

Northern
Ireland
Office

**Consultation on Section 75 Equality
Impact Assessment of the proposed
draft Criminal Justice (Northern
Ireland) Order 2007**

Criminal Justice Reform & Delivery Division
Massey House
Stormont
BELFAST
BT4 3SX

November 2007

**CONSULTATION ON EQUALITY SCREENING AND IMPACT
ASSESSMENT FOR THE PROPOSALS OF THE DRAFT CRIMINAL
JUSTICE (NI) ORDER 2007**

1. Introduction	1
2. Overview of Proposals	2
3. Equality Considerations	4
4. Assessing the Proposals	6
5. Screening	7
6. Screening and Assessment Conclusions	10
7. Your comments	11
8. Consultation Code of Practice	12
9. Duration of Consultation	13
10. Responding to this Consultation	13
11. Alternative Formats	14
12. Confidentiality of Responses	14
Annex A – The Provisions in the proposed draft Order	15

Proposed draft Criminal Justice (Northern Ireland) Order 2007

1. Introduction

The purpose of this consultation document is to seek views from interested parties on the implications of the proposed draft Criminal Justice (Northern Ireland) Order 2007 with regards to equality of opportunity for all groups specified under Section 75 of the Northern Ireland Act 1998.

This consultation document provides an overview of the purpose and content of the proposed draft legislation; an assessment of the equality considerations; the Northern Ireland Office's consultation code of practice; and how to respond to this equality consultation.

It also details how to get more information on our equality screening process should it be required and how to respond to the parallel consultation on the substantive policy proposals.

Our screening forms and the supporting equality impact assessment may be found on the NIO website at www.nio.gov.uk.

The proposed draft Order and its full Explanatory Document on which this equality screening assessment is based may be found on the website along with details on how to submit views on the main policy proposals. An Easy Read paper providing an overview of the proposals is also available.

2. Overview of Proposals

The proposed draft Criminal Justice (Northern Ireland) Order 2007 provides a series of new sentencing powers; arrangements for risk assessment and management of certain sexual and violent offenders and potentially dangerous people in the community; a series of road traffic offences and penalties; and a range of miscellaneous matters to enhance the law on knife crime, alcohol consumption, police powers and improvements to the efficiency of criminal justice system procedures.

The draft Order has a number of aims and purposes:

- To provide enhanced levels of public protection for Northern Ireland.
- To improve existing provisions for the management of dangerous offenders
- To prevent crime and victimisation
- To improve the supervision and rehabilitation of offenders;
- To improve the efficiency and effectiveness of the criminal justice services; and
- To enhance public confidence in the criminal justice system of Northern Ireland.

To achieve these aims, proposals are made for changes to the range of sentences available to the courts particularly in relation to dangerous offenders. The legislation would create public protection sentences for serious sexual and violent offenders, and provide for release on licence and powers to recall to custody for non-compliance with licence conditions. Statutory post-release supervision of sentenced prisoners on release from prison would

replace existing arrangements for unconditional release at the half-way point of sentences.

It also creates proposals to more effectively manage the risk posed by certain sexual and violent offenders and potentially dangerous people in the community by a multi agency risk management approach.

In parallel, new powers are proposed to enhance the management of low-risk offenders in the community by expanding the use of curfew orders and introducing electronic monitoring (or “tagging”); and creating a non-custodial alternative for fine default.

The proposed draft Order also contains powers to address a number of other criminal justice themes. Three broad areas relating to road traffic are dealt with: powers to deal with bad driving; drink driving; and police powers. The Order also contains powers around the purchase and consumption of alcohol and combating alcohol-related disorder; increased penalties for offences relating to knives; and a range of other matters including amendments to prison law, the availability of video links in court; legal aid; police powers under PACE and the proving of arrest warrants; “ASBO” and youth justice law.

The provisions are outlined in more detail in Annex A.

3. Equality Considerations

As a public authority under Section 75 of the Northern Ireland Act 1998, the NIO is required to have due regard to the need to promote equality of opportunity:

- Between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- Between men and women generally;
- Between persons with a disability and persons without; and
- Between persons with dependants and persons without.

In addition to this obligation public authorities are required to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group,

This legislation requires us to consider whether any policy has a differential impact upon the relevant groups, the nature and extent of that impact and whether such impact is justifiable.

For screening purposes, each grouping in the proposed draft Order was screened individually. Screening forms were completed on each of the following:

- The sentencing framework proposals (public protection sentences, post-release supervision, curfews and tagging, release and recall, and the supervised activity order)
- Road traffic provisions
- Purchase and consumption of alcohol
- Prison law

- Live video links in courts
- Legal aid
- Police and Criminal Evidence
- Knives
- Proving execution of arrest warrants
- Anti-social behaviour orders
- Youth justice

Individual screening forms are available on the NIO website.

