

SEWEL MEMORANDUM
SEXUAL OFFENCES BILL

Motion: That the Parliament endorses the principle of protecting society from persons who pose a risk of causing sexual harm and agrees that the provisions within the Sexual Offences Bill which relate to devolved matters and which re-enact the Sex Offenders Act 1997, extend the categories of offenders required to register, increase restrictions on sex offenders and strengthen the notification requirements and operation of the Sex Offenders register should be considered by the UK Parliament.

Background

The Scottish Executive and the UK Government take very seriously the risk to society from sex offenders. As a result, the policy of both the Scottish Executive and the UK Government has consistently been, so far as possible, to legislate for sex offenders on a UK basis. This is to ensure compatibility across the UK so as: (i) to avoid possible loopholes between the application of provisions in each jurisdiction; (ii) to minimise the possibility of misunderstanding about the rules in each jurisdiction; (iii) to avoid the possible perception that one jurisdiction is regarded as less severe than another; and (iv) to ensure so far as possible that legislative changes in each jurisdiction are adopted at the same time.

As a result, in October 2000, the Scottish Parliament (by virtue of a Sewel Motion) approved amendments to the Sex Offenders Act 1997 in the Criminal Justice and Court Service Act 2000. These included provisions relating to notification of foreign travel by sex offenders; the time within which sex offenders had to register; police powers to photograph and fingerprint an offender on initial registration; and powers for Ministers to make regulations requiring offenders to register at certain police stations. In June 2002, the Scottish Parliament (also following a Sewel Motion) agreed to a further amendment of the Sex Offender Act 1997 in the Police Reform Act 2002 to ensure 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.

The further provisions now proposed for inclusion in the Sexual Offences Bill are in response to two recent reviews. The provisions relate to sexual offences, their prevention, and the protection of children.

In July 2001, following a review of the Sex Offenders Act 1997, the Home Office and Scottish Executive, published a joint consultation paper. The Sexual Offences Bill takes forward proposals from that joint review.

In June 2001, an Expert Panel on Sex Offending led by Lady Cosgrove published further proposals relating to Scotland. The Scottish Executive published its response to the Expert Panel's recommendations in October 2002. Provisions relating to a number of those recommendations were contained in the Criminal Justice Bill which completed its passage through the Scottish Parliament on 20 February 2003.

Provisions relating to most of the remaining outstanding recommendations are now contained in the Sexual Offences Bill. It is proposed that amendments be made to the Bill to give effect to all the remaining recommendations.

The Sexual Offences Bill was introduced in the House of Lords on 28th January 2003.

Proposals

The Bill is in three Parts. Part 1, which does not extend to Scotland, makes significant changes to the (mainly statute-based) law on sex offences in England and Wales to enhance protection for victims of sex offences, to ensure both equality under the law and that the law is ECHR compliant. In Scotland, most sex offences are dealt under the common law. Scottish Ministers agreed that, given the differences in the law, it was not necessary to commit at this stage to a full-scale review of the law on sex offences in Scotland but that the position would be reviewed following the findings of the English consultation exercise. In the meantime, work has been taken forward in Scotland in the Criminal Justice (Scotland) Bill which deals with the proposals set out in the White Paper: Serious violent and sexual offenders (June 2001) and the White Paper: Making Scotland Safer: Improving the Criminal Justice System (December 2001). The Criminal Justice (Scotland) Bill also takes forward measures in a number of areas of criminal justice, including Programme for Government commitments on serious violent and sexual offenders and stalking and harassment.

Part 2 of the Sexual Offences Bill which does extend to Scotland, contains measures for protecting the public from sexual offending. It re-enacts, with a number of amendments the following **notification requirements**:

- (i) Reducing the period within which a sex offender must notify the police of a change of details from 14 days to 3 days.
- (ii) Reducing the amount of time a sex offender can spend at an address other than his home address before having to notify that address from 14 days to 7 days.
- (iii) Making all those on the register confirm their details on an annual basis. At present, there is no requirement for them to do so.
- (iv) Giving the police the power to check the fingerprints and take a photograph of a sex offenders each time a notification is made, not just on his initial notification.
- (v) Requiring sex offenders to provide their National Insurance number when making a notification.

We propose that the part of Schedule 2 of the Bill that relates to Scotland and which deals with offences committed in Scotland which make the offender automatically subject to the notifications requirements of the register should be amended to include any offence that a judge decides has a significant sexual element. This fulfils the intention behind the recommendations of the Expert Panel on Sex Offending chaired by Lady Cosgrove. The Expert Panel considered that an offender should be subject to registration where he or she is convicted of any offence which does not carry automatic registration but where the evidence discloses that there was a significant sexual element in the offender's behaviour such as to warrant additional measures to protect the public from the risk posed by the offender, subject to the right of appeal against such an order by the offender.

The Expert Panel also proposed that registration requirements should apply to all sex offenders not just when the victim was at the time of the offence under 18. At present, there are exceptions from registration depending on the seriousness of the sexual offence. For example, where an offender is convicted of assault with intent to rape and the

victim(s) is 18 years or over, the offender only becomes subject to registration requirements if he is sentenced to period of imprisonment for thirty months or more.

Moreover in relation to England and Wales certain civil provisions placing restrictions on sex offenders in the community, previously known as Sex Offender Orders (s.1 and 2 of Crime and Disorder Act 1998), have been recreated into a new civil preventative order - a Sexual Offences Prevention Order (SOPOs). SOPOs will carry a requirement to register under the Bill.

The proposal is that amendments be made to the Bill so that sex offender orders in Scotland which are currently provided for in section 20 of the Crime and Disorder Act 1998 should also be recreated into the new SOPO civil preventative order. The police would be able to apply for an order where they take the view that an offender with a conviction in Scotland has committed an offence with a significant sexual element and that the offender is likely to pose a risk of serious sexual harm and the relevant conviction predates the commencement of the provisions in the Bill. In addition, the police should be able to apply for these orders in relation to people with convictions in Scotland after the provisions in the Bill come into force where the court has already decided that the offence had a significant sexual element and the offender is therefore subject to the notification requirements of the register. Similar powers would be given to the police in Scotland in relation to people in Scotland with convictions from other parts of the UK.

Part 3 contains general provisions relating to the Bill, including minor and consequential amendments and commencement provisions.