

# **Stakeholder consultation on Violent Offender Orders**

## **Summary of responses and next steps**

**May 2007**

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Annex A: Policy paper

## **Introduction and background**

Initial proposals for Violent Offender Orders were included in the Criminal Justice System Review, published in July 2006. In order to further develop the policy and work through some of the practical issues associated with the proposed Orders, a policy paper was sent to key stakeholders on 4 April 2007 to seek their views and input. In order that the views of stakeholders could be taken into account in the drafting of the Criminal Justice Bill, consultees were asked to respond by 30 April 2007, however a number of responses were received and taken into account after the close date.

This document summarises the responses that were received from stakeholders, and sets out next steps and amendments the Government has decided to make to the policy as a result of those responses.

The policy paper which was sent to stakeholders can be found at Annex A to this document for reference.

## Summary of responses

### General overview

Thirty-one responses were received in total, representing the views of the Crown Prosecution Service, Probation, Police, the Judiciary, the Youth Justice Board, civil rights groups, as well as the voluntary sector.

Overall there was support for the principle of Violent Offender Orders as an additional public protection tool and preventative measure against serious violent offending. There was general recognition that an individual's risk of violence can continue after formal intervention currently ends, and that, if properly implemented, Violent Offender Orders would enable that risk to be managed effectively.

Some respondents (including Liberty, the Magistrates' Association, and the Law Society) questioned the concept of Violent Offender Orders, and in particular the suggestion that breach of a civil order should be a criminal offence. Liberty felt that the Orders 'seek to punish individuals while sidestepping the criminal due process protections that apply under Articles 6 and 7 of the Human Rights Act'.

Other key concerns raised were in terms of resource implications for the Orders, particularly in terms of costs to the Probation Service and the Police and how they would be covered; whether conditions should include positive requirements, for example to receive treatment or attend a particular course; and whether Violent Offender Orders should apply to juveniles as well as adults. These issues are explored in detail later on in this section.

There was some dissatisfaction expressed about the method of consultation, and the length of time given for responses. However the majority of respondents welcomed the opportunity to give their views and input into the development of the policy.

### Responses to specific questions posed in the policy paper

***Questions 1 and 2: Is the eligibility criteria right? Should there be any time limits placed on when the qualifying offence was committed? Are there any other options that should be considered in terms of target group?***

The majority of respondents supported the eligibility criteria for Violent Offender Orders set out in the paper.

In terms of the requirement for an individual to have been convicted of a Schedule 15 (CJA 2003) offence, in general it was felt that there was a strong case for targeting offenders who have committed serious offences in the past, on the grounds that past behaviour is the best predictor of future behaviour. The Magistrate's Association felt that Schedule 15 offences were too wide an

eligibility criteria, and Surrey Probation felt that only Part 1 (Violent Offences) of the Schedule should apply, with additional criteria that the offender has been made the subject of an extended sentence or their offence caused serious harm.

While most respondents supported the requirement that an individual must have been awarded a custodial sentence of at least 12 months in order to qualify for a Violent Offender Order, some expressed the opinion that this was too high and that the Orders should apply to those convicted of a lesser custodial sentence or a community sentence. Particular examples given were domestic violence offenders who may have a high risk of harm that needs to be managed but that might not fulfil this qualifying criteria.

Several respondents (CPS, Magistrates Association, NACRO, Criminal Bar Association) felt that there should be a time limit on convictions for qualifying offences in line with Rehabilitation of Offenders Act 1974, to ensure that old bad conduct is not dragged up after years of good conduct, particularly for minor qualifying offences. Others, for example the Justices' Clerks' Society, felt that in practice the requirement that an offender must continue to present a high risk would operate as a protection against the use of very old convictions in most cases. The majority of respondents felt that imposing time limits was not desirable because it would mean that individuals to which the Orders should apply would be unnecessarily excluded.

### ***Question 3: Should Violent Offender Orders apply to juveniles?***

This question received a mixed response. Twenty two respondents answered it, with eleven expressing the view that Violent Offender Orders should apply to juveniles; six that they should not; and five that they should apply to 16 and 17 year olds only.

Of those who felt the Orders should be given to juveniles - including the CPS, ACPO, the Police Federation of England and Wales, Kent Police, several probation areas as well as HMI Probation, the Council of District Judges, Criminal Bar Association and the Justices' Clerks' Society - the main reasons given were that it was not appropriate to exclude young people who may pose a very serious risk of harm to society simply on the basis of age. It was felt that, because of the nature of sentencing for juveniles very few would meet the eligibility criteria, but for those that did it was important to have Violent Offender Orders available as a tool to manage their risk. Many made the point that the recent spate of violence involving young people made this all the more pertinent.