4. Assessing the Proposals

Assessing each of the Order's groupings against the Section 75 groups and across the various purposes of the proposals required a cross cutting approach. Impacts needed to be assessed not just with regard to offenders who might be subject to new powers, but also to Northern Ireland society as a whole. The criminal law is designed to be for the benefit and protection of the public and equality assessments must ensure that they are of equal benefit for the wider public and victims. We therefore assessed the proposals according to a number of purposes and impact groups.

5. Screening

In enhancing *public protection*, our analysis is that the proposals will have equal benefit to everyone in Northern Ireland across all Section 75 categories. The public protection sentences; the post-release licence requirements; and the powers to tackle knife crime will benefit all. The provisions dealing with sexual and violent offences, licensing, monitoring, supervision and recall powers will provide protection benefits to all Section 75 groups.

In terms of *crime prevention* again the benefits will be equal for all across the Section 75 categories. Public protection sentences and post-release supervision are designed to prevent offending through the use of custody in appropriate circumstances and through supervision after release. The road traffic powers are designed to prevent road death and improve road safety for all; the alcohol provisions are to prevent anti-social drinking and behaviour; and powers around the manufacture and sale of knives are for the benefit of all.

In terms of *public confidence* our analysis is that crime, the fear of crime and impact on victims affects the quality of life across a range demographic and Section 75 groups. NI crime surveys show that differing age groups have fears about differing types of crime as do differing genders, marital statuses, and disability. Victims come from both the young and old; all sexual orientations; religions; and races. To take some examples: the risk assessment and release arrangements that are being created for dangerous offenders; the post-release supervision arrangements; the controls

being put in place around the manufacture, supply and possession of knives; and even the increased powers to deal with under-age and public drinking will all have positive impacts. In terms of public confidence and victim impacts, all groups will benefit from the proposed changes.

In terms of the *efficiency and effectiveness* purposes of the draft Order, the proposals will have benefits for both offenders and society as a whole. Irrespective of their characteristics, offenders will benefit from expanded opportunities for live link court appearances; as a result of expanded police bail powers, will be less likely to be brought before a court in the first instance; and for those who are having an arrest warrant executed, will be able to be taken to a more local court. In overall terms a more efficient criminal justice system will be achieved through reductions in delay; less transporting of offenders around the jurisdiction; and speedier access to courts and justice.

In terms of *offenders*, two aspects are worth considering: the rehabilitative and positive impacts the proposals will have as well as the impacts of the sentencing powers themselves. For *rehabilitation and positive impacts*, all sentenced prisoners released under the Order, irrespective of Section 75 characteristics, will have post-release supervision. Not only does this have public protection importance but it also assists prisoners in their rehabilitation into society. Curfew, tagging and bail powers will allow custody to be avoided in some cases and earlier release achieved in others. The supervised activity order as an alternative to prison for fine default will also benefit all such offenders. The

change in law to allow 17 year-olds to be remanded into custody to a juvenile justice centre rather than an adult prison is particularly important in preventing young girls from being held in an adult prison. So too is the ability of vulnerable defendants to avail of live link facilities. There will also be adjustments to rehabilitation of offenders' law to assist young offenders.

Turning to the *sentencing powers*, because of the particular profile of offenders, the legislative proposals are most likely to impact on males - males are by far the most dominant Section 75 group in the offending population. Across the full range of sentencing provisions – including road traffic, knives, alcohol etc – it is mostly young males who will be impacted upon (though this is not exclusively so as sex offenders have an older age profile than other offenders).

For offenders, our conclusions from this analysis are that young males who offend may be affected more than any other Section 75 group. The key aspect however is that the impact will only be on those “who offend” - not on young males as a whole. Offenders are a self-selecting group who choose to break laws that apply equally to all. It is their offending behaviours that attract the impact, not as a result of any particular policy proposals to target young males as a group.

The impact of the proposals on offenders is therefore the only area that we screened as being in need of a more detailed equality impact assessment. The results of our impact assessment are available on the NIO website.

6. Screening and Assessment Conclusions

In overall terms, the proposed draft Criminal Justice (NI) Order is a public protection, crime reduction and prevention package for the benefit of society as a whole. Our overall assessment is that the policy package positively benefits all Section 75 groups equally: those who may be victims as a result of their sexual orientation; gender; age including those who may be particularly vulnerable as children, by being elderly or disabled; or indeed because of their religion or politics. Whether that is in terms of public protection sentences, road safety powers, knife laws, public drinking etc. the package as a whole benefits all.

