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Northern Ireland Assembly

Research Paper 72/08

June 2008

THE DRAFT CRIMINAL JUSTICE (NI) ORDER 2007

Research and Library Service

This paper is intended as a brief introduction to the draft Criminal Justice Order 2007. It gives an overview of the ongoing consultation process and highlights potential issues for further consideration.

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Introduction

This paper sets out the following information:

1. Overview of the draft Criminal Justice (NI) Order 2007
2. Sentencing
3. Risk Assessment and Management
4. Road Traffic Offences
5. Miscellaneous and Supplementary–
 - 5.1 Purchase and consumption of alcohol
 - 5.2 Penalties
 - 5.3 Other areas covered
6. Conclusion

This briefing is intended as an overview of the draft Order and is not a fully comprehensive analysis of each article. It highlights some of the issues for consideration which have been raised in consultation documents as well as issues of public interest.

1. Overview of the Draft Criminal Justice (NI) Order 2007

The draft Order is divided into six distinct parts. After an Introductory Part the Order deals with, Sentencing Powers (Part 2); Risk Assessment and Management (Part 3); Road Traffic Offences (Part 4); Miscellaneous and Supplementary Provisions (Part 5); and a Supplementary Part (Part 6).¹

The new proposals within the draft Criminal Justice (NI) Order have been introduced to increase public protection in a number of ways:

- (i) By introducing a new sentencing structure for dangerous sexual and violent offences and post-release supervision
- (ii) By tackling knife crime
- (iii) Creating new powers for the control of drinking in public places
- (iv) By re-evaluating curfew powers and introducing electronic monitoring
- (v) By understanding the purpose of custodial sentencing and ensuring that it is used only for offenders who merit it

The proposed legislation would create public protection sentences for serious sexual offenders and violent offenders and establish post-release supervision on release from prison. New powers are also proposed to increase the management of low-risk offenders in the community by way of electronic tagging, the expansion of curfew orders and the creation of a non-custodial alternative for fine default.²

¹ Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007 [http://www.nio.gov.uk/proposed_draft_criminal_justice_\(northern_ireland\)_order_2007_explanatory_document.pdf](http://www.nio.gov.uk/proposed_draft_criminal_justice_(northern_ireland)_order_2007_explanatory_document.pdf)

² Ibid.

2. Sentencing

Part 2 of the Order contains proposals for changes to the range of sentences available to the courts, with particular reference to the introduction of new measures for the sentencing and assessment of dangerous, violent and sexual offenders and the creation of public protection sentences and post-release supervision.

A distinction has been made between these offenders and the management of low-risk offenders in the community by way of electronic tagging, expansion of curfew orders, and the creation of a non-custodial alternative for fine default.³

2.1 Dangerous Offenders

Dangerous offenders are considered in Part 2 of the draft Order. An offender is assessed as dangerous⁴ if the court decides that there is a significant risk to members of the public of serious harm should the offender commit further such offences.⁵ Serious harm means death or serious personal injury whether physical or psychological.⁶ Dangerousness assessments will be based on reports by specialists including psychiatrists, probation officers or psychologists who will specifically prepare a report for such an assessment.⁷

(a) Sentencing for Dangerous Offenders

Article 4 creates an indeterminate custodial sentence (ICS) for public protection. An ICS allows the court to consider cases where a sentence under Article 5 (i.e. an extended custodial sentence) would not be adequate for the purposes of protecting the public from serious harm from further offences committed by the offender. Therefore, the ICS provides for the indeterminate imprisonment of those dangerous offenders who continue to pose a significant risk of serious harm to the public. When imposing an ICS the court must specify the minimum period that will be served.⁸ After this minimum period has been served, release will depend on the recommendation of the Parole Commissioners.⁹ This Article also states that the court cannot use the ICS in place of the life sentence when an offender could be liable to a life sentence, the court must pass a discretionary life sentence if the seriousness of the offence requires it.