All the children's charities that responded to the consultation were opposed to the application of juveniles to young offenders. The main reasons cited were that they would not understand the Orders and would be more likely to breach them. Thames Valley Probation were also against it, pointing out that a specific sentencing framework exists for juveniles to reflect the more dynamic nature of risk.

Five respondents - South Wales Probation, Hertfordshire Probation, the Youth Justice Board, HM Courts Service and the Magistrates' Association - suggested that Violent Offender Orders could apply to 16 and 17 year olds only, and only in the most extreme and specific of circumstances. The YJB commented that there is a small group of high risk young people whose DTO or S91 will end before they are 18, who could usefully be covered by this policy.

***Question 4: How could Violent Offender Orders best be adapted to apply to juveniles?***

Some respondents felt that the eligibility criteria for juveniles should be the same as for adults, but that there should be statutory reviews every six or twelve months. Some suggested that there should be no minimum length of qualifying sentence because juveniles tend to get shorter sentences than adults, while others thought that the 12 month custodial sentence requirement should remain for juveniles.

Many were of the view that the minimum and maximum terms of the Order should be shorter than for adults. NCH the children's charity felt that, if VOOs were to apply to young people, there should be a high threshold for risk assessments which should be age-appropriate and carried out by those with experience of violent young people.

The Youth Justice Board commented that guidance should require that Youth Offending Teams are directly involved in the assessment and court request of any application made by MAPP for a Violent Offender Order on a young offender, that they should set the requirements within the Order with MAPP and the Court, and that they should continue to be involved in monitoring and breach proceedings where appropriate.

***Question 5: Are there any potential problems associated with the process for applying for a Violent Offender Order?***

The Police Federation of England and Wales, as well as several probation areas, were of the view that the decision to apply for a Violent Offender Orders and the responsibility for monitoring and enforcing the Orders should not just be for the police but should fall to MAPP agencies as a whole. NACRO made the point that enforcement by the police risks fuelling the perception that the Orders are punitive rather than preventative.

The Justices' Clerks' Society suggested that the CPS should be allowed to consider whether an application for a Violent Offender Order should be made, as a body independent from the investigation process. CPS argued that, because the application is not made at the point of sentencing but on application, it would be more appropriate for the police to make the application.

Liberty in particular raised questions about the evidence and the standard of proof needed to apply for a Violent Offender Order. This is addressed in the next section of the document.

Some respondents felt that there should be a maximum length for a Violent Offender Order, after which the court should be able to renew the Order if necessary. The Magistrates' Association felt that the minimum length of two years suggested was too long and rigid, while Kent Police and ACPO questioned why the minimum length of five years for Sexual Offences Prevention Orders was not mirrored.

***Question 6: Should the police be able to apply for Violent Offender Orders on conviction?***

The majority of respondents did not feel that Violent Offender Order should be available on conviction because the level of risk posed by an individual could change significantly during the length of their sentence.

Those that supported the availability of Violent Offender Orders on conviction felt that it could be overly bureaucratic or difficult to apply for one at a later stage, and that it would reduce the chance of cases 'slipping through the net'. Several felt that not allowing applications for Violent Offender Orders on conviction could risk challenging the process that allows Sexual Offences Prevention Orders to be applied for at this stage.

***Question 7: Should the courts be able to impose positive requirements on the subject of a Violent Offender Order?***

The majority of respondents felt that it would be extremely problematic to impose positive requirements on individuals subject to a Violent Offender Order. Many of the respondents from the Probation Service made the point that resources for offender behaviour programmes can be scarce in some areas, and that the Court imposing the Order would not necessarily have know whether attendance on a particular course or intervention was feasible without Probation taking a much more active role than currently envisaged. They also commented that the majority of individuals subject to a Violent Offender Order would already have been through the Criminal Justice System and as such are likely to have received the sort of positive interventions that would potentially form part of a Violent Offender Order.

Difficulties with compelling individuals to comply with treatment, particularly mental health treatment, were emphasised. Many felt that the imposition of positive requirements, and the fact that breach would bring with it a criminal sentence, could be contrary to ECHR Article 6.

The Police Federation of England and Wales, the Council of District Judges, the NSPCC, ACPO, HM Courts Service, and the Justices' Clerks' Society were in favour of positive conditions but all underlined that these should be properly resourced.

