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Sex Offenders Act, 2001: Implications for the Probation and Welfare Service, Policy and Practice

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Summary
The implementation by the Oireachtas of The Sex Offenders Act, 2001 places statutory responsibility on the Probation and Welfare Service (PWS) for the post-release supervision of convicted sex offenders in instances where the Court, at the time of sentencing, includes such supervision in the sentence. The Post Release Supervision Order (PRSO) is aimed at enhancing public safety by protecting the community and reducing victimisation. This protection of the community is achieved by managing and reducing the risk of re-offending through supervision. From the perspective of the PWS, the introduction of this legislation therefore has implications for service delivery in both institutional and community settings. This article details the main provisions of the Sex Offenders Act, 2001 and examines the issues for PWS practice, as well as detailing the Service's response to its additional statutory obligations.

Keywords Sex Offenders, Post Release Supervision Orders, Risk Management, Intervention, Registration and Notification.

Introduction

The Sex Offenders Act 2001, enacted by the Oireachtas in October 2001, incorporates within its various parts a strategy for the management of sex offenders in the community, with particular reference to An Garda Síochána and the Probation and Welfare Service. The Act has many similarities to the sex offender legislation in Britain and Northern Ireland, but also has some features unique to the Irish situation.

The main provisions of the Act

PART 1: Primarily focuses on the *schedule of offences* covered by the Act. Offences under the Child Trafficking and Pornography Act, 1998, which include specific non-contact offences against children, are included in the schedule. Other non-contact offences, e.g. indecent exposure, are not included.

PART 2: Here the obligations of the sexual offender to notify certain information are outlined in detail. The *Notification System*, colloquially referred to as 'the register', places the following obligations on an offender found guilty of an offence under the schedule of offences. The offender must inform An Garda Síochána of his/her name (including any alias), date of birth and home address within seven days of conviction (if not imprisoned), or within seven days of his/her release from prison in instances where the offender has been imprisoned. The offender must also notify, within seven days, any change of address within the state. If the offender intends to leave the state for a continuous period exceeding seven days he/she must inform An Garda Síochána of that intention, and of the new address if known. The offender may make

notification by attending in person at a Divisional Headquarters of An Garda Síochána and give the information verbally. Alternatively, he/she may do so by registered post. The length of time the offender is subject to the notification system depends on the severity of sentence handed down by the Court. For those aged less than eighteen years at the time of sentence, the notification requirements are halved. Failure to comply is subject to penalty. Finally, for those subject to notification for an indefinite period, the offender can after ten years, return to Court seeking to have the order varied or discharged.

The Court, when convicting an offender under this part of the Act, shall issue a certificate of conviction/sentence to the offender, the Garda, the Governor of the prison if the offender is imprisoned, and/or the PWS within the meaning of Part Five of the Act. In instances where a person is convicted in another jurisdiction of a sexual offence contained in the schedule of offences, then that person must on entering the state inform An Garda Síochána of that fact and be subject to the Notification System.

PART 3: Under this part, a Garda Chief Superintendent may apply to the Circuit Court for a *Sex Offenders Order*, when he/she is satisfied that the offender through his/her behaviour and/or attitude poses a danger to potential victims and/or the wider community. This is a civil order and therefore the requirement in seeking the order is one of probability as against beyond reasonable doubt. The Court, in granting the Order, must be satisfied that the person does pose a danger to others. In granting such an Order, the Court can place conditions or prohibitions on the offender. Importantly, this must be done within the context of the offender's personal integrity and constitutional rights. Orders can be for a period of five years or longer. The conditions of an order can be varied during its existence and the offender can apply to the court to have it revoked. Failure to comply is an offence.

PART 4: *The Provision of Information for Employment purposes*. This part places responsibility on an offender convicted under the Act to inform an employer or any other relevant person acting in that capacity, i.e. a person engaging the offender in voluntary work, of his/her conviction of a sexual offence, if the work is likely to involve unsupervised contact with children (less than 18 years of age) or a mentally impaired person. Failure to adhere carries penalties.

PART 5: *Post Release Supervision of Sex Offenders*. This part has particular relevance for the PWS and its management and supervision of sex offenders in the community. Section 28 places a duty on the Court in determining the sentence to be imposed on a sex offender in respect of the sexual offence concerned, to consider imposing a sentence involving a post-release supervision order (PRSO). In considering that matter, the Court shall have regard to:

The need for a period, after the offender has been released into the community, during which his or her conduct is supervised by a responsible person,

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- The need to protect the public from serious harm from the offender,
- The need to prevent the commission by the offender of further sexual offences and
- The need to rehabilitate or further rehabilitate the offender.

Under Section 29, the court may impose a sentence involving a PRSO i.e. a sentence that involves a period of imprisonment followed by a period of supervision. The length of such a combined sentence must not exceed the duration of the maximum sentence that may be imposed for the sexual offence under the Act. Additional provisions which may be included in a sentence involving post-release supervision are outlined in Section 30. These may include a condition prohibiting the sex offender from doing one or more things the Court considers necessary for the purpose of protecting the public from serious harm from the offender, and/or a condition requiring the sex offender to receive psychological counselling or other appropriate treatment provided by the PWS or any other body which it appears to the Court, having regard to any submissions made to it on behalf of the PWS, is an appropriate body to provide such counselling or treatment.

