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Controlling Sex Offenders: Raising Critical Questions about the Sex Offenders Bill 2000

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Developments to control sex offenders after the expiration of their punishment – justified in effect as a form of supplementary child protection-have flourished in the U.K. and the U.S. during the 1990s. With the Sex Offenders Bill 2000, Ireland seems to have succumbed to the trend. Various measures, chiefly copied from the U.K., are to be introduced by this legislation. This article casts a critical eye over these initiative with a view to stimulating a debate on the best way to balance the need to protect children (and vulnerable adults) and the need to allow the sex offender to re-integrate into society.

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¹

Introduction

The issue of how to protect the public (particularly children and vulnerable adults) from convicted sex offenders after the expiration of their sentences has risen to prominence in a number of countries during the 1990s and has recently become a contemporary concern in the Republic of Ireland. The Sex Offenders Bill 2000 is the most significant attempt by government to reassure the public that it is actively pursuing this issue. However, in this article I wish to cast some critical light on this initiative and its ability to protect children and vulnerable people from recidivist sex offenders. Critical reflection and informed debate are necessary if initiatives in controlling sex offenders are to be effective and also balanced as between the rights of the public and those of ex-offenders.

Broadly stated, the approach the State intends to adopt is similar to that applying at present in the U.K. It seeks to manage the risk posed by sex offenders in the community and will do so by adopting a number of initiatives very similar to those that have been in place in the U.K. for a few years.

These are all predicated on the notion that sex offenders have a high rate of recidivism and are a continuing threat to children and other vulnerable adults, matters about which there is contradictory and inconclusive evidence.² Indeed, the term “sex offender” encompasses a wide range of offenders, not all of whom share the same characteristics and it would be a mistake to presume that all those convicted of an offence of a sexual nature will necessarily be a future threat to children and vulnerable persons. As one would expect, the Bill prescribes a range of offenders subject to its terms, but one must still question whether the offenders targeted here are indeed those who pose the most risk to vulnerable children and adults. There is a danger that an emotionally resonant term has the effect of blinding us to the question of whether the individuals being targeted do pose the threat they are assumed to pose.

The sex offender “register”

The main feature of the Bill is the imposition of a notification requirement on convicted sex offenders resident in Ireland, whether convicted in the Republic or elsewhere, to facilitate the compilation of a register of such offenders.³ The requirement will only apply to those convicted after the commencement of the legislation.⁴ Those convicted of sex offences (within the meaning of the Act) outside the State must comply with the requirement whether the offender was resident in the State at the time or not.⁵ A defence is provided, however, to an offender who honestly, though mistakenly, believes that he or she is not subject to the requirement because the offence in question was not one that would require notification if it had been committed in Ireland.

The notification requirement will operate in a similar manner to that in place in the U.K.⁶ Offenders will, therefore, be required to notify the Gardaí of their name and address for a period of time determined by the length of their sentence (see table 1).

Length of prison sentence *	Notification period
Life or > or = 2 years	Indefinite**
> 6 months but 2 years	10 years
or = 6 months	7 years
Suspended prison sentence	5 years
<p>* If offender is aged less than 18 years, the period is halved. Certain offences do not give rise to a notification requirement if the victim is aged 15 or more but is less than 17 years, provided that the offender is not more than three years older than the victim. These offences are (1) defilement of a girl aged between 15 and 17, (2) buggery of persons aged 15-17, (3) gross indecency with males aged 17 years, and inchoate offences relating to the above.</p>	
<p>** Clause 10-offender may apply to courts to have this requirement discharged, after 10 years, on the basis that “the interests of the common good are no longer served by his or her continuing to be subject” to the indefinite notification requirement. No specific examples are provided, but the condition might be met where the individual is severely physically incapacitated.</p>	

The triggering period for notification is 10 days, rather than 14 days as it is in the U.K. This means that an offender has 10 days from the date of release to inform the Gardaí of his address. Offenders are also required to register other addresses at which they reside for a period of 10 days, or two or more periods, which taken together amount to 10 days in any 12 months. Furthermore, offenders who leave the state for a continuous period of 10 days or more at a time must inform the police in advance of their leaving, which has the intended effect of requiring sex offenders to notify the Gardaí of their holiday addresses. Where the offender leaves the state for an unintended 10-day period, he must inform the Gardaí within 10 days of arrival back in the State of his whereabouts during that time.