***Question 8: Are there any potential issues or problems with storing information on those subject to Violent Offender Orders on VISOR?***

There was general support for the use of VISOR for this purpose. Some respondents felt that the system might need additional resources, and others emphasised that it would be problematic until VISOR was fully rolled out to Prisons and Probation. However the rollout has already started, and will be completed before Violent Offender Orders come into force.

***Question 9: Are there any potential issues or problems with the proposed system for monitoring and enforcing Violent Offender Orders?***

As for question 5, many felt that MAPP agencies should be involved in monitoring and enforcing Violent Offender Orders, and that there should be national standards. Many respondents felt that this would require extra resources; the Police Federation of England and Wales were of the view that MAPPA should be funded directly by the Government.

The CPS felt that an independent prosecutor should be involved in breach proceedings to review the evidence and public interest tests, and if necessary prosecute the breaches. In practice the CPS will automatically be involved if an Order is breached, and guidance will state that in cases of particular complexity it may be sensible for the police to seek CPS advice on the working of the prohibitions in the proposed Order to ensure that they will be enforceable by way of a criminal prosecution for breach.

***Question 10: Comments on estimated numbers?***

There were some queries about estimated numbers, however it is extremely difficult to predict these with any degree of certainty. There was general support for the estimated numbers of breaches. Hertfordshire Probation made the point that one case that 'goes wrong' will be likely to lead to a political commitment to do more, and the number of orders increasing significantly.

***Question 11: Other comments?***

See 'Other issues raised' below.

***Question 12: What is the potential impact, both positive and negative, of Violent Offender Orders in terms of race; disability; gender; gender identity; religion, belief and non-belief; sexual orientation; and age?***

The Runnymede Trust felt that Violent Offender Orders would have a disproportionate impact on BME communities; NACRO suggested that this might be because black people are more likely to be assessed as high risk and could therefore be over-represented under this policy. Many expressed a concern that young adults might be over-represented. Some respondents felt that it was important to monitor the equality impact of Violent Offender Orders.

A number of respondents suggested that there could be potential benefits for minority and vulnerable groups since the Orders will be a useful tool in tackling domestic violence and hate crime.

### **Other issues raised**

#### **Relationship between Violent Offender Orders and other sentences**

Some respondents questioned the relationship between Violent Offender Orders and other sentences already available to the courts, in particular the public protection sentences available under the Criminal Justice Act 2003, and non-molestation orders available under the Family Law Act 1996.

Public protection - extended and indeterminate - sentences introduced in the CJA 2003 have been available for those convicted of a Schedule 15 offence under that Act since April 2005. This means that, in the vast majority of cases, high risk individuals who would fulfil the eligibility criteria for a Violent Offender Order are already covered by these sentences and as such sufficient measures are in place to manage their risk for as long as it is deemed necessary. However there remain gaps into which some offenders may fall. For example, some may have been convicted of a Schedule 15 offence before April 2005 and therefore not eligible for the public protection sentences. Others may not have been assessed as sufficiently dangerous at conviction, but their risk has increased since that time. Violent Offender Orders are being created to fill these gaps.

Liberty expressed the view that non-molestation orders, breach of which will be an offence under the Domestic Violence, Crime and Victims Act 2004 from July 2007, already achieve much of what Violent Offender Orders seek to do, and would be even more effective if state agencies rather than a private individuals were able to make applications. However, non-molestation orders would presume some form of relationship between offender and victim which, while this is likely to exist in domestic violence cases, is unlikely to be the case with other forms of violent behaviour which Violent Offender Orders seek to manage.

#### **Mentally disordered offenders**

A number of views were expressed about Violent Offender Orders in relation to mentally disordered offenders, and in particular about the increased likelihood of breach in those cases. The police will be able to apply for an Order in those cases where an individual is found not guilty of a Schedule 15 offence by reason of insanity. Where an individual has been sentenced to a hospital order rather than a custodial sentence they will be eligible for a Violent Offender Order, but in practice this is unlikely to be necessary as under the hospital order they will automatically be subject to measures to manage their risk on release and liable to recall to hospital if they do not comply with them.

In many cases, even where a mentally disordered offender would be eligible for a Violent Offender Order it may not be appropriate to use this measure. The decision in any individual case would depend on factors such as the nature of the mental disorder (mental illness, psychopathic disorder or mental impairment), capacity to comply with conditions of the order and the link between the mental disorder and the violent conduct itself.