In imposing a sentence involving a PRSO on a sex offender, the Court has a duty to explain the effect of the sentence to the offender. The Court shall explain to him/her the effect of the sentence, the consequences provided for should he/she fail to comply with any of the PRSO conditions, and that under this Act the Court may vary or discharge any of those conditions on the application of either the offender or a Probation and Welfare Officer. Furthermore, at any time after the supervision period has commenced, the Court may, on the application of the offender or Probation and Welfare Officer, discharge all the supervision period conditions (and the PRSO shall lapse accordingly) or vary or discharge one or more of those conditions if, having regard to the circumstances which have arisen since the sentence was imposed, it considers it would be in the interests of justice to do so, and the protection of the public from serious harm from the offender no longer requires that those conditions should continue in force or, as appropriate, that they should continue in force in the form in which they stand at the date of the making of the application. Failure to comply with a PRSO is an offence, punishable with a fine and/or imprisonment.

PART 6: Addresses a number of miscellaneous issues, the most significant of which in the present context, provides for a complainant to be legally represented during the hearing of his/her application. This provision is only available in instances where the offence is of a serious nature, i.e. rape, aggravated sexual assault.

Probation and Welfare Service Response to the Act

In response to this statutory obligation placed on the PWS by the Sex Offenders Act, the Service has developed a protocol to assist and support Probation and Welfare Officers to implement effective practices in working with this group of offenders, whether in custody or in the community. The Service protocol contains a number of key elements. Firstly, it involves the establishment of the (PWS) National Sex Offender Office, with responsibility for the administration and maintenance of all information on PRSOs. The Office is based at Service

Headquarters, Smithfield. The protocol also prescribes the intervention and management framework for working constructively with this group of sex offenders, both in prison and the community. Central to its philosophy, the protocol acknowledges that community supervision of high-risk cases should be seen as a continuum that starts in the courtroom, continues through the prison sentence and into the post release context. This is based on the recognition that interventions made with the offender in prison should be linked to plans for release (Spencer, 1999; SWSI, 2000; Correctional Service, Canada, 2000; Murphy, 2002) and supervision to be implemented following release; hence the need for a planned, co-ordinated and structured approach at and through all stages.

Research indicates the need for an ongoing effort to facilitate and encourage a climate and culture among staff of all agencies, particularly 'on the ground' in custodial institutions, that supports, values and reinforces the role of offence focused work undertaken in assisting offenders change and manage their behaviour (O'Reilly and Carr, 2004). This in turn should then facilitate a holistic, multi-disciplinary approach, incorporating literacy issues; mental health issues; introduction to the group work experience; motivational work as well as an introduction to offence-focused intervention. The PWS protocol reflects and embodies these principles of effective practice, facilitating Probation and Welfare Officers in their work of engaging, motivating and supporting offenders to use their time in custody constructively to effect meaningful change, both in attitude to offending and in their behaviour.

Decisions with regard to release planning need to be based on the assessment of the level of risk of re-offending, which in turn dictates how that risk will be managed. This reflects the need to involve all those who have a legitimate part to play in ensuring all factors are taken into account when planning the release of the offender (Spencer, 1999; CSOM, 2000). The protocol is explicit in advocating a multi-disciplinary approach throughout the case management process. Effective management of sexual offenders in the community involves planned arrangements for overseeing the offenders, designed to manage and reduce the risk posed by each individual offender. There are a number of elements to the supervision process, notably risk assessment and management, the need to address offending behaviour as well as resettlement issues for those leaving prison. The Service's management of sex offenders is substantially influenced by the perceived risk of recidivism and supervision plans need to reflect this. Furthermore, it is important to consider the impact the pending release may have on the victim, his/her family, the offender's family and the community. Risk management must also recognise the importance of influencing and maximising the positive factors, including informal supports, in the offender's situation (Doyle, 2002).

Within the aforementioned context, it is imperative to acknowledge that offenders who commit sexual offences are not a homogeneous group. Consequently, each individual presents different risks and needs, and therefore require individualised supervision plans (Leon, 2000; Langton and Barbaree, nd: Kemshall, 1996). Given this, the protocol clearly prescribes a proactive collaboration between the supervising Probation and Welfare Officer and his/her line

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manager in designing and implementing a supervision plan tailored to each individual client. The plan needs to be structured yet flexible, and sensitive to changing conditions in the offender's life.

Effective supervision plans can be divided into two broad areas:
Risk management strategies (imposition of external control over factors relevant to the offending behaviour) – achieved through the development of a risk management strategy for each offender, and
Intervention programmes (development of internal control) – achieved by the offender addressing pertinent issues through participation in a recognised programme (e.g. Lighthouse Programme) and the transfer of the knowledge, understanding and skills gained into his /her daily life.

While participation in a treatment programme is an integral element in the process, it remains just one element, albeit an integral one. Also central to risk management is the need for adequate arrangements for the monitoring and management of the identified risk if public protection, the desired outcome, is to be realised. Consequently, the need for effective individualised management strategies should not be underestimated. Prediction, based on individualised risk factors, in turn dictates the elements of a system of supervision and oversight. Areas for consideration, as outlined in the protocol, include:

- (Continued) Offence focused interventions,
- Accommodation,
- Employment / training issues,
- Addictions,
- Propensity for violence, and
- Resettlement issues.

Conclusion
It is evident that there are a number of interrelated issues, all of which are pertinent to formulating and implementing a strategy for the management of sexual offenders released from prison. Furthermore, to be effective, management of this group needs to be operated by those who are accountable and have authority vested in them. It is therefore crucial that the Probation and Welfare Service, a key participant in managing offenders in the community, in collaboration with the Department of Justice, Equality and Law Reform, develops a proactive and coherent strategy to inform and educate the various stakeholders and the public at large of the importance of engaging this offender group in changing their offending behaviour and thereby contributing to greater public safety. The protocol for Service operation of Part 5 of the Sex Offenders Act, 2001 is the cornerstone for the development of a more integrated and enlightened policy and strategy in this area.

Note The description of the relevant legislation above is not intended as a legal interpretation, but rather as a practice guide for readers working in the probation and related fields.

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