

SEWEL MEMORANDUM POLICE REFORM BILL (NO 2)

Motion “That the Parliament endorses the principle that sex offenders orders made in one jurisdiction within the UK should be recognised and enforceable throughout the UK with appropriate provisions in place concerning how the orders are applied for, amended and discharged; and agrees that the relevant provision to achieve these ends should be considered by the UK Parliament in the Police Reform Bill.”

Background

The Police Reform Bill was introduced in the UK Parliament on 25 January 2002. The main purpose of the Bill is to implement the UK Government’s police reform programme in England and Wales, but the Bill also deals with other policing related matters and the Scottish Parliament has already agreed that some of its provision should be extended to Scotland. These were the subject of an earlier Sewel Motion passed by the Scottish Parliament on 30 January 2002 as follows:

“That the Parliament agrees that the provisions within the Police Reform Bill which relate to devolved matters, including provisions relating to the terms and conditions of service of constables seconded to the Independent Police Complaints Commission, the inspection of the Ministry of Defence Police in Scotland, the removal of the nationality bar for police officers, extending (pursuant to certain international agreements) the liabilities of chief constables in relation to foreign officials from other member states carrying out investigations in Scotland and extending offence provisions in relation to such foreign officials, should be considered by the UK Parliament.”

Proposals

In response to concerns raised about the operation of certain provisions relating to Sex Offenders, new amendments are now proposed to the Sex Offenders Order system, as provided under the Crime and Disorder Act 1998, to enable the mutual recognition of Sex Offender Orders throughout the UK.

Sex Offender Orders can be made against sex offenders whose present behaviour is giving reasonable cause to believe that an order is necessary to protect the public from serious harm. However, it has become apparent, highlighted by a recent high profile case, that whilst for the majority of sex offenders, the Sex Offender Order (SOO) system works well, there can be problems when offenders move from one jurisdiction to another and the provisions of an Order do not carry with them.

The amendments to the Police Reform Bill are intended to amend the law in two inter-related ways. The first is to give the police throughout the United Kingdom greater flexibility in how they apply for SOOs and how these are applied for, amended and discharged. The legislation would be amended so that a chief officer of police will be able to apply for an order with respect to someone who he knows or has reasonable cause to believe is coming to his area as well as to someone already in it.

Second, SOOs made in Scotland cannot at present cover behaviour in and are not enforceable in England and Wales or Northern Ireland and vice-versa. In effect, the impact of an order is limited to the jurisdiction in which it is made. Breach of a SOO made in England and Wales is therefore only an offence if perpetrated within that jurisdiction. In order to commit the like offence in Scotland there would first have to be a SOO made under Scottish law. In the absence of such an order, there is no offence as there is no order to break. This means that if someone subject to an English order moves from England to Scotland, the Scottish police must seek a completely new order. That requires a burden of proof and the process can inevitably take time. There must also be a risk that it may not be known for a period that the offender has actually moved. In all these circumstances, the offender would not be bound by the terms of an order for a period and this could put individuals or the general public at risk.

Scottish Executive
May 2002