The Gardaí will have no means of verifying the accuracy of information relating to addresses outside the jurisdiction unless it is transmitted to the relevant police force or authorities in the foreign jurisdiction for verification. It is not known if routine transmission of information to the sex offender's country of destination is likely to take place, but it would seem an excessive administrative burden to do so. Clearly, the utility of the requirement to keep the Gardaí informed of foreign addresses will depend on the co-operation of the authorities in the sex offender's

country of destination. However, this could be a mechanism by which cross-border co-operation in the management of sex offenders is achieved by the police services north and south of the border. At present, there are informal protocols governing the exchange of information between other police forces and An Garda Síochána where convicted child abusers move into the Republic,⁷ though the existence of these protocols should mean that even without the notification requirement, it should not have been possible for foreign sex offenders, especially from the U.K., to use the Republic as a “safe haven” (as was alleged by some T.D.s during the Second Reading Debate, for example, see below). A formalisation of these arrangements should now be possible, and perhaps necessary, if the government is serious about this issue.

The requirement on sex offenders convicted elsewhere to register is one that it is suggested will be extraordinarily difficult to enforce, particularly as the U.K. and Ireland form a common travel area and because of the free movement of persons within the European Union.⁸ It is unclear how a sex offender convicted outside the Republic is expected to be aware of this requirement. This innovation in respect of “foreign” offenders seems to have originated in the fear that the Republic was a “safe haven” for fugitive sex offenders from the U.K., but particularly from Northern Ireland. According to newspaper reports, these offenders were moving to the Republic to evade the requirements of the Sex Offenders Act 1997.⁹ Unnecessary and unhelpful attention has been placed, I suggest, on the “foreign” sex offender in the consideration of the appropriate measures to control sex offenders. The adoption of legislative developments having their origin in the U.K. and, to a lesser extent, the U.S., is also interesting because Ireland has not had a high profile murder such as that of Megan Kanka¹⁰ or of Sarah Payne¹¹, nor did the release of a notorious murderer, like that of Sidney Cooke¹² in England for example, spur these developments. It may be that precisely because such a notorious domestic example was not available as a totemic image around which politicians could congregate, that some participants to the debate felt the need to resort to the image of the foreign sex offender. This construction of the foreign sex offender, with its connotations of clandestine infiltration of the state, may also have been (subconsciously) informed by the emotionally-charged immigration debate. Whatever the reasons, it may be that a form of international peer pressure develops in respect of certain policy or legislative developments, ensuring that governments feel obliged to react in similar ways to other states. A sort of “domino” effect is evident amongst states with an affinity resulting from shared cultural experiences, similar legal systems or geographical proximity.¹³ In succumbing to this effect, I will argue, states do not always adapt legislative and policy initiatives developed elsewhere to their advantage.

The immediate value of the register will be reduced by the fact that it is not intended to apply the notification requirement retrospectively and therefore its real value may not become apparent for a number of years. Furthermore, the range of information that the offender is required to give is limited and the issue of how other relevant information will be gathered, and what that information might be, raises its head. Routine visits by Gardai to ensure the accuracy of the information tendered by the offender could be used as opportunities to gather other salient information, like the fact that there are children or vulnerable adults present. This information would have to be linked to other relevant information on the offender and his crimes, but such a task would require even more effort by social services, probation officers and the Gardaí. However, this intelligence-gathering process should be subject to appropriate respect for the offender's privacy. There are dangers in over-intrusive policing to which I shall return below.