Article 5 of the draft Order creates an extended custodial sentence (ECS) for public protection. It provides that the extended sentence is made up of the 'appropriate custodial term' and an 'extension period'. The appropriate custodial term is the

³ Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007 [http://www.nio.gov.uk/proposed_draft_criminal_justice_\(northern_ireland\)_order_2007_explanatory_document.pdf](http://www.nio.gov.uk/proposed_draft_criminal_justice_(northern_ireland)_order_2007_explanatory_document.pdf)

⁴ Draft Criminal Justice (Northern Ireland) Order 2007. [http://www.nio.gov.uk/the_criminal_justice_\(northern_ireland\)_order_2007_draft_statutory_instruments.pdf](http://www.nio.gov.uk/the_criminal_justice_(northern_ireland)_order_2007_draft_statutory_instruments.pdf) Section 6.

⁵ Ibid. Offences as specified in Schedule 1

⁶ Ibid. Art 3.

⁷ Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007 (para 2.6)

⁸ Draft Criminal Justice (Northern Ireland) Order 2007 art 4(3)- the court shall impose an ICS and specify a period of at least two years as the minimum period for the purposes of Art 7.

⁹ Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007 para 2.16

period that the court considers appropriate to reflect the seriousness of the offence. An extended period of supervision on licence must also be specified by the court, which would be added to the sentence. This could be an extension period of up to 5 years for violent offenders and eight years for sexual offenders.¹⁰

A dangerous offender who has been assessed as dangerous and convicted of a specified sexual or violent offence which carries a maximum penalty of less than 10 years will be given an ECS.

A dangerous offender who has been convicted of an offence which carries a maximum penalty of 10 years or more will be liable for:

- (i) a discretionary life sentence **OR**
- (ii) an ICS **OR**
- (iii) an ECS.

(b) Release on Licence for Dangerous Offenders

Part 2 of the draft Order sets out the release provisions for an ICS and an ECS for dangerous offenders. For an ICS the relevant part is the minimum period specified by the court.¹¹ For an ECS, the relevant part is one half of the appropriate custodial term as directed by the court.

Once a prisoner has served the relevant part of their sentence and the Parole Commissioners have directed their release, the Secretary of State (SoS) must release the prisoner on licence. It is worthy of note that the Parole Commissioners cannot direct the prisoner's release unless the SoS has referred the case and the Commissioners are satisfied that it is no longer necessary for the prisoner to be confined.¹² Release from the public protection sentences will involve the creation of a new independent body of Parole Commissioners for NI.¹³

Sentencing and release on licence for dangerous offenders is considered in Table 1

¹⁰ Ibid.

¹¹ Draft Criminal Justice (Northern Ireland) Order 2007 art 4.(3)- the court will specify a period of at least two years as the minimum period for the purpose of Article 7 (release on licence of certain prisoners)

¹² Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007.

¹³ Ibid. 2.8

Table 1 Sentencing for Dangerous Offenders

Sentence Category	Definition for the purposes of Dangerous Offenders (Part 2)	When can the court impose this type of sentence?	Definition of "Relevant part of sentence" for Release on licence	Conditions for release on licence
Life Sentence (Articles 3 and 4)	(a) a sentence of imprisonment for life (b) a sentence of detention during the pleasure of the Secretary of State ¹⁴ (c) a sentence of detention for life	1. The court considers that the seriousness of the offence or of the offence and one or more of the offences associated with it, is such as to justify a life sentence ¹⁵ 2. When the offender has been assessed as dangerous and has been convicted of a specified and serious sexual or violent offence with a maximum penalty of 10 years or more the court can impose a discretionary life sentence. ¹⁶	The minimum period (art 4.(3)- the court will specify a period of at least two years as the minimum period for the purpose of Article 7 (release on licence of certain prisoners)	On completion of the relevant part of the sentence the offender can be risk assessed by the Parole Commissioners for release on licence by the Secretary of State
Indeterminate Custodial Sentence (ICS) (Article 4)	A custodial sentence for an indeterminate period ¹⁷	The offender will only receive an ICS if the court considers that an ECS would not be adequate to protect the public from harm and will specify a minimum term which the offender is required to serve in	The minimum period	As above

¹⁴ Draft Criminal Justice (Northern Ireland) Order 2007. Section 3(3)(c) Under para. (1) of Article 45 of the Criminal Justice (Children) (NI) Order 1998 (NI 9) (punishment of certain grave crimes)

