

What is the Committee on the Administration of Justice (CAJ)?

CAJ is an independent non-governmental organisation, which is affiliated to the International Federation of Human Rights (IFHR). CAJ monitors the human rights situation in Northern Ireland and works to ensure the highest standards in the administration of justice. We take no position on the constitutional status of Northern Ireland, seeking instead to ensure that whoever has responsibility for this jurisdiction respects and protects the rights of all. We are opposed to the use of violence for political ends.

CAJ has since 1991 made regular submissions to the human rights organs of the United Nations and to other international human rights mechanisms including the European Commission and Court of Human Rights and the European Committee on the Prevention of Torture.

CAJ works closely with international NGOs including Amnesty International, the Lawyers Committee for Human Rights, Human Rights Watch and the International Commission of Jurists.

Our activities include: publication of human rights information; conducting research and holding conferences; lobbying; individual casework and legal advice. Our areas of expertise include policing, emergency laws, children's rights, gender equality, racism and discrimination.

Our membership is drawn from all sections of the community in Northern Ireland and is made up of lawyers, academics, community activists, trade unionists, students, and other interested individuals.

In 1998 CAJ was awarded the Council of Europe Human Rights Prize in recognition of our work in defence of rights in Northern Ireland. Previous recipients of the award have included Medecins Sans Frontieres, Raoul Wallenberg, Raul Alfonsin, Lech Walesa and the International Commission of Jurists.

Introduction

CAJ welcomes this opportunity to respond to the proposals outlined in “Consultation Paper on the Review of Part I of the Sex Offenders Act 1997”. Government is to be commended for this review of the 1997 Act which is intended to strengthen the legislation and better protect children. The majority of proposals are to be warmly received in this respect. Several aspects, however, require further consideration or clarification. There are also a number of issues which have not been addressed in the Review.

General Principles

The introduction of the Sex Offenders Act 1997, and therefore any proposed changes to it, was framed in terms of protecting the public from sex offenders, though the main targets are clearly paedophiles. There is clearly a need, as always, to strike the appropriate balance between the need to protect the public on the one hand, and the potential damage to individuals who have paid their debt to society and may not re-offend on the other. In this context, the following basic principles are important:

Article 3 of the United Nations Convention on the rights of the Child asserts:

1. In all actions concerning children, whether under public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child are a primary consideration.
2. State Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her ...

Article 19 of the Convention further states that:

1. State parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or

mental violence, injury or abuse, neglect or negligent treatment or exploitation, including sexual abuse ...

Taken together these articles emphasise the government's obligation to protect children from abuse, and to make this a primary consideration in all matters affecting children. Clearly, registration of sex offenders so that the police may keep track of their whereabouts in order to protect children is one such matter. However, article 3 cannot be used to justify the introduction of a system which is arbitrary or inequitable or to dismiss completely the rights of offenders.

Offenders must also have a reasonable expectation that they are safe from arbitrary registration requirements. Article 8 of the European Convention on Human Rights states that 'everyone has the right to respect for his or her private and family life' and that interference with this right should only occur for serious reasons such as 'for the protection of health or morals, or for the protection of the rights and freedoms of others.'

Article 7 of the International Covenant on Civil and Political Rights also asserts:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy ... nor to unlawful attacks on his honour or reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

In short, privacy must be respected and a person should have the right to remain free from damaging or harmful interference. The balance to be struck is therefore between the right to privacy and the need to protect the most vulnerable in our society.

The Range of Offences Covered by the Act (Chapter Four)

The intention of all such legislative provisions aimed at "tracking" or monitoring sex offenders in the community is to protect children from the risk posed by those who are perceived to be a danger. It is surprising, therefore, that sexually motivated

offences of violence such as murder and burglary with intent to rape were not included in the original range of offences covered by the Act. Such future inclusion is to be welcomed. In addition, this will also remove the anomalies which exist in relation to the inclusion of less serious sexual offences which will be discussed below.

In cases where there is a doubt, however, as to the motivation behind the offence, the offender's right of appeal against the sentence will be crucial.

The inclusion of the recent offence of an Abuse of Trust is also to be welcomed. It is not clear, however, why the age limit for this was set at 20 and not 18. Surely children are equally at risk from persons aged 18 who abuse their trust as they are from persons who are aged 20.