Perhaps surprisingly, there is little direct evidence from either U.S. or U.K. experience that registers do indeed reduce the level of sex crimes. This is partly because no empirical research has been completed, but also because different definitions of “sex crime” are used for different purposes, so that recorded sex offences may be a broader category of offences than those used to track sex offenders and it may be difficult to state the beneficial effects on crime rates and disposal rates occasioned by the development of a register.¹⁴ One of the suggested benefits of a sex offender register is its value as an investigative tool in dealing with future sex crime. This view should be tempered with some caution, I suggest, for a number of reasons. Firstly, the lack of empirical data on the effect of registers means that no conclusions can be drawn about the effect of the register. Secondly, it is difficult to prove a causal link between the existence of the register and the detection of the offender. Thirdly, there may be a danger that the register could be too heavily relied upon by the police, giving rise to the prospect of miscarriages of justice as offenders are wrongly blamed for committing new offences.

The Sex Offender Order

Other developments provided for in the Bill also mirror developments in U.K. law during the 1990s. Thus, it also provides for a new civil order, a sex offender order, to be issued where the Garda Síochána considers that it is necessary to protect the public from harm.¹⁵ The Gardaí can apply to court for a sex offender order where the offender has acted, on more than one occasion, "in such a way as to give reasonable grounds for believing that an order under this section is necessary to protect the public from serious harm from him or her." The power of the courts when issuing these orders is circumscribed by the fact that the prohibitions contained therein must be necessary to protect the public from serious harm, which is defined as "death or serious personal injury whether physical or psychological." These orders last for five years, or longer if the court directs, triggering a requirement to notify the Gardaí for their duration. An order can be discharged, on application, if the court can be satisfied that the continued protection of the public from serious harm no longer warrants continuing the order in force, or the effect of the order is to cause an injustice. While the court has a broad discretion as to the terms of the order, some constitutional limitations-arising from the offenders' liberty and privacy rights-will restrain that discretion if the order is too vague or disproportionate in its impact, for example.

One question that needs to be addressed is whether the identity of the sex offender will be made known when the order is made.¹⁶ Indeed, for it to be effective this may have to be the case. A decision not to publicise the identity of an offender subject to these orders means that the police will have full responsibility in enforcing the order and cannot count on the vigilance of the public in order to help them. English experience of the operation of sex offender order indicates that they will be used in situations of last resort, and will probably require a significant diversion of police resources to enforce them.¹⁷

Post-release supervision

The courts will be empowered to impose a period of supervision on sex offenders¹⁸ to follow on from a custodial sentence, provided that the combination of the two does not exceed the statutory maximum sentence for the offence in question.¹⁹ Requirements to attend appropriate counselling as part of the post-release supervision can be included.²⁰ Before imposing such supervision, the court is to have regard to four matters:

- the need for a period of supervision after the offender has been released from prison;
- the need to protect the public from serious harm;
- the need to prevent the commission of other sexual offences by the offender: and
- the need for further rehabilitation of the offender.²¹

The essential limitation of post-release supervision is, of course, that sex offenders often present themselves as model probationers and detecting re-offending can be very difficult. Therefore, at best this is only a temporary control mechanism whose value is determined by the resources the state is prepared to invest in this matter as well as by the physical and legal limitations on the supervising probation officers. Furthermore, if sex offenders are as devious and as manipulative as they are popularly conceived to be, then consideration must be given to training specialised probation officers to carry out this task; the wide geographical spread of sex offenders in the State would make this task even more expensive.²² Supervision by probation officers will only be effective as a deterrent if breaches of the requirements are enforced. Lastly, if this initiative is intended to be partly a deterrent against future offending by making it more difficult for sex offenders to emerge from custody and recommence offending, rather than simply a punishment for past activity, probation officers will be expected to exercise a type of policing function that may have profound long-term consequences for the nature of the role performed by the Service.

Offence of applying for work with children

The Bill will also create an offence of applying or seeking employment, whether paid or unpaid, which will allow the offender unsupervised access to children without declaring, to the prospective employer, the fact that the offender has been convicted of certain sexual offences. In the event that the offender is unaware, when applying for the position, that it would allow such unsupervised access, he is required to inform the employer of the offences for which he has been convicted as soon as he becomes aware that he will have such access to children.