¹⁵ Ibid. section 4.(2)

¹⁶ Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007 [http://www.nio.gov.uk/proposed_draft_criminal_justice_\(northern_ireland\)_order_2007_explanatory_document.pdf](http://www.nio.gov.uk/proposed_draft_criminal_justice_(northern_ireland)_order_2007_explanatory_document.pdf) (para 2.4)

¹⁷ Draft Criminal Justice (Northern Ireland) Order 2007. section 4(4) subject to the provisions of Part 2 as to the release of prisoners and duration of licences

¹⁸ Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007 (para 2.4)

		custody. ¹⁸		
Extended Custodial Sentence (ECS) (Article 5)	(a) A sentence of detention under Article 45(2) of the Criminal Justice (Children) Order 1998 (NI 9) (b) A sentence of detention in a young offenders centre (c) Subject to para (8), a sentence of imprisonment ¹⁹	When a dangerous offender convicted of a specified sexual or violent offence for which the maximum penalty is less than 10 years will be given an ECS. ²⁰	One-half of the period determined by the court as the appropriate custodial term	As above- unless the offender has previously been recalled under Article 27

2.2 Custodial Sentences

The general provisions for custodial sentences are contained in Part 2 Chapter 2 of the draft Order.²¹ It defines custodial sentencing for offenders over the age of 21 years as a “sentence of imprisonment”²² and for offenders under the age of 21 as:²³

- (i) a sentence of imprisonment for a term of more than 4 years;
- (ii) a sentence of detention in a young offenders centre
- (iii) a sentence of detention under Article 45(1) or (2) of the Criminal Justice (Children) (NI) Order 1998²⁴
- (iv) an order under Article 39 of that Order sending the offender to a juvenile justice centre;²⁵
- (v) an order under Article 44A of that Order sending the offender to secure accommodation

The chapter includes:

- (a) Restrictions on imposing discretionary custodial sentences²⁶
- (b) Length of discretionary custodial sentences²⁷
- (c) Length of custodial periods²⁸
- (d) Procedural requirements for custodial sentences²⁹
- (e) Additional requirements in the case of mentally disordered offenders³⁰
- (f) Disclosure of pre-sentence reports³¹

¹⁹ Draft Criminal Justice (Northern Ireland) Order 2007 section 5(7)

²⁰ The sentence will become a determinate sentence of at least one year and offenders will become eligible for release at the half way point. In addition to the custodial part, courts will set extended supervision periods of up to five years for violent offenders and eight years for sexual offenders. (para 2.5 Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007)

²¹ Draft Criminal Justice (Northern Ireland) Order 2007 Chapter 2- Custodial Sentences

²² Ibid Article 10 (a)

²³ Ibid Article 10 (b)

²⁴ <http://www.opsi.gov.uk/si/si1998/98150404.htm#45> -Punishment of certain grave crimes

²⁵ Ibid- Juvenile Justice centre orders

²⁶ Draft Criminal Justice (Northern Ireland) Order 2007 Art. 11

²⁷ Ibid. Art 12

²⁸ Ibid Art 13

²⁹ Ibid Art 14

³⁰ Ibid Art 15

For the purposes of legislative consolidation, Chapter 2 replicates some of the provisions from the Criminal Justice (NI) Order 1996.³²

2.3 Release on Licence

Provisions for release on licence are contained in Chapter 3 of the draft Order. Offenders serving a determinate custodial sentence³³, also known as a fixed-term prisoner are outlined in the draft Order. Those offenders serving a determinate sentence are released after serving a requisite custodial period. This requisite custodial period will be specified by the court.³⁴ For prison sentences of less than 12 months, the court will set licence conditions; for longer sentences the SoS will set licence conditions taking into consideration the court's recommendations.³⁵

Once offenders have been released after a custodial sentence they will be placed under supervision. **This new form of imprisonment will replace unconditional release at the half-way point and remove automatic 50% remission.**³⁶

The NIO Review of Sentencing raised some points for consideration for discretionary release:

There are two main areas where a system of discretionary release here might have advantages. In the current absence of a system for the loss of remission for disciplinary infractions, this might be seen as filling a significant gap. While each establishment already operates a progressive regime which rewards constructive behaviour, a system of discretionary release might give prisoners an incentive to behave better in prison and to take steps to readdress their offending behaviour.