## **Government response and next steps**

The Home Office is grateful for all comments received on the policy paper and will take them into account in further developing and taking this policy forward. It is extremely helpful to have the views of stakeholders and practitioners who will be potentially using Violent Offender Orders in public protection work in the future, in order to ensure that they are as effective and robust a tool as possible.

A number of key issues have been raised by respondents, which this section will aim to discuss and respond to in turn. The Government's intention is to introduce legislation to provide for Violent Offender Orders in the Criminal Justice Bill which is expected to be introduced before the summer recess.

### **VOOs: Human Rights implications**

The Home Office has reflected upon concerns that the introduction of Violent Offender Orders will have human rights implications. It is important to emphasise that civil orders already exist and are widely used in this country, for example Anti-Social Behaviour Orders and Sexual Offences Prevention Orders, both of which bring with them a criminal conviction for breach. Violent Offender Orders seek to mirror the arrangements for these existing orders as far as possible.

Article 6 of the ECHR provides for the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in the determination of civil rights and obligations or any criminal charge. A Violent Offender Order will be civil in nature, imposing conditions which are necessary to protect the public from the risk of serious violent harm identified. It will not have any punitive purpose. An Order will be issued by a court only when it is satisfied that the individual qualifies and the legal test for risk is met. Persons on whom Violent Offender Orders are imposed will have a statutory right of appeal, as well as the right to apply for the order to be varied or discharged. Breach of the terms of a VOO will be a criminal offence.

Article 7 of the ECHR states that there should be no punishment without law. It provides that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed. It also provides that a heavier penalty shall not be imposed than the one that was applicable at the time the criminal offence was committed. Again, a Violent Offender Order is not a punishment but a civil preventative measure. A previous conviction for a Schedule 15 offence is only one criterion for eligibility for a Violent Offender Order, and must be accompanied by a much more recent assessment of risk of serious harm. The VOO is not imposed as an additional punishment for a Schedule 15 offence. Breach of the conditions set as part of a Violent Offender Order will by law be made a criminal offence, in line with arrangements already in place for existing civil orders. This is in line with article 7 as breach of a VOO will be a criminal offence at the time that the breach is committed.

### **Eligibility criteria**

Broad agreement has been given to the fact that a conviction for a Schedule 15 offence should be a criterion for eligibility for a Violent Offender Order.

The Home Office has reflected upon comments that there should be a time limit on when the Schedule 15 offence was committed, and understands reasons for this. However on balance the decision has been made not to impose a time limit, because to do so could mean that otherwise eligible offenders, for whom a Violent Offender Order would potentially be an important tool to manage their risk, may slip through the net. It is felt that the requirement that an individual must continue to present a high risk of serious harm would ensure that old convictions are not dragged up without a much more recent assessment of risk.

Respondents to the policy paper have made important points about the potential for the eligibility criteria to preclude those individuals who have committed serious offences, but have not been awarded a custodial sentence of 12 months. This may be the case with domestic violence offenders, for example, because of problems around gathering evidence and victim attrition. The Home Office fully appreciates that such people could still present a high level of risk which it is important to ensure is managed. However there are already a range of measures in place to do this, for example through restraining or non-molestation orders; improvements to the way in which information about offenders and victims can be shared between relevant agencies; the roll-out of Multi-Agency Risk Assessment Conferences; work to improve evidence-gathering and investigation procedures for domestic violence cases; and the roll-out of Specialist Domestic Violence Courts.

The intention behind Violent Offender Orders has always been that they will apply only to the most dangerous and violent offenders from whom the public needs to be protected. It is important to have a means to define who these people are. Lowering the threshold in any way would risk de-valuing the Orders and could mean that they are used in respect of individuals to whom they were never intended to apply. Indeed, the Home Office has reflected upon comments from other respondents to the consultation, that the Schedule 15 criterion is too wide and that Part 2 (sexual) offences should not be included, and has made the decision to further narrow the eligibility criteria to ensure that Violent Offender Orders can apply only those who have committed the most serious Part 1 violent offences. These will include Murder, Manslaughter, Attempted Murder, and Grievous Bodily Harm.

### **Length of order**

The Home Office is minded to keep the minimum length of a Violent Offender Order at 2 years. This is shorter than for Sexual Offences Prevention Orders, which is 5 years, however the nature of risk is different for violent and sexual offenders. Violent behaviour can, in many cases, be linked to a particular circumstance, situation or relationship and risk of offending may reduce when this is removed. Sexual offending, by contrast, is often much more intrinsic and measures to manage risk need to be longer term.