Doubt must be cast on the usefulness of this offence in preventing sex offenders from seeking employment that will allow them access to children. The employer is unlikely to be in a position to determine whether an applicant is a sex offender for the purposes of the Act, unless the position is one that is covered by the existing administrative vetting procedures.²³ Access to these vetting procedures is not made available to private employers or voluntary or charitable organisations. In order for this offence to be effective, offenders will have to be sufficiently afraid of being detected to deter them from applying for these positions in the first instance. Offenders will not be found out unless the employer becomes aware of the offender's past, which is only likely to happen if the Gardaí (or perhaps the victim) alerts the employer. It might be much more beneficial to allow relevant employers to make requests for criminal records checks from the Gardaí. Otherwise, the employer will, in many cases, be left to manage this matter. One other difficulty that is not anticipated is the possibility that the employer will be aware of the conviction and employ him nonetheless.^{24 25} Finally, it is worth noting that the protection afforded to vulnerable adults by the Bill is significantly reduced, because this offence does not apply to offenders seeking jobs where they will have access to vulnerable persons.

In the U.K., the idea of an offence of applying for work with children has now been enacted, in a much more elaborate format, as part of the Criminal Justice and Court Services Act 2000. As part of the drive to integrate the various mechanisms to protect children, the offence in that Act criminalises an attempt to seek prohibited employment where a person is included on the Department of Education's list of persons excluded from employment in schools,^{num} or on the Department of Health's Consultancy Service Index²⁶ or where the offender has been the subject of a "disqualification order". The disqualification order - the innovative element of the 2000 Act - can be made by a court where someone is convicted of any one of a range of offences, if the court believes that the nature of the offence is such that the offender should be deemed unsuitable for work with children. The continuing nature of a person's disqualification can be challenged by an application to a tribunal appointed for the purpose of dealing with such appeals or applications.²⁷ This is a more elaborate system than is being mooted by the Government, and has the virtue that the offender will be aware that he or she is not entitled to work in certain places. Furthermore, its integration with the existing vetting procedures administered by the Departments of Health and of Education should allow employing organisations whose work involves access to children to monitor whether convicted sex offenders are committing the offence of applying for such work.

Disclosing information about sex offenders in the community and using the register

At present it is not entirely clear what use is to be made of the register and how Gardaí will release the information gathered as part of the registration process. The development of the register is clearly not an end in itself if protection is to be afforded to vulnerable members of the community, rather it is a tool for risk management.²⁸ Disclosure strategies will have to be developed and consideration given to how the objectives of risk management are to be furthered by the register. As Thomas has acknowledged,²⁹ the U.K. authorities were surprised at the extra administrative burden arising from the establishment of the register.

At Second Reading, the Minister asserted that:

"information will only be disclosed to other persons in the most exceptional circumstances in order to prevent an immediate risk of crime or to alert members of the public to an apprehended danger and then only on a strict "need to know" basis. Administrative arrangements will be put in place to this end."³⁰

Given the approach of the Irish government thus far and the common law tradition shared by the

U.K. and Ireland, it is likely that police discretion to release information will be on a basis similar to that in the U.K. There the release of information is governed by administrative circular³¹ and in *R v. Chief Constable of North Wales ex p A.B.*³² the Court of Appeal had occasion to consider the issue of disclosure. It determined that disclosure was a matter for the authorities having regard to the risk they perceived to be involved, although disclosure should only be in exceptional cases.³³ In that case, the police decided to disclose the identity of a couple convicted of sex offences to the owner of the caravan site on which the couple were living. Blanket disclosure, it was implied, would be both undesirable and unlawful, a conclusion that the Irish courts might also arrive at having regard to the constitutional right to privacy and the right to privacy guaranteed by Article 8 of the European Convention on Human Rights.