*The second advantage is that it would permit prisoners who have not made progress in prison to be kept away from the public for a longer period of time. This would be particularly relevant in relation to dangerous offenders.*³⁷

Another important point which the NIO Review of Sentencing highlighted was the degree to which the period in custody could be varied. It was suggested this system

³¹ Ibid Art 16

³² Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007 para 2.10

³³ *Determinate Custodial Sentence means a custodial sentence for a determinate term.* Draft Criminal Justice (Northern Ireland) Order 2007, Art 17(2)

³⁴ Draft Criminal Justice (Northern Ireland) Order 2007, art 13.

[http://www.nio.gov.uk/the_criminal_justice_\(northern_ireland\)_order_2007_draft_statutory_instruments.pdf](http://www.nio.gov.uk/the_criminal_justice_(northern_ireland)_order_2007_draft_statutory_instruments.pdf)

³⁵ Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007 para 2.11

³⁶ Ibid para 2.11

³⁷ Review of the Sentencing Framework in Northern Ireland NIO Consultation Document, Pg 12. May 2005

http://www.nio.gov.uk/review_of_the_sentencing_framework_in_northern_ireland_consultation_and_responses.pdf

could result in less certainty about the period that a prisoner would spend in prison, which may have an impact on public confidence.³⁸

2.4 Curfews and Electronic Monitoring

The draft Order creates new powers which will allow increased use of curfews as a condition of bail and as a condition or requirement attached to certain non-custodial sentences.³⁹ The draft Order will also allow for the use of curfews as a condition of a licence on release from custody. Therefore the creation of powers for electronic monitoring⁴⁰ will allow for the effective monitoring of curfews set for certain offenders.⁴¹

During the Review of the Criminal Justice System in Northern Ireland (2000), there were some suggestions that electronic tagging should be introduced in Northern Ireland. It was acknowledged in the Review that there may be some benefits to this technique in certain circumstances, particularly where the alternative might be imprisonment. However the Review stated there would be human rights implications that would need to be considered, adding that its use in certain circumstances in NI might have the effect of putting offenders at risk.⁴²

However, there are human rights implications that would need to be considered. It could be argued that the wearing of tagging devices amounts to a degrading form of punishment and that where its use imposes undue hardship on members of the tagged individual's household this might infringe the right to privacy and family life. Its use in certain circumstances in Northern Ireland might also have the effect of putting offenders at risk. We are also aware that private contractors in England and Wales have been used to run electronic monitoring schemes, an approach that would need careful consideration in the Northern Ireland context.

The new proposals set out in the draft Order provide the Secretary of State with a power to release early a standard determinate prisoner subject to curfew and electronic monitoring arrangements. Release under such circumstances will be subject to strict conditions and can only occur towards the end of the sentence.⁴³

2.5 Supervised Activity Orders

Chapter 5 of the draft Order creates a Supervisory Activity Order for the court's consideration, for cases of fine default, instead of a short period in custody. Under

³⁸ Ibid, Pg 13

³⁹ Draft Criminal Justice (Northern Ireland) Order 2007 art. 26

⁴⁰ *Electronic monitoring is a system of using electronic devices to determine where an individual is. Typically an offender will wear a small electronic transmitter on wrist or ankle.* Review of the Sentencing Framework in Northern Ireland NIO Consultation Document, Pg 20. May 2005

⁴¹ Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007 para 2.12

⁴² Review of the Criminal Justice System in Northern Ireland, 2000 para 12.83
http://www.nio.gov.uk/review_of_the_criminal_justice_system_in_northern_ireland.pdf

⁴³ Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007 para 2.12

this new provision the court will be able to impose a community-based *alternative* for non-payment of a fine instead of a period in prison.⁴⁴

This new arrangement for fine default has been welcomed by the Criminal Justice Inspection NI, who state that the current practice of imposing very short periods of imprisonment is an ineffective use of prison resources:⁴⁵

It is important that fines should be enforced, so that their credibility as a sanction is preserved, but the current Northern Ireland practice of imposing very short periods of imprisonment is ineffective as a sanction and disruptive to the prison system. In 2006 defaulters amounted to some 30 per cent of admissions. Having to cope with fine defaulters alongside more serious offenders complicates prison management and takes up disproportionate time for the officers.