In other respects our conclusion is also the draft Order assists offenders themselves. There are provisions to help them avoid custody; to have appropriate supervision; and to assist with their rehabilitation on release. In terms of the criminal justice process itself systematic protections exist for the offender including legal representation and legal aid. Prosecution and sentencing takes into account all the facts and circumstances surrounding a particular case before coming to a decision; the 'case merits principle' is at the core – backed up by subsequent appeal mechanisms. Importantly the provisions are based on powers that already exist in England, Wales and Scotland.

The criminal law exists to protect society from activities which society (through Parliament) deems unacceptable and punishable. It applies equally to all and the overwhelming consideration must be the protection of the public from offending and from harm posed by offenders.

Our conclusion is that as a public protection, crime prevention and rehabilitation package, the proposed legislation benefits all section 75 groups. Any impacts on offenders – who are predominantly male – are as a consequence of their offending behaviours, not as a result of any of the proposals targeting offenders or males as a group. Our conclusion is that the proposed legislation is compliant with Section 75 requirements.

We would welcome views on these conclusions.

7. Your comments

Your comments are welcome on the equality implications of the draft proposals, particularly with regard to the following questions considered during the NIO Screening and Equality Impact Assessment process:-

- Is there any evidence of higher or lower participation or uptake by different groups in relation to the scheme within any of the nine categories?
- Is there evidence or indication that different groups have different needs, experiences, issues and priorities in relation to the scheme?
- Is there an opportunity to better promote equality of opportunity or better relations by altering the policy or working with others in Government or the larger community?

Copies of the screening documents and equality impact assessment may be found on the NIO website www.nio.gov.uk.

8. Consultation Code of Practice

The NIO follows the Cabinet Office code of practice when we consult with the public. The NIO Equality Scheme also contains specific obligations relating to consultation on the impact of proposed policies on the promotion of equality.

The Cabinet Office guidance contains six key consultation criteria:-

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy. [Criterion 1](#)
- Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses. [Criterion 2](#)
- Ensure that your consultation is clear, concise and widely accessible. [Criterion 3](#)
- Give feedback regarding the responses received and how the consultation process influenced the policy. [Criterion 4](#)
- Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator. [Criterion 5](#)
- Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate. [Criterion 6](#)

9. Duration of Consultation

In line with guidance from the Cabinet Office this consultation will run for a period of 12 weeks from 8 November 2007. All responses should therefore be submitted by 5pm on 31 January 2008. Comments are welcomed by post, e-mail or text phone and responses will be acknowledged on receipt.

10. Responding to this Consultation



For queries and responses to the consultation please contact:-

Northern Ireland Office
Criminal Justice Reform & Delivery Division
Massey House
Stoney Road
Belfast
BT4 3SX
E-mail: cjorder2007@nio.x.gsi.gov.uk

 Telephone: 028 90 527142
 Text phone: 028 90 527668

If you have any queries or concerns about the way in which the consultation has been handled please contact the NIO Consultation Co-ordinator at the following address:

Donna Knowles
Equality Branch
Central Management Unit
Northern Ireland Office
Room 14
Stormont House Annexe
Stormont Estate
Belfast
BT4 3SH
E-mail: donna.knowles@nio.x.gsi.gov.uk

 Telephone: 028 90 527015
 Text phone: 028 90 527668

11. Alternative Formats

An electronic version of this document is available on the NIO website www.nio.gov.uk. Hard copies will be posted on request. The text phone contact details are provided above.

Copies in other formats, including Braille, large print, computer disk etc may be made available on request. Please let us know if you need copies in an alternative language or format.

12. Confidentiality of Responses

The NIO will publish a summary of responses following the completion of the consultation process. Unless individual respondents specifically indicate that they wish their response to be treated in confidence, their name and the nature of their response may be included in any published summary of responses. Respondents should also be aware that the NIO's obligations under the Freedom of Information Act may require that any responses, not subject to specific exemptions in the Act, may be disclosed to other parties on request.

Annex A – The Provisions in the proposed draft Order

Dangerous Offenders

The proposals provide for the introduction of new measures for the sentencing and assessment of dangerous violent and sexual offenders. These can result in indeterminate sentences or life sentences that have extended licences up to 8 years after final release.

If an offender has been assessed as dangerous and has been convicted of a specified and serious sexual or violent offence with a maximum penalty of 10 years or more, he will receive either a discretionary life sentence, an indeterminate custodial sentence (an “ICS”), or an extended custodial sentence (an “ECS”). The offender would only receive an ICS if the court considers that an extended sentence would not be adequate to protect the public from serious harm and will specify a minimum term or ‘tariff’ which the offender is required to serve in custody. The ‘tariff’ must be at least two years.