But the salutary lesson from the brief experience in the U.K. is that releasing information may prove counter-productive, as the offenders in *ex p. AB* had in fact disappeared and “gone underground” by the time of the appeal hearing. Furthermore, many questions about the disclosure of information remain unresolved. For example, if information is disclosed to a school principal, can he or she be prevented from relaying that information to others? Amassing information is useful only to the extent that there are well-considered procedures about the use of that information, and that there are agencies with the duty, and resources, to act on it. It will also be necessary for the authorities to have clear objectives in mind when they release such information. It is not clear what objectives were fulfilled in *ex p. AB*, for example, because the flight of the offenders obviously frustrated the objective of tracking offenders. Interestingly, Plotnikoff and Woolfson's evaluation of the Sex Offenders Act 1997 reported that only five of the English and Welsh police forces had utilised their community notification policies, though almost all forces had such a policy. The report noted that “where there was concern about an individual offender, forces were more likely to use general awareness-raising measures within the community, without disclosing individual details”³⁴. In short, community notification policies will have to be drafted that not only provide adequate direction to the Gardaí and social services authorities, but that also advance the goal of protecting the public without interfering improperly with the rights of offenders. And while the focus during the passage of the Bill through the Oireachtas is likely to be on the disclosure of information gathered as part of the registration process, the opportunity should be taken to consider the disclosure of other information gathered by Gardai or other public authorities. It might be useful for it to dwell on the English experience in dealing with the release of information “outside” of the register, by social workers, for example, as demonstrated in *R v. Devon County Council ex p. L*³⁵. There, social workers, suspecting L of paedophile offences, visited the homes of his female partners who had children to warn them of their suspicions.

The Minister intends that “the Gardaí, in consultation with the relevant State agencies, such as the Probation and Welfare Service and the Health Boards, will undertake continuous risk assessment of those who are subject to the registration requirement.”³⁶ This statement was made in the context of the issuing of the release of information. The degree of organisation and co-operation needed to ensure the effectiveness of this exercise should not be underestimated, especially as this inter-agency co-operation will be grafted onto existing duties and responsibilities, possibly without any additional resources. In order to make the assessment, the agencies will have to be in possession of relevant information about the offender, his current pattern of behaviour, his modus operandi in the past and the opportunity for committing similar or further sex offences, for example. This information will probably not be held on the register and so presumably the agencies would have to be involved in extensive intelligence-gathering activity if they were to be in a position to perform this function adequately. Assuming that this inter-agency co-operation is productive, questions arise as to what can be done with the resultant risk assessments and, equally crucially, who has responsibility for implementing that action, or at least supervising the action taken.

The first evaluation of the U.K.'s registration requirement has provided information that will be of use to the authorities in the Republic.³⁷ The issues identified as needing further consideration related to how information was shared with other police forces and with the public where the danger was assessed as being high risk, how the information was verified by police officers and whether additional information was added to the basic information on the register. Thus, for example, 63% of forces used visits to the sex offender's residence to record further details “about the offender and his circumstances on a form (usually part of a specially designed risk assessment package)”³⁸. The issue of the offender's privacy is clearly raised by this activity and,

by the terms of this initiative, no legal obligation requires the offender to furnish the information.

Hebenton and Thomas' study of sex offenders registers in the U.S. highlights what should now be fairly obvious, namely that in order for these initiatives to be successful, they will require very significant amounts of agency action and co-operation beyond that implied by the Minister. Indeed, the authors of that study recommended the establishment of a single agency with overall responsibility for the management and control of sex offenders. This recommendation has the merit that not only would the risk be more coherently managed, but, arguably, the offender's rights might be protected in a more coherent manner.