Further support for this new provision is also shown in the Review of the Sentencing Framework in Northern Ireland carried out in 2005. During consultation, many respondents strongly expressed the view that custody should not be used for fine default. Other points for consideration include:

- *Consideration should be given to the enforcement of community based activities. For example in Scotland activity is determined by social services and may consist of social education, financial management, or unpaid work in the community.*⁴⁶
- *Ongoing review of these activities may be necessary to assess how effective they are as a deterrent/punishment for the offence in question.*
- *Supervised Activity Orders may also have an adverse effect on resources of the organisation taking responsibility. For example if the local police are responsible for the supervision of fine defaulters, more man power may be needed- Resource assessment.*

2.6 Parole Commissioners

The new provisions contained within chapter 6 rename the current Life Sentence Review Commissioners as the Parole Commissioners for Northern Ireland.⁴⁷ Parole Commissioners will assess how suitable dangerous offenders are for release into the community and they will also review decisions of recalling licensed prisoners to custody.⁴⁸

At the moment the Probation Board Northern Ireland (PBNI) is consulting on its Corporate Plan for 2008-2011⁴⁹, with a closing date of 11 January 2008 for all

⁴⁴ Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007 para 2.14

⁴⁵ Response by Criminal Justice Inspection Northern Ireland to the Draft Criminal Justice (NI) Order 2007 29th November

⁴⁶ Review of the Sentencing Framework in Northern Ireland NIO Consultation Document p.28

⁴⁷ Draft Criminal Justice (Northern Ireland) Order 2007 art. 48

⁴⁸ Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007 para 2.16

⁴⁹ Probation Board Northern Ireland Corporate Plan 2008-2011, Consultation Document
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responses. The draft consultation document outlines how the PBNI plans to introduce all of the provisions contained in the new Criminal Justice Order, one such provision being the creation of the Parole Commissioners.

- *With an increase in the remit of the Parole Commissioner to incorporate public protection sentences, consideration may need to be given to resource allocation.*

3. Risk Assessment and Management

The Review of the Sentencing Framework in NI, highlighted the relevance of Risk management and assessment in the new provisions for NI. It outlines the importance of post-release aspects of sentencing as they apply to dangerous offenders. Multi-agency public protection arrangements are not designed to require individual offenders to comply with risk management arrangements. Rather, the statutory requirement is on the criminal justice agencies to co-operate to protect the public.⁵⁰

Article 51 of the draft Order outlines guidance to agencies on assessing and managing certain risks to the public.⁵¹ The Secretary of State may issue guidance to agencies on the discharge of any of their functions connected with assessing and managing risks. This does not add to existing statutory powers for individual agencies but rather places the emphasis on maximising the effectiveness of their existing statutory functions through multi-agency working.⁵²

- *Should individual agencies have increased statutory power dependent on the role they play in exercising public protection?*

4. Road Traffic

The draft Order contains new powers to address three areas of road traffic law. These are:⁵³

- Bad driving
- Drink driving, and
- Police powers.

Within the area of “bad driving”, a new definition of “careless driving”⁵⁴ is included and also a new offence of “causing death, or grievous bodily injury by careless driving”⁵⁵ is introduced. This section also introduces more severe penalties for unlicensed, disqualified or uninsured drivers who cause death by driving.⁵⁶

<http://www.pbni.org.uk/cp0811draft.pdf>

⁵⁰Review of the Sentencing Framework in Northern Ireland NIO Consultation Document, May 2005 Pg 15.

