

MEMORANDUM

CRIMINAL JUSTICE AND COURT SERVICES BILL

Background

1. On 15 September 2000 the Home Secretary announced a package of legislative measures to improve the protection of the public from sex and violent offenders. The proposals are a mixture of new duties on the police and other services, and changes to strengthen the existing sex offenders register that was set up by the Sex Offenders Act 1997. The UK Government intends to bring forward these legislative proposals as amendments to the Criminal Justice and Court Services Bill, which is in Committee in the House of Lords. The Bill introduces a number of criminal justice reforms which apply mainly to England and Wales only. The UK Government's proposals on sex offenders concern matters which in Scotland would fall within the Parliament's legislative competence, but the Scottish Executive believes that some of them should be introduced in Scotland by extending the proposed Westminster legislation.

Content of the Bill

2. The Bill is currently in four parts. The first sets up a new National Probation Service and a Children and Family Court Advisory and Support Service, both for England and Wales. The second sets up an integrated statutory system to prevent unsuitable people from working with children. The third contains provisions for dealing with offenders in England and Wales including community orders, electronic tagging, drug testing, and final warnings for young offenders. There are also provisions abolishing detention in a Young Offenders Institution for those over 18 and removing the role of the Home Secretary in setting the tariff in murder cases when the offender is under 18 (implementing the decision of the European Court of Human Rights in the Thompson and Venables case). The fourth part allows the police, including the police in Scotland, access to Driver and Vehicle Licensing Agency (DVLA) driver records and contains provision on truancy and parenting orders. DVLA driver records are held for the purposes of Part III of the Road Traffic Act 1998, which is a reserved matter. The Bill provides that Scottish Ministers must be consulted before any regulations are made in respect of access to these records by the police in Scotland. The provisions relating to the protection of children and detention for young offenders also extend to Scotland as far as they concern courts-martial, which have jurisdiction across the United Kingdom.

Proposal

- 3. The Home Secretary has proposed nine legislative measures:
 - i. a duty on chief officers of police and chief officers of probation to establish arrangements for assessing and managing the risks posed by sex and violent offenders, and a power for the Secretary of State to issue guidance on such arrangements and on the publication of information to the public about them;
 - ii. a duty on the probation service to consult victims about the release arrangements for any offender sentenced to twelve months or more in prison

following conviction for a sexual or violent offence, and to inform the victim of the release arrangements and conditions;

- iii. a power for the Crown Court to make an order placing restrictions on sex offenders to have effect on release from custody;
- iv. a power for the Secretary of State to make regulations concerning notification to the police and probation service by those responsible for the detention, discharge and release of sex offenders liable to registration under the Sex Offenders Act 1997;
- v. a power for the Secretary of State to make regulations requiring notification to the police of foreign travel by sex offenders;
- vi. an increase in the maximum penalty for failure to register for sex offenders to five years imprisonment from six months;
- vii. initial registration of sex offenders to take place in person within 72 hours, rather than in person or by post within 14 days;
- viii. powers to the police to photograph and fingerprint the offender on initial registration;
- ix. a power for the Secretary of State to make regulations specifying that certain offenders should register at certain police stations, rather than any station in a force area.

All of these measures concern matters that would fall within the legislative competence of the Scottish Parliament. However, the Scottish Executive proposes that the measures in sub-paragraphs iv - ix are brought forward in Scotland through extending the Criminal Justice and Court Services Bill at Westminster.

Sex Offenders Act 1997 and registration of sex offenders

4. The Sex Offenders Act 1997 introduced a requirement on the most serious sex offenders to register their name and address with the police. The intention is to protect the public from these offenders by providing the police with up to date information about their whereabouts, allowing better assessment and management of the risk these offenders pose. Offenders must register with their local police whenever they move throughout the period when registration is required, and failure to register is a criminal offence. The Act applies across the United Kingdom, and sex offenders moving between jurisdictions with the United Kingdom have identical registration requirements, and commit the same offence in each jurisdiction if they fail to register.

UK Government amendments to the registration regime under the Sex Offenders Act 1997

5. Five of the legislative measures proposed by the UK Government concern changes in the registration regime for sex offenders (those described at paragraph 3, sub-paragraphs v to ix). The measures address weaknesses in the current regime which were being considered in the joint review of the Sex Offenders Act that is being carried out by the UK Government and

the Scottish Executive. The requirement to register in person within 72 hours and the power to fingerprint and photograph offenders would address the current right to register by post, which has been identified by the police as a significant difficulty in establishing the identity of the person purporting to register. The power to make regulations requiring sex offenders to notify the police when travelling abroad would also address a major gap in the current legislation. The increase in the maximum penalty indicates the seriousness with which the offence of non-registration is viewed, and should increase the overall effectiveness of the regime. The power to make regulations in relation to the police stations at which certain sex offenders must register is intended to make sex offenders register at police stations that are equipped for and have experience of the task, and can make the best use of the information.