Difficult issues also arise here in relation to the "abuse of trust" offence and the offence of unlawful sexual intercourse with a girl aged between 13 and 16 in respect of consensual sexual intercourse between minors. In Northern Ireland, in the past, young males have been registered as sex offenders for having consensual sex with their girlfriend. Such "offences" are arguably outside the remit of what would be called a sex offence and the people involved do not necessarily inflict harm on other people. In addition, such net widening only serves to detract attention and resources from the real dangers. The proposed changes to ensure that only offences which are considered sufficiently serious by the courts will trigger registration. As will be argued below, a specialist response is needed for juveniles.

Further anomalies arise in relation to offences such as indecent exposure, and the existing or proposed offences under the current Home Office Review of Sex Offences, entitled "Setting the Boundaries", such as voyeurism, managing or controlling the activities of men or women who are prostitutes for money or reward, and exploiting others by receiving money or reward from men or women who are prostitutes. The consultation paper proposes that the public order offence of indecent exposure continue to be excluded from the range of offences covered by the SOA 1997. However, while not an overtly serious offence, indecent exposure could inflict lasting psychological damage, particularly to children and may be a prelude to the onset of a more serious sexual offending career. Equally, it does not make sense to

exclude such an offence from the registration requirement but to propose the inclusion of “voyeurism” and the above offences in relation to earnings from prostitution. These are not what one would automatically consider sexual offences and the idea that “peeping toms” or “pimps” would be registered as sex offenders is surely outside the remit of what could ordinarily be called a paedophile or in even in the broadest sense a sex offenders register. Such an inclusion would do little to protect children from the risk of abuse in the community and net-widening once more may have serious civil liberties implications.

Given the anomalies which exist in relation to the different categories of sexual offences which will or will not attract a registration requirement, there is an argument for basing registration on assessed risk rather than sentence length or membership of an offence category. For instance, it may be that a litany of offences, particularly in the case of incest, may be contained in only one or two sample counts. Equally, plea-bargaining may mean that very serious offences such as rape may be whittled down to indecent assault, so that in reality very serious offending may be masked. The fallibility of predictive judgements is well documented. However, with the establishment of the Northern Ireland Sex Offender Working Group which recently formalised new multi-agency procedures for the assessment and management of risk posed by sex offenders, expertise in this area is likely to be increased further.

The Nature of the Registration Requirement (Chapter 5)

The proposals in this area are generally to be welcomed. In particular the fact that the offender should be required to make subsequent notification or changes of address in person at a designated police station rather than by post. This would remove the major gap which existed even after the introduction of the changes under the Criminal Justice and Court Services Act 2000 that offenders must initially register in person but could continue to register any changes to their details by post. While registering by post is better than not registering at all, registration in person at a designated station ensures that the local police are aware of the offender’s appearance and can put a face to the name.

There are, however, one or two areas of concern. The change in the period for subsequent notification, notifying the police of any changes of address, from 14 to 8 days appears arbitrary. To keep procedures uniform perhaps it might have been better to reduce this period to 3 days as is the case with initial or first registration with the police. Such uniform procedures may be better for not only the police in “keeping track” of offender’s whereabouts but also for offenders who may be confused with so many variations in days and procedures which also extend to intention to travel abroad. In this respect, it is also important that itinerant offenders be subject to the same requirements and are not singled out for special treatment.

A periodic confirmation of the offender’s details with the police has been proposed every twelve months. Given the fact that sex offender’s are known to be extremely mobile and the problems experienced thus far with non-registration it is suggested that a shorter period of a maximum of 6 months would be better. This would be more effective in keeping track of the offender’s whereabouts and is not so arbitrary as to interfere with the offender’s civil liberties.

Difficulties arise in relation to the definition of “home address.” The consultation paper proposes broadening this so as to include both very temporary addresses and other locations which are not conventional homes but at which the offender regularly sleeps. It would appear that “very temporary addresses” and “other locations ... at which the offender regularly sleeps” are mutually exclusive and further clarification is needed here. It is recognised that sex offenders can be devious and manipulative and that part of their *modus operandi* is that they are extremely mobile and may seek out targets in different communities. Care needs to be taken nonetheless that intervention in an offender’s life is not unnecessarily arbitrary. Moreover, making the registration requirement too onerous may act as a deterrent to some offenders registering with the police in the first place.