⁵¹ Draft Criminal Justice (Northern Ireland) Order 2007 art.51

⁵² Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007 para 2.19

⁵³ Ibid. para 2.20

⁵⁴ Draft Criminal Justice (Northern Ireland) Order 2007 art. 61

⁵⁵ Ibid art. 62

⁵⁶ Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007 para 2.20

The area of “drink driving” is also addressed in the draft Order and includes tighter laws on failing to allow specimens to be tested, police powers to requiring breath specimens and regulations regarding ‘alcohol ignition interlock’⁵⁷ programmes.⁵⁸ Finally, the draft Order creates a series of police powers to seize vehicles causing alarm, distress or annoyance and to regulate the use of devices used by some motorists to avoid speed detection.⁵⁹

The NIO carried out a consultation on *Road Traffic and Driver Disqualification*⁶⁰ between November 2006 and January 2007. The consultation contained 15 proposals for modifying the law relating to motoring offences, and for the powers of the court in relation to driver disqualification.⁶¹

The proposals in the consultation were designed to replicate measures already in place in England and Wales, including those recently introduced in the Road Safety Act 2006.⁶²

The NIO received general support from organisations who responded to the consultation although some issues were raised.⁶³

- *Should there be a proposal to reduce the maximum alcohol level for drivers?*⁶⁴
- *How is the alcohol ignition interlock system monitored? Is there evidence for its function as an effective deterrent?*
- *A number of respondents voiced concerns over more engineering work being carried out to make roads safer.*⁶⁵
- *There was disappointment expressed regarding the absence of a proposal to introduce a 20mph default speed limit for community streets.*⁶⁶

⁵⁷ NIO Road Traffic and Driver Disqualification Consultation November 2006- these devices consist of a small box which is attached to a sample head and mouthpiece which can then be fitted to a vehicle. The alcohol interlock ensures that the driver is sober before he can start the vehicle.

⁵⁸ Ibid. Such programmes would apply to a person who is convicted of a second drink-driving offence within ten years of a first conviction.

⁵⁹ Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007

⁶⁰ NIO Road Traffic and Driver Disqualification Consultation November 2006

http://www.nio.gov.uk/road_traffic_and_driver_disqualification_a_consultation.pdf

⁶¹ Ibid- listed: Statutory definition of “careless driving”; Causing death or grievous bodily injury by careless driving; Alternative verdicts to manslaughter; Wanton and furious driving; Causing death by driving – unlicensed, disqualified or uninsured drivers; Driving disqualification for any offences; Driving disqualification for fine defaulters; Power of police to stop a vehicle; Failure to allow a specimen to be tested; Breath specimens at the roadside; Vehicles causing alarm, distress or annoyance; Road freight operators’ licences; High Risk offenders; Medical enquiries following disqualification; Speed Assessment Equipment Devices; Alcohol Ignition Interlocks

⁶² Summary of Consultation Responses to NIO Road Traffic Offences Consultation, 2007 Pg

1. http://www.nio.gov.uk/summary_of_responses_to_road_traffic_consultation.pdf

⁶³ Ibid p. 2

⁶⁴ Ibid p. 7

⁶⁵ Ibid p. 7

⁶⁶ Ibid p. 8

5. Miscellaneous and Supplementary

5.1 Purchase and Consumption of Alcohol

A “test purchases of alcohol” power is to be created, to allow police officers to identify bars and off-licences selling alcohol to individuals under 18.⁶⁷

These test purchases would enable a constable⁶⁸ acting in the course of his duty, to send a person under the age of 18 into licensed premises, to attempt a purchase of intoxicating liquor. This new power would allow for licensed premises to be subject to observation and would establish whether or not sale of liquor has occurred to an underage individual.

- *Is this sufficient deterrent for prevention of underage sale of liquor or are further measures necessary?*
- *Should further thought be given to the ethical considerations involved in such a scheme, both from the young person’s perspective and also from the licensed premises being tested?*
- *Will the testing of licensed premises be carried out on a random basis or should testing develop an approach which targets those areas which have been identified as having under-age youth drinking or anti-social behaviour issues?*

Powers are also created to deal with the consumption or possession of alcohol in designated public places particularly where there is a problem of anti-social behaviour associated with drinking alcohol.⁶⁹ These public places will be designated by District Councils.⁷⁰ An offence would be committed if a person failed to comply with a constable’s request not to drink alcohol or to surrender it.⁷¹

Currently all 26 district councils have bye-laws that make it an offence to drink alcohol in designated public places.⁷² These bye-laws currently operate by giving the police and councils the power to take the names and addresses of offenders. Councils are then responsible for prosecution proceedings.⁷³

In 2003 concerns were raised by several district councils regarding the apparent increase in anti-social behaviour associated with the consumption of intoxicating liquor in public places.⁷⁴ A working group was established to review the operation of drinking in public bye-laws. It examined the bye-laws regulating the consumption of intoxicating liquor in public places as well as the anti-social behaviour that may be part of that activity.⁷⁵

⁶⁷ Draft Criminal Justice (Northern Ireland) Order 2007 art 66.