A dangerous offender who has been convicted of a specified sexual or violent offence for which the maximum penalty is less than 10 years will be given an ECS. This sentence will be a determinate sentence of at least one year and offenders will become eligible for release at the half way point. In addition to the custodial part, courts will set extended supervision periods of up to five years for violent offenders and eight years for sexual offenders.

Dangerousness and Risk Assessment

When considering a public protection sentence dangerousness is assessed by the court as to whether there is a significant risk of serious harm to members of the public by the commission of further such offences. Serious harm means death or serious personal injury whether physical or psychological. Dangerousness assessments will be based on reports specifically prepared for that purpose by specialists including probation officers, psychiatrists or psychologists.

The proposals also include powers for the Secretary of State to issue guidance to more effectively assess and manage the risk posed by certain persons in the community, where that risk is best managed by agencies sharing information and working together. Serious harm has the same meaning as that relating to public protection sentences and can be caused by way of such persons' offending or otherwise.

The agencies that will be operating the guidance include the police, the prison service, probation services, the NSPCC and relevant Government Departments or agencies. Guidance prepared by the agencies and approved by the Secretary of State will provide the detail of how the arrangements will operate in practice. An annual report must be prepared.

Prison Sentences and Release on Licence

New arrangements are created for prison sentences and for prisoners' release on licence, recall to prison following breach of licence requirements and further re-release.

Release from the public protection sentences will be at the discretion of a new independent body of Parole Commissioners for Northern Ireland. After an ICS tariff has been completed, the offender will be risk assessed by the Parole Commissioners. The prisoner can be released or required to remain in prison until the risk has sufficiently diminished to allow release and supervision in the community. For an ECS, release would be possible during the second half of the sentence based on the same Parole Commissioners risk assessment process otherwise they will be released at the end of the custodial part.

Offenders serving standard prison sentences will be released on licence at a point determined by the court. For prison sentences of less than 12 months, the court will set licence conditions; for longer sentences (those of 12 months or more) the Secretary of State will set licence conditions taking into consideration the court's recommendations. On release, such prisoners will be placed under the supervision of a probation officer. This new form of imprisonment will replace unconditional release at the half way point and remove automatic 50% remission.

Following release, all public protection and standard sentenced prisoners will be on licence under the supervision of a supervising officer. During their licence period – for the ICS sentence that could be in place for life; for the ECS that could be up to 8 years –

prisoners may be recalled to custody by the Secretary of State for breach of conditions, for re-offending or on grounds of risk.

Curfews and Tagging

New powers will allow increased use of curfews as a condition of bail; as a condition or requirement attached to certain non-custodial sentences; and as a condition of a licence on release from custody. Curfews periods are to be restricted to between 2 and 12 hours in any one day, but the Secretary of State will have the power to vary these hours by Order if required. Powers are also introduced to avoid a curfew causing any conflict with a person's religious beliefs or interference with the times that the individual may normally work, receive training, or attend school or any other educational establishment.

The parallel creation of powers for electronic monitoring or 'tagging' will allow for the effective monitoring of curfews if the period of electronic monitoring is to be more than 14 days, which should allow for their wider use in preference to custodial sentences or remands in custody.

The proposals also provide the Secretary of State with a power to release a standard determinate prisoner early, subject to curfew and electronic monitoring requirements.

The power is only available if the prisoner is serving a sentence of at least six weeks, has served at least four weeks and one half of his custodial sentence and is in the final 135 days of his period of custody . There are a number of exceptions where the type of

release cannot occur and powers are also introduced to facilitate the recall of any prisoner that does not comply with strict release conditions, though a recall under these powers does not go before the Parole Commissioners as this would be considered a breach of sentence, rather than licence conditions.

Supervised Activity Orders

The proposed draft Order will create a Supervised Activity Order available to the court as an alternative to committal to custody for fine default. Rather than being sent to prison for non-payment of a fine, courts will be able to impose a community-based alternative. The “SAO” will be available for fines up to £500 and will have a minimum of 10 hours and maximum of 100 hours activity requirement. Activities will be set and supervised by a supervising officer. Failure to comply can result in a longer prison sentence than would have been the case had a custodial period been set in the first instance.

Parole Commissioners

The proposals will create a body of independent Parole Commissioners for Northern Ireland to assess dangerous offenders’ suitability for release into the community and to review decisions recalling all licensed prisoners to custody. The current Life Sentence Review Commissioners will be renamed and their role extended to include these functions. The Parole Commissioners provisions largely replicate and replace those already in law by way of the Life Sentences (NI) Order 2001.