6. The Scottish Executive believes that these measures should also be introduced in Scotland. The measures would result in a significant strengthening of the effectiveness of the registration regime, providing increased protection for the people of Scotland from the risks posed by sex offenders. We believe these proposals would attract widespread support from the police and others involved in this difficult area.

7. As well as supporting these proposals on their merits, the Scottish Executive believes that it is vital to maintain a common registration regime on either side of the border to avoid legal complications in enforcement, and to ensure that no incentive is provided for sex offenders to move to a particular jurisdiction, for example because the penalty was lighter. There would also be particular difficulties if there was a requirement to notify the police when travelling abroad from England and Wales, but not from Scotland. Our joint review of the Act with the UK Government is intended to maintain this commonality, and it will continue to consider other aspects of the Act not in these proposals.

8. The Scottish Executive also believes that these measures should be introduced in Scotland in the same timescale as they are being enacted in England and Wales. Given the substantial legislative programme announced by the First Minister on 14 September for the forthcoming year, it would be extremely difficult to introduce legislation to the Scottish Parliament before next April, which would result in the provisions being enacted in Scotland between nine months and a year after similar legislation has been enacted for England and Wales. The Scottish Executive believes this is an unacceptably long period of time to provide less protection from sex offenders for people in Scotland, and to operate with the cross-border difficulties discussed above. The Scottish Executive therefore believes that the best way to proceed is to extend the planned amendments to the Criminal Justice and Court Services Bill to Scotland. It should be noted that two of the measures we propose to introduce in this way give powers to the Scottish Ministers to make regulations, which would be subject to scrutiny by the Scottish Parliament.

Notification to police of release of registrable sex offenders

9. There is one other measure proposed by the UK Government that the Scottish Executive believes should be extended to Scotland through the amendments to the Criminal Justice and Court Services Bill at Westminster. The UK Government proposes to give the Secretary of State the power to make regulations concerning notification to the police and probation service by those responsible for the detention, discharge and release, including temporary release, of sex offenders liable to registration under the Sex Offenders Act 1997 (paragraph 3, sub-paragraph iv above). Hospitals do not routinely disclose information about the discharge of mentally disordered offenders to the police because of patient

confidentiality. The Scottish Executive guidance on the Sex Offenders Act makes clear that hospital clinical managers should give serious consideration to notifying the police when a registrable sex offender is no longer detained and that the need to protect the public means that the balance will generally be in favour of informing the police. While hospitals and police forces are encouraged to establish good and effective working relationships to ensure that the requirements of the Act are met, we support this measure to ensure that all cases are notified to the police and to clarify the potential conflict between the need to safeguard the public and professional guidance to medical staff on confidentiality. This position was also widely supported during consultation last year on the Scottish Executive guidance on the Sex Offenders Act. There would be the opportunity for further extensive consultation with the medical professions and others when the regulations were being prepared. Legal issues, including data protection questions, would also have to be considered further in drafting these regulations.

10. Given the views that have been expressed in the past in support of such a proposal, the Scottish Executive is keen to take advantage of the proposed amendment to the Criminal Justice and Court Services Bill to introduce this reform in Scotland at the earliest possible date by extending its scope to cover Scotland, giving a similar power to Scottish Ministers. The regulations drafted under the power would be subject to scrutiny by the Scottish Parliament.

Other Home Office legislative proposals

11. The Scottish Executive does not propose that the remaining measures being introduced by the UK Government (those described at paragraph 3, sub-paragraphs i to iii above) are introduced in Scotland at this point, either by extending the Westminster Bill or by separate Scottish legislation. We do not believe that it has been demonstrated that there is a need for a specific statutory duty on Chief Constables and local authority criminal social work departments to work together on risk assessment and management as current non-statutory arrangements are working satisfactorily. Nor do we believe that there is a need for a statutory power for Ministers to issue guidance on these arrangements or publicity arrangements. The information needs of victims are already being considered by the Scottish Executive, as is the role they could have in providing information to the Parole Board in advance of the Board's decisions about release conditions. The Scottish Executive plans to pilot an automated scheme to provide a wide range of information, including release details, in 2001. We are considering whether there may be a need for a statutory basis to this scheme.

12. The Scottish Executive will also consider further the proposed new restriction order to be made on conviction. The Scottish Executive will request the Expert Panel on Sex Offending to examine this proposal. The conclusion reached by the Expert Panel will be taken into account, as will the findings of Lord MacLean's Committee on violent and sex offenders, in preparing future legislation on sex offenders for Scotland.

SCOTTISH EXECUTIVE
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