The Home Office has reflected upon suggestions that there should be a statutory maximum length for a Violent Offender Order. On balance the decision has been made not to impose such a maximum, but to leave it to the discretion of the court to determine length. This mirrors the arrangements for Sexual Offences Prevention Orders and Anti Social Behaviour Orders.

### **Juveniles**

There are arguments both for and against applying Violent Offender Orders to juveniles. The Home Office accepts that the youth offending system is different in motivation to the criminal justice system for adults, in that its key objectives are to prevent young people from offending or continuing to offend, and from being stigmatised as a criminal later in life. It is also true that new interventions should not automatically be applied to juveniles without due thought and consideration as to whether these are appropriate.

However, Violent Offender Orders are aimed at protecting the public from the most dangerous and risky individuals, and a small number of these will, inevitably, be under the age of eighteen (or sixteen). The Home Office does not wish to prevent the police from applying for a Violent Offender Order in respect of these individuals, many of whom are capable of very serious acts of violence. The majority of respondents to the policy paper supported this view. It is felt that the existing criteria are sufficiently robust as to exclude all but the most dangerous juveniles from eligibility for a Violent Offender Order. Guidance accompanying the introduction of Violent Offender Orders will specify that the relevant Youth Offending Team should take part in any decision to apply for an Order in respect of a juvenile, that they should be involved throughout the length of the Order, and that where possible social services should also be consulted. It will also suggest that magistrates with relevant experience or qualifications to deal with applications for orders against children and young people should be chosen for hearings with juveniles.

In terms of how Violent Offender Orders could be adapted to apply to juveniles, there was some appetite expressed on the part of respondents to the policy paper for imposing shorter minimum and maximum lengths than are suggested for adults. It is important to note that other civil orders such as Sexual Offences Prevention Orders and Anti-Social Behaviour Orders do not provide for this. Because Violent Offender Orders will apply to more serious young offenders, who present a higher risk of harm than those who are generally awarded an ASBO, we have taken the decision not to reduce the lengths of the Orders when applied to juveniles.

Guidance on Anti-Social Behaviour Orders does however suggest that the police should review Orders made in respect of under-18s on an annual basis, involving other agencies as appropriate, to ensure that they are still necessary. These reviews will become statutory under the Criminal Justice Bill 2007. The Home Office has taken on board the views of respondents to the policy paper who emphasised the importance of regular reviews of Violent Offender Orders made in respect of juveniles, and believes that a similar process to that in place for Anti-Social Behaviour Orders would be

appropriate. The policy will be amended accordingly, and the Home Office will ensure that any additional resources arising from this are accounted for.

### **Positive requirements**

The Home Office has taken on board the concerns raised by the majority of respondents with respect to the intention to include positive requirements as part of a Violent Offender Order. It is clear that including positive requirements as part of an Order would represent a significant additional burden on resources particularly for the Probation Service, and that there would be potential issues in terms of requirements to access and comply with treatment particularly for mentally disordered offenders.

The decision has therefore been taken that positive requirements will not form part of the conditions available for a Violent Offender Order. There will, however, be an automatic requirement for all individuals subject to an Order to periodically notify the police about key information such as name and address.

### **Orders on conviction**

While the Home Office recognises that making Violent Offender Orders on application is likely to be more resource intensive than allowing them to be made on conviction, it is felt that this is the best course of action particularly given the dynamic nature of risk in violent offenders. This should not challenge the current arrangements for making Sexual Offences Prevention Orders on conviction, because, as discussed above, the risk that these are designed to manage is different in nature.

### **Role of MAPP**

Many respondents questioned the role of MAPP in the application, monitoring and enforcement of Violent Offender Orders. As outlined in the policy paper MAPP will have an important role to play in the decision to apply for a Violent Offender Order in respect of an individual, however the Home Office does believe that the police are best placed to monitor and enforce these Orders. As part of their core business, for example through specialist teams dealing with domestic violence, hate crime or guns and gangs, or Safer Neighbourhood teams, and through routine intelligence checks, the police should quickly become aware if an offender subject to a Violent Offender Order is breaching the conditions of their Order. They may in some circumstances wish to refer to the MAPP agencies if they feel they might have relevant information in relation to a suspected breach, for example, but we do not wish to overburden MAPP by requiring panels to meet regularly in respect of individuals subject to Violent Offender Orders.

### **Evidence needed to apply for a Violent Offender Order**

Clarification has been sought on the evidence needed to apply for a Violent Offender Order. A Violent Offender Order is a preventative order, the key objective of which is to protect the public from serious harm. In order to apply for a Violent Offender Order the police must be certain that the individual fulfils the qualifying criteria set out in the policy paper: that he has been convicted of a (specified serious) Schedule 15 offence, has been awarded a custodial sentence of at least 12 months, that he presents a risk of serious harm to the

public, and that he is not subject to any other equivalent measures to manage that risk.