Road Traffic Offences

The proposals contain new powers to address three areas of road traffic law. “Bad driving”, including a new definition of “careless driving”; a new offence of “causing death, or grievous bodily injury by careless driving”; and more severe penalties for unlicensed, disqualified or uninsured drivers who cause death by driving. “Drink driving” including tighter laws on failing to allow specimens to be tested; police powers to requiring breath specimens; and regulations regarding ‘alcohol ignition interlock’ programmes. And a series of police powers to seize vehicles causing alarm, distress or annoyance (including mini-scooters being raced around public streets); and to regulate the use of devices used by some motorists to avoid speed detection.

Purchase and Consumption of alcohol

The proposals contain provisions for combating alcohol-related disorder and addressing the problem of the sale of alcohol to minors. A “test purchase” power is to be created to allow police officers to identify bars and off-licences selling alcohol to under 18s. The test purchase power can only be used under the direction of a police constable; with parental consent; with a requirement to avoid any risk to the welfare of the minor.

Powers are also created to deal with the consumption or possession of alcohol in designated public places where there is a problem of anti-social behaviour associated with drinking alcohol. An offence would be committed when a person failed to comply with a constable’s request not to drink alcohol, or with his request to surrender alcohol. Public places would be designated by

District Councils. The maximum penalty on conviction of the new offence would be a fine up to £500. Fixed financial penalties of up to a quarter of that level would be available as an alternative to prosecution.

Prisons

A number of amendments are proposed to the Prison Act (Northern Ireland) 1953, including miscellaneous changes concerning medical officers and amendments to better control, regulate and modernise prison security. Amendments to the laws on assisting a prisoner to escape and conveyance of prohibited articles into or out of prison including drugs, weapons, mobile phones, satellite phones and cameras are also provided, along with increased penalties

Live Links

The Draft Order contains a number of provisions designed to consolidate the law on, and increase the use of, live video links. Such facilities are already in use for prison remand purposes and have the benefit of providing a cost-effective and secure means for prisoners to participate in remand hearings without having to be transported to court. The new powers will expand the use of video links in Courts to include, in certain circumstances: preliminary hearings, sentencing hearings, evidence of vulnerable accused, and appeals under the Criminal Appeal Act.

Legal Aid

Two technical amendments are made in relation to legal aid provision. These amendments are to the Access to Justice

(Northern Ireland) Order 2003 and relate to legal aid for proceedings relating to anti-social behaviour orders and to proceedings under the Proceeds of Crime Act 2002.

Police and Criminal Evidence

Amendments being made to the Police and Criminal Evidence (Northern Ireland) Order 1989 (“PACE”) alter the police authorisation level required for certain procedures; introduce trigger powers for entry into premises in particular circumstances; and create new powers to allow police to attach conditions to bail before charge.

Penalties

New sentencing powers extend the maximum penalties available to the courts for certain offences relating to knives though also include crossbows and other offensive weapons. Broadly the new penalties will relate to offences of possession, manufacture and sale. The provisions introduce a standard set of maxima – 12 months’ imprisonment and/or a £5000 fine where a person is convicted in a magistrates’ court; 4 years and/or an unlimited fine for convictions in the Crown Court. New powers are also created for courts to impose a driving disqualification for any offence. This is designed to allow courts to disqualify from driving individuals convicted of offences related to kerb-crawling, and other like offences which involve vehicles but are not ‘motoring’ offences *per se*.

Proving execution of arrest warrants

New provisions are proposed to enable a wider range of courts to hear the proving of the execution of arrest warrants. In appropriate circumstances an arrest warrant issued in one County Court Division could be proven in the Division of arrest or in an adjoining the County Court Division. The transport of defendants across court divisions would be reduced providing a more effective and efficient procedure.

Anti-Social Behaviour Orders

Two adjustments are made in relation to legislation relating to anti-social behaviour orders. To allow existing interim order powers to operate more effectively, applications will be possible without notice, and a technical amendment is also included to enable rules of court to be made for special measures for witnesses.

Youth Justice

A number of adjustments are made to youth justice legislation. Rehabilitation periods for youth conference orders, reparation orders and community responsibility orders are clarified to one year. Powers are also created to allow a child under the age of 18 who has been remanded in custody to be accommodated in a juvenile justice centre instead of a young offender's centre – particularly relevant to female offenders who need not therefore be held in an adult prison; clarifying the period of a youth conference order; removing the requirement for a care order to be suspended whilst a child is serving a juvenile justice centre order; and powers for youth court remands are re-enacted.