The applicability of human rights standards

There are a number of human rights standards applicable to the control of sex offenders that act as ultimate constraints on State action, including the right to privacy, the right to freedom of association, the right to earn a livelihood, the right to move freely within the State and the right to liberty. These rights, found in the fundamental freedom articles of the Constitution or in the European Convention on Human Rights (or perhaps in both), are not absolute and allow for justifiable and lawful interference in the exercise of these rights by the state. Generally, such interference will be tolerated provided it pursues legitimate goals in a proportionate manner. The compatibility of the proposed measures with these human rights norms is too large a question to address in this article, but the nature of the offences committed by the sex offenders and the goal of protecting vulnerable persons from future crime will probably mean that the courts will be reluctant to consider that these measures infringe the range of substantive rights outlined above, either at a domestic or European level. Indeed, the experience thus far of challenges to the U.K. developments adds support to this conclusion,³⁹ as does the approach of the U.S. courts in respect of rights-based arguments.⁴⁰ The ease with which these rights can be lawfully infringed should not blind us to the fact that no matter how unpalatable the actions of the offender, he or she is still entitled to some, albeit residual, protection from unwarranted interference by the state. Perhaps a long-term concern should be that we do not allow our desire to prevent serious sexual crime and to protect the vulnerable, to contribute to a gradual erosion of civil liberties. There is a danger that, in the same manner that anti-terrorism legislation enacted to combat violence arising from Northern Ireland has contributed to an erosion of liberties generally, legislation designed to give police and other authorities the power to control sex offenders may have similar adverse long-term consequences.

Concluding observations

The extent to which the Republic intends to replicate developments in the U.K. is the most immediately obvious feature of the Sex Offenders Bill. Aside from being a wry commentary on the development of policies and solutions to contemporary social problems in Ireland, it also demonstrates that many of these developments are recycled initiatives, employed in an attempt to deliver government rhetoric in a manner that placates public opinion and opposition politicians. It is trite, although nonetheless true, that there are no votes in defending sex offenders' rights to ensure that these measures are balanced. Additionally, and perhaps more importantly, it is not altogether clear that politicians are indeed devising solutions, in adopting these measures, to confront the problems actually faced in protecting children and vulnerable people. The abuse of children in care institutions, particularly those run by religious orders, and the abuse of children by coaches to voluntary sporting organisations, for example, represent the type of problems these measures should be addressing. Similarly, the revelation that the man convicted of the rape of the girl known as X in the infamous Supreme Court abortion case *X v. Attorney-General*, had been granted a taxi licence by the Garda Carriage Office, and subsequently allowed to keep it when his identity became clear to that office, only to have it removed eventually when he was the subject of new allegations of sexual abuse against a minor, is another example of the sort of problem that that needs to be addressed.⁴¹

There are clearly gaps in the protective measures in operation in the Republic of Ireland. Although the Republic has copied much from the U.K., it has yet to develop other protective measures applicable there, like "List 99" and the Consultancy Service Index. And the Government may be underestimating the amount of extra work generated by these control mechanisms, as indeed happened in the U.K.⁴² Ireland should adopt a co-ordinated approach to monitoring the implementation of these initiatives to ascertain their effectiveness, which goes

beyond multi-agency co-operation. Even in the U.K., where multi-agency approaches operate in the constituent jurisdictions, the focus is on the interaction of agencies within the context of these legislative and administrative initiatives, rather than co-operation beyond the narrow confines of these initiatives to consider in a more holistic fashion the management of sex offenders in the community. Government may be unwilling to set up new administrative structures but the reality of the new legislative and administrative initiatives is that, as stated above, extra work will be created anyway. A failure to set up such an agency would underline the thesis that these measures are simply exercises in placating public opinion rather than a real commitment to enhance community safety.

The current focus on sex offenders is dominated by an ethos of risk management, rather than re-integration into the community yet re-integration remains a reality that must be pursued. A control, containment and monitoring strategy has to be balanced with an integration strategy, otherwise the former may become more difficult to manage. The reality is that, no matter what grandstanding is done by politicians, state authorities must spend time ensuring the re-integration of the offender in a manner that poses as little danger as possible to the community. There is no doubt that certain sex offenders pose peculiar dangers of which we should be aware and useful legislative and administrative tools, fashioned with an eye to their compatibility to constitutional and international human rights norms, can help a state police this danger. But we should also be mindful of the fact that politicians' penchant for playing to the gallery means that it is possible that these initiatives will amount to no more than attempts to assuage public fears rather than genuine attempts to protect the public. More cynical observers might be forgiven for contending that there is a danger that the initiative is a "con job" in the original sense of the phrase, namely a confidence trick orchestrated by securing the confidence or support of the public. In short, now is the opportune time to give proper consideration to these initiatives if they are really to have the effect of improving the security of children and vulnerable persons.