In making an assessment that an individual presents a high risk of serious harm the police and other agencies will use their professional judgement, which will take into account knowledge of key risk factors and be informed where possible by risk assessment tools such as OASys. As with Sexual Offences Prevention Orders, the police will have to prove to the court in applying for a Violent Offender Order that, taking into account the whole picture, an individual has acted in such a way as to make it necessary for a Violent Offender Order to be to protect the public or any member of the public from serious violent harm from him. Under section 127 of the Magistrates Courts Act 1980, at least part of that behaviour must have taken place in the six months prior to the application being made. The police will not need to call for evidence from any potential victim in doing this, and hearsay evidence will be admissible.

## List of respondents

CPS  
HM Courts Service  
Police Federation of England and Wales  
Avon & Somerset Probation  
Devon & Cornwall Probation  
South Wales Probation  
Surrey Probation  
Lancashire Probation  
Hertfordshire Probation  
Cambridgeshire Probation  
Merseyside Probation  
HMI Probation  
MAPPA Manager, Northamptonshire  
MAPPA Coordinator, Staffordshire  
Thames Valley Probation  
Kent Police  
Derbyshire Constabulary  
ACPO  
Council of District Judges (Magistrates Courts)  
Criminal Sub Committee of the Council of HM Circuit Judges  
Magistrates Association  
The Law Society  
Justices' Clerks' Society  
Criminal Bar Association  
Runnymede Trust  
Liberty  
NACRO  
Youth Justice Board  
NCH, The Children's Charity  
Office of the Children's Commissioner  
NSPCC

ANNEX A

**HOME OFFICE POLICY DOCUMENT ON VIOLENT  
OFFENDER ORDERS**

**APRIL 2007**

# VIOLENT OFFENDER ORDERS

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## **Section 1 – Introduction**

Proposals for Violent Offender Orders were included in the Criminal Justice System Review, published in July 2006. In this document, in the context of focusing increasingly on serious crime and protecting the public from dangerous and violent offenders, a commitment was made to: *'Introduce Violent Offender Orders to provide the courts with tough new powers to manage dangerous violent offenders beyond the period of their sentence with penalties of up to five years for breach of conditions'*. The government intends to legislate to provide for Violent Offender Orders this parliamentary session.

This document sets out the background to the issue and our initial proposals, and outlines the process by which we envisage that the Orders will be obtained and enforced. It also contains some estimated figures relating to the likely numbers of Orders and Orders breached. We would welcome your views on these specific issues, and any further thoughts or ideas which you may have on the policy as a whole. This should help ensure that Violent Offender Orders, when introduced, will be as effective a public protection tool as possible.

### **How to respond**

Responses to the questions in this document and general comments on the policy should be sent to the Home Office by e-mail:

[voiconsultation@homeoffice.gsi.gov.uk](mailto:voiconsultation@homeoffice.gsi.gov.uk)

Alternatively you may respond in writing to:

Violent Offender Order consultation  
Violent Crime Unit  
Home Office  
4<sup>th</sup> Floor Peel Building  
2 Marsham Street  
London  
SW1P 4DF

The closing date is **30 April 2007** and all comments should be received by that date.

## **Section 2 – Why do we need Violent Offender Orders?**

Currently, at the end of a violent offender's sentence, there is no mechanism for continued restriction of that individual's activities. The Multi-Agency Public Protection Arrangements (MAPPA) responsible authorities (the Probation and Prison Services, and the police) can continue to discuss and share information about an offender through MAPPA if they remain concerned about the level of risk posed. However they have no powers of control over the offender's behaviour, and no sanctions are available should that behaviour fall short of criminal offending but still give rise to concern.

A Violent Offender Order will be a preventative measure, to ensure that dangerous individuals are more effectively monitored, with activities that increase risk being restricted. Conditions will be attached to a Violent Offender Order, to manage or reduce the risk which such individuals may pose to the public. Breach of those conditions will be a criminal offence punishable by up to five years' imprisonment. The aim is to ensure that the public are continuously and consistently protected from offenders who pose a high risk of serious harm. Serious harm is defined by the Criminal Justice Act 2003 as death or serious personal injury, whether physical or psychological.

