent offender to have an order that would run for any longer than five years. They simply thought that it would be good to follow the England and Wales example in that case.

The Chairperson: If it were for the five years, it would still be subject to a review, and if the police were to wish to extend it, it could be extended?

Ms Patterson: Yes. It is not entirely the same, but, in the same vein, we have had to look to introduce a review mechanism for indefinite notification requirements. It would be more difficult to seek to justify an order for a violent offender for longer than five years.

The Chairperson: Members have no more questions, so the Committee is content for it to be brought forward as part of that Bill and, obviously, we will give it closer scrutiny at that stage. Thank you very much for coming along.

Mr Johnston: Thank you, Chairman.