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2. Don Grubin's work, for example, *Sex Offending against Children: Understanding the Risk*, (Police Research Series Papers, Home Office, 1998) has demonstrated that most offending (80%) takes place in the home or similar setting and the likelihood of "stranger danger" is quite low. He also claims that 25-40% of sex offenders could be labelled as paedophiles and that 1/3 of sex crimes are committed by adolescents (usually males) who are not interested in sexually abusing children per se.

3. The effect of the notification requirement, it is claimed, will be to ensure that the Gardaí records will be up-to-date, thus in effect creating a register similar to the U.K. one, Department of Justice, Equality and Law Reform, *The Law on Sexual Offences - A discussion paper*, para. 10.2.3. (Stationery Office, 1998)

4. Exceptions have been created in respect of offenders still in prison, on temporary release or whose sentences are "otherwise still in force or current", so that these offenders will be required to notify the Gardaí of their addresses on release.

5. Clause 12.

6. Sex Offender Act 1997, s.1.

7. Minister of Justice, Equality and Law Reform, Mr John O'Donoghue, in a debate in Seanad Éireann on child abduction, December 17, 1998

8. The U.K. has recently adopted a similar requirement in Schedule, paragraph 4 of the Criminal Justice and Court Services Act 2000. The Act does not state a minimum period of absence that triggers the requirement, but leaves the matter to regulations to be enacted

9. These references arose on a number of occasions in both Houses of the Oireachtas. For example, see the speeches of Mrs A. Doyle, Mr Glynn, Ms. Leonard on a debate on child abduction in the Seanad, December 17, 1998. See also the speech of Mr Neville and Ms Clune during the second reading of the Bill. See also the contributions of Deputy McManus during the Dail Debates of May 7, 1998 on the (resumed) second reading of the Sex Offenders Registration Bill 1998. Many parliamentarians, in making these claims, relied on newspaper reports that sex offenders from Britain or Northern Ireland were living in the Republic.

10. This was a seven-year-old New Jersey girl who was abducted, sexually assaulted and murdered by a neighbour, a sex offender who had recently arrived in the area. Her parents' campaign to pressurise the authorities into releasing information about the movement of paedophiles to the public led to the enactment of community notification laws across the U.S., commencing with the Sex Offenders Registration Act 1994 (N.J. Stat. Ann 2C-7 (West 1995)) in her home state of New Jersey, as well as the adoption of a federal statute, finalised as the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program (42 U.S.C. 14071 (1998)).

11. Sarah Payne's abduction and murder close to her home triggered a similar demand for community notification type laws in the U.K..

12. Cooke was convicted in 1989 of the manslaughter of a 14-year-old boy, having sexually abused him, along with an accomplice, Robert Oliver. The issue of where these men would be housed on their release was the subject of media attention; see, for example, "Search goes on to house paedophile" , The Times, August 13, 1998.

13. John Meade makes similar arguments in respect of the legislation establishing the Criminal Assets Bureau, "Organised Crime, Moral Panic and Law Reform: the Irish Adoption of Civil Forfeiture" , Irish Criminal Law Journal, 2000 [10] No. 1, pp.11-16

14. Bill Heberton and Terry Thomas, Keeping Track? Observations on Sex Offender Registers in the U.S.", (Police Research Series papers, Home Office, 1997), at p.34.

15. Similar to the sex offender order provided for in the Crime and Disorder Act 1998, s.2.

16. No sex offender order issued to date in Northern Ireland resulted in the identification of the offender there. See The Observer, May 14, 2000.

17. More significantly for the public in the long term, the state may have solved the difficulty of establishing preventative detention schemes that are compatible with human rights norms and constitutional guarantees in situations where no national emergency exists, in the development of the sex offender order process.