Violent Offender Orders will not exist in isolation, but as part of a complementary framework of mutually reinforcing public protection measures. The Sexual Offences Prevention Order (SOPO) is a broadly comparable civil order which has proved successful in protecting the public from high-risk sex offenders, who would otherwise be at large in the community without any restrictions. 503 SOPOs were granted in 2004/05, the first year in which they were available, quickly rising to 933 in 2005/06 as the Orders bedded in. In 2005/06, 104 Orders were breached (although this figure also includes any breaches of the 40 Notification Orders and Foreign Travel Orders issued in that year – this data is not disaggregated).

The Criminal Justice Act 2003 introduced a clear distinction between dangerous and other offenders. Offenders not convicted of serious sexual or violent offences are currently automatically released halfway through any prison sentence, and those serving 12 months or more are on licence for the remaining half. Those convicted of a specified sexual or violent offence (contained in Schedule 15 of the Act), and who are assessed as dangerous (where the court considers that there is a significant risk to members of the public of serious harm being caused by the commission of further specified offences), must be given one of two new types of public protection sentences: extended or indeterminate.

Those convicted of offences with a maximum penalty of less than ten years must be given an extended sentence, which comprises the appropriate custodial sentence for their offence, and an extension period. They will be eligible to apply to the Parole Board for release at the halfway point of the custodial term and, if refused, released automatically at the end of the custodial period. Once released offenders are subject to licensed supervision (and possible recall to prison should they breach the conditions of their

licence, or should their risk of re-offending increase) for an extended period of up to eight years for sexual offences and five years for violent offences. Those convicted of a serious specified offence (one with a maximum penalty of ten years or more) must be given an indefinite sentence of imprisonment for public protection. They will be given a minimum term, during which they will not be able to apply for release. After that point they will not be released until the Parole Board considers that it is safe to do so - their overriding concern when making the release decision is public protection. Once released they will be on licence for a minimum of ten years. After that point they may apply again to the Parole Board for termination of their licence. This sentence is similar to life imprisonment, although it differs in that the offender will not necessarily be on licence for life, and in that it may be awarded (where the offender is assessed as dangerous) for offences for which life imprisonment is not available.

Violent Offender Orders are intended to fill a gap, providing a tool for the management of risk posed by those violent offenders who have not been awarded a public protection sentence – either because the court did not assess them as sufficiently dangerous at the time of conviction, or because their level of risk has increased during their sentence, or because the offence which they were imprisoned for committing was not a specified offence, or because their offence was committed before the introduction of these new sentences in April 2005 – but who are nonetheless considered to pose a high risk of serious harm at the end of their sentence.

### **Section 3 – What will a Violent Offender Order look like?**

A Violent Offender Order will have similarities to some existing orders, such as the Sexual Offences Prevention Order (SOPO).

The Order will have a minimum length of two years and no statutory maximum length.

The Order will be available to violent offenders who present a high risk of serious harm to the public, and who are not subject to any other measures aimed at managing that risk.

A Violent Offender Order will be a civil rather than criminal order, as is the case with SOPOs and Anti-Social Behaviour Orders. There are a number of advantages to this:

- the procedure for obtaining a civil order is normally simple and quicker than formal criminal proceedings;
- the strict criminal rules on cross-examining witnesses and the use of hearsay evidence do not apply;
- they can prohibit conduct which may not be criminal;
- the prohibitions can go wider than conduct which the defendant is already engaged in; and
- there remains a threat of criminal prosecution and a possibly substantial custodial sentence for breach of the Order.

Breach of the Order would be a criminal offence punishable by a maximum of five years' imprisonment.

## **Section 4 – Who will be eligible for a Violent Offender Order?**

As currently envisaged, individuals eligible for a Violent Offender Order would:

- have been convicted of an offence listed in Schedule 15 of the Criminal Justice Act 2003. This includes all sexual or violent offences with a maximum penalty of 2 years or greater (including life), a wide range from Actual Bodily Harm (ABH) through to manslaughter;
- have been awarded a custodial sentence of at least 12 months (which would mean that part of the sentence would have been served on licence in the community);
- continue to present a high risk of serious harm to the public after their licence has expired; and
- not be subject to any other equivalent measures (e.g. other civil orders or community sentences) aimed at managing that risk.

**Q1. Is this the right eligibility criteria? Should there be any time limits placed on when the qualifying offence was committed?**

**Q2. Are there any other options which should be considered in terms of target group?**

### **Juveniles**

We believe that, in principle, Violent Offender Orders should apply to juvenile offenders who pose a high risk of serious harm to the public but who are not subject to alternative arrangements to manage that risk. However, we accept that particular care would need to be taken over making children subject to Violent Offender Orders.