⁶⁸ Subject to the conditions as outlined in art 66

⁶⁹ Draft Criminal Justice (Northern Ireland) Order 2007 art 69.

⁷⁰ Explanatory Document, Proposed Draft Criminal Justice (Northern Ireland) Order 2007 para 2.21

⁷¹ Ibid 2.22

⁷² Consultation Paper on Bye-Laws Regulating the Consumption of Intoxicating Liquor in Public Places, September 2003 http://www.dsdni.gov.uk/bye_laws_reg_intox_liq.pdf p.2

⁷³ Ibid p.3 para 2.1

⁷⁴ Ibid para 2.2

⁷⁵ Ibid p.3

The majority of views received as a result of the subsequent consultation exercise supported the measures now being proposed in the draft Order. However the Department of Social Development commented that there was no significant demand for a blanket ban on drinking in public.⁷⁶

Further issues for consideration:

- **Should** further consideration be given, now or in the future, to a blanket ban on alcohol in public places rather than limited to the “designated public places” as outlined in article 67 of the draft Order?
- How realistic would such a ban be in relation to implementation and maintenance of such a ban?
- Are there sufficient resources to enforce such a ban adequately?

5.2 Penalties

Article 89 of the draft Order⁷⁷ extends the maximum penalties for certain offences which include possession, manufacturing or selling of knives or offensive weapons. These include offences relating to crossbows; possessing an offensive weapon; a number of offences around the manufacture, sale or unlawful marketing of knives; and selling a knife to a person under the age of 18.

In July 2006 David Hanson MP, Minister for Criminal Justice launched a public consultation paper “The Law on Knives in Northern Ireland”.⁷⁸ The consultation sought views on tackling knife crime and preventing the emergence of a knife culture in NI.

Proposals to increase the penalties for possession of knives in public were widely supported, as were increased penalties for the illegal sale of knives to underage purchasers and the sale of offensive weapons.⁷⁹

A number of concerns arose from the consultation in relation to young people and knives. These are outlined below.⁸⁰

- *Violence, and its causes, must be addressed generally in order to prevent a knife culture in NI.*
- *Is there a need for youth education about knife crime and a general “raising of awareness” within schools and families about this type of crime?*

⁷⁶ Written submission to Ad Hoc Committee from the Department of Social Development on Articles 67-71 of the Draft Criminal Justice Order (NI) 2007.

⁷⁷ Draft Criminal Justice (Northern Ireland) Order 2007 art. 89

⁷⁸ The Law on Knives in Northern Ireland: A Consultation July 2006
http://www.nio.gov.uk/the_law_on_knives_in_northern_ireland.pdf

⁷⁹ The Law on Knives in Northern Ireland: Summary of Responses to a Consultation, October 2007
http://www.nio.gov.uk/a_summary_of_responses_to_a_consultation_on_the_law_on_knives_in_northern_ireland.pdf

⁸⁰ Ibid

- *Should further research be conducted to assess the attitudes of young people to knife crime?*
- *Could a licensing regime of certain weapons help to prevent knife crime? For example a mandatory scheme or a voluntary scheme.*
- *Further consideration should be given to the control of sale and availability of knives.*

5.3 Other Areas Covered

Other areas covered under Miscellaneous and Supplementary include:

- (i) Prisons
- (ii) Use of live links
- (iii) PACE
- (iv) Arrest Warrants
- (v) Anti-social behaviour orders

No major concerns appear to have been raised on these issues in recent consultations.

6.0 Conclusion

Recent consultation relevant to the draft Criminal Justice Order 2007 has raised a number of issues. Further to the issues identified within this briefing document there are some broader considerations which apply to the Order as a whole:

- *Resource allocation for the development and enforcement of new legislation*
- *Publicising the range of new law and measures- ensuring public awareness*