18. The period of supervision will be administered by the Probation and Welfare Service.

19. Similar to that introduced in Great Britain under the Criminal Justice Act 1991, ss 58-60.

20. Clause 29.

21. In a separate, but related, development, the Minister has recently announced that sex offenders (and some other categories of offenders) will not be eligible for certain types of temporary release from prison under legislation which he shortly intends presenting to the Oireachtas. (Sunday Tribune, February 18, 2001). This latest initiative certainly seems to smack of populism, as no evidence has been offered that further offences are being committed by these prisoners on release. Indeed, the possibility that these privileges might be lost by inappropriate behaviour often serves as a sufficient disincentive. The management of sex offenders in prisons could become more difficult if all such offenders are denied these privileges. This development may be viewed as further evidence to support the general thesis in this article, namely, these initiatives are designed chiefly to assuage public opinion

22. On this point, see Adam Sampson, Acts of Abuse: Sex Offenders and the Criminal Justice System (Routledge, 1994) at p.78

23. These deal with the recruitment of staff for children's residential centres or the recruitment of staff for positions with health boards that will allow them access to children or vulnerable adults.

24. The U.K. legislation dealing with this issue, the Criminal Justice and Court Services Act 2000, s.35(2), makes it an offence for the employer to knowingly engage someone disqualified from working with children.

25. Known as List "99"

num. 25

[26.](#) An index of persons convicted or cautioned for certain sexual offences against children, or of persons who, in previous employment, caused children harm or put them at risk of harm. Access to the index is available to organisations whose work involves employees or volunteers having substantial access to children. Decisions about whether or not to employ those on the Index rest with the organisation..

[27.](#) This Tribunal is provided for in the Protection of Children Act 1999, the main function of which is to put the Consultancy Service Index on a statutory footing.

[28.](#) English police authorities felt the need to introduce a national risk assessment model in April 1999, for example.

[29.](#) Terry Thomas, "Protecting the Public: Some Observations on the Sex Offenders Bill 2000", Irish Criminal Law Journal 2000 [10] No.2, pp. 12-15..

[30.](#) Dáil Debates, April 6, 2000..

[31.](#) Home Office Circular 39/1997..

[32.](#) [1998] 3 All E.R. 310, [1998] 3 W.L.R. 57. The Court also considered that the police should, if possible, inform offenders that they were intending to release the information and give them an opportunity to respond..

[33.](#) For commentary on this case, see Helen Power, "Sex Offenders, Privacy and the Police" Criminal Law Review [1999] 3-16, and Mullender, "Privacy, Paedophilia and the European Convention on Human Rights: A Deontological Approach" , Public Law [1998] 384..

[34.](#) Joyce Plotnikoff and Richard Woolfson, Where Are They Now? : An.Evaluation of Sex Offender Registration in England and Wales, (Police Research Series papers, Home Office, 2000)..

[35.](#) [1991] 2 F.L.R. 541..

[36.](#) Second Reading Debate, April 6, 2000..

[37.](#) Compliance rates, measured one year after the commencement of the obligation, were very high: of those on the Police National Computer at August 31, 1998, 73% had registered, 23% were in custody or were within the 14-day registration period, and 4% appeared to be in breach of their obligations..

[38.](#) J Plotnikoff and R Woolfson, op. cit., p.2.

[39.](#) As well as ex p AB, dealt with earlier, there has been an unsuccessful due process challenge to the Consultancy Service Index: R v Secretary of State for Health ex p C[1999] 2 C.C.L.R. 172. And in R v. Broxtowe BC ex p B, the basic premise of natural justice — audi alterem partem — was set aside, because the court considered that no risks whatsoever could be taken in respect of protecting children and even if B had been afforded the opportunity to challenge the council's decision, it would have made no difference to its decision..

[40.](#) Wayne A. Logan, "Liberty Interests in the Preventive State: Procedural Due Process and Sex Offender Community Notification Laws" , 1999 [89] Journal of Criminal Law and Criminology 1167-1231..

[41.](#) While the new register should deal with the initial failing in this case, i.e. that the Gardaí were unaware that the offender had changed address, the failure of the Garda Carriage Office to revoke the licence until public pressure was applied would not be addressed by any of the proposed developments..

[42.](#) Terry Thomas, op cit...