Our view is that Orders for juveniles should work in such a way as to be particularly flexible in respect of length and content, to reflect the more dynamic and fast-changing nature of risk with young offenders.

**Q3. Should Violent Offender Orders apply to juveniles at all?**

**Q4. How could Violent Offender Orders best be adapted to apply to juveniles?**

- Should Violent Offender Orders be available for all juveniles above the age of criminal responsibility, or limited to, for example, 16 and 17 year olds?
- Should there be a reduced minimum length of the Order for juveniles?
- Should there be a maximum length of the Order for juveniles?
- Should there be statutory reviews of the Order (at which it could be discharged or the conditions varied), every six months, for example, for juveniles?
- Should the Order be available to juveniles who have been awarded a custodial sentence of less than 12 months, or perhaps only to those who have been awarded a longer sentence?
- Should the range of eligible offences be expanded for juveniles beyond Schedule 15, or should it be reduced?

## **Section 5 – How will an individual get a Violent Offender Order?**

Our proposal is that suitability for a Violent Offender Order would, in most cases, initially be considered by the MAPPAs agencies. All offenders serving 12 months or more with a conviction or caution for a specified sexual or violent offence are subject to MAPPAs, a statutory set of arrangements under which the Prison and Probation Services, and the police (the ‘responsible authorities’), and any other agencies with an interest in the case, work in partnership to share information and manage high-risk offenders.

There are three levels of MAPPAs supervision, reflecting the level of risk and the complexity of the risk management required in each case. The MAPPAs agencies will consider the overall risk of the individual, and identify any actions which may be necessary to manage that risk. Our proposal is that the MAPPAs agencies will consider whether an individual’s level of risk at the end of their licence seems to be so high as to warrant continuing restrictions, by means of a Violent Offender Order.

The police will then take a decision on whether to apply to the Magistrate’s Court for an Order. This will be an operational decision for them, based on the circumstances of the particular case and an assessment of whether a Violent Offender Order is the most effective way of managing this individual’s risk. The police will also be able to apply for an Order in respect of an offender who is known to them, and who meets the eligibility criteria, and who poses a high risk of serious harm, but who is not currently on licence or serving a prison sentence.

We propose that this consideration should not take place at the time of conviction or sentence, and that the police should only be able to apply for an Order separately. In most cases the application will be made near the end of the licence period, so that it is based on the most up to date assessment of risk at the point at which the Order would bite. We accept that it may be less resource-intensive for the police to apply for an Order at the time of conviction than to make a separate application later. However, a Violent Offender Order is a preventative civil order, not a criminal sentence, and we would not wish to encourage it to be used or perceived as one.

Furthermore, risk is dynamic and subject to change in either direction with the passage of time – particularly in the case of an offender who has been imprisoned and then subject to a period of licensed supervision. This may have a rehabilitative effect and may reduce risk, or in some cases risk may increase.

If a Violent Offender Order is imposed at the time of conviction, the grounds on which it was made may no longer exist at the time when the offender finishes their sentence. Conversely, there may be new circumstances which increase risk and warrant a Violent Offender Order. Or it may be necessary to return to court to vary the conditions of the Order. For these reasons we propose that courts should not be able to impose a Violent Offender Order when sentencing.

## **Courts will grant a VOO where:**

- the subject meets the eligibility criteria; and
- the court is satisfied that it is necessary to make an Order for the purposes of protecting the public or any particular members of the public from serious harm from the defendant.
- In specifying the conditions of the Order, the court must be satisfied that there is a direct link between the specific conditions and the risk factors which exist in each case.

## **How is risk assessed?**

Probation officers, and other practitioners who make risk assessments, have at their disposal a range of statistical risk-prediction tools. The most widely used is OASys (Offender Assessment System), which was jointly developed by the Prison and Probation Services, and is used to assess the risk of re-offending and of harm, as well as to indicate specific risk factors and areas of attention for risk management.

Risk assessment is not an exact science, however, and statistical tools such as OASys do not replace an assessor's judgement. Instead, they help to ensure that risk assessment is comprehensive and evidence-based. In assessing risk, practitioners must take into account a wide range of risk factors. These include historical or static factors such as the offender's formative years and upbringing, previous offending, any cognitive deficiencies, entrenched pro-criminal or anti-social attitudes, and history of substance abuse or mental health issues. They also include factors which affect risk dynamically, such as the offender's present domestic situation and relationship with their family or partner, their associates and lifestyle, accommodation issues