Application of the Act to Children and Young People Who Sexually Abuse Others (Chapter 6)

The issue of how best to deal with young sexual abusers is one of the most problematic in the whole sex offender debate. As the title of a recent Northern Ireland conference on the topic asserts, the questions arises as to whether they are “Risky Children or Children at Risk?” The difficulty arises in balancing the two competing facts that, on the one hand, for many abusers, the onset of a sexual offending career begins in adolescence or childhood and continues into adulthood. Indeed, research has also shown that with some young abusers early intervention and treatment may be successful in stemming the propensity to offend sexually. On the other hand, to label a child or a young person who has committed sexually deviant acts as a sex offender, which the registration requirement inevitably entails, may be to stigmatise them for life. Registration may result in serious social and emotional consequences for those listed and their families.

These competing dilemmas make clear that there is a need for a specialist response in relation to juveniles. That is not to say that they should not be registered or monitored in some form, just that they should not be subject to the same requirements and procedures as their adult counterparts. In this respect, it is contended that option (c) as set out in the consultation document represents the best compromise (Ch. 6, para. 11) - that children and young people who sexually abuse should be registered with an agency other than the police which has a remit to address both their abusive behaviour and their wider needs. In view of their wider child protection role, perhaps the social services would be the best placed agency to assume such a role.

Also, in relation to children and young people, the proposed penalties for children and young people for failing to meet the requirements of the SOA 1997 are flawed. The document proposes, *inter alia*, Detention and Training Order of a maximum of two years duration. This is out of step with the response advocated above that there should be a specialist response in relation to juveniles. Detaining them in a facility is not the answer. On the other hand, in addition to the fine which is currently available, the proposed use of Action Plan and Curfew Orders, and Parenting Orders, if applied properly, may represent an equally effective response in the face of non-compliance with the registration requirement.

Application of the Act to Sex Offenders Who Travel Between Countries (Chapter 7)

The introduction of the changes in this area effected by the Criminal Justice and Court Services Act 2000 for offenders who intend to travel abroad and the proposed registration of UK and foreign nationals convicted of sex offences overseas travelling to the UK are to be welcomed. However, in order for the police to apply to a magistrates' court for an Order to Register as a Sex Offender they will have to know that the person is a convicted sex offender. As has been well documented in the context of this jurisdiction since the introduction of the SOA 1997, problems abound concerning sex offenders slipping over the border to the Republic of Ireland in order to avoid the registration requirement. There is an element of informal cross-jurisdictional co-operation between agencies here, particularly the police, and those in the Republic in relation to offenders. However, these are two separate jurisdictions with distinct systems of law. There is a clear need for a stronger element of "structured co-operation" in this area as recommended by the Northern Ireland Criminal Justice Review Group (2000: para. 17.53). It may be that closing this loophole in the current legislative provision will not be achieved short of a joint register where police forces on both parts of the island through sharing information as part of a co-ordinated approach will be able to keep track of at least the most dangerous offenders.

Other Matters (Chapter 8)

The proposals contained in this residual category are generally to be welcomed. In particular, CAJ is in agreement that there is no viable way of extending the SOA to offenders convicted before the legislation came into force beyond the existing application to those who are already in contact with the criminal justice system at this time, without violating the offender's due process rights.

As regards the proposal to issue guidance to the courts about the role of the SOA in monitoring sex offenders and about dealing with breach of the requirements of the Act, such guidance could usefully be extended to educate sentencers about the impact

of abuse on victims so that sentencers will pass appropriate and proportionate sentences which reflect the real harm caused by the crime. More appropriate sentences may enable more sex offenders to avail of treatment programmes while in prison.

There is one further issue which necessitates discussion. The whole issue of resources was little considered at the time of the implementation of the Sex Offenders Act 1997 and has also importantly failed to be addressed by the Review. The operation of the SOA 1997 has been subsumed within existing police practices and budgets. In addition, in tandem with this, new multi-agency procedures have recently been introduced in Northern Ireland by the Sex Offender Working Group, set up to meet the requirements of the SOA 1997. Many organisations in the inter-agency approach in Northern Ireland such as the police, probation, social services, prisons, the Housing Executive, education and the voluntary sector, are now formally required to work together to assess and manage the risk posed by sex offenders. Difficulties also arise here as to the strain placed on individual organisational resources which are required to make these procedures workable. Without the resources required to make the management of information obtained under the legislation work such provisions merely give lip service to protecting the public from the risk posed by sex offenders in the community.

In conclusion, CAJ hopes that the Home Office/Northern Ireland Office find these recommendations useful in trying to strengthen the Sex Offenders Act 1997 in order to better protect children. We are very willing to discuss any point further if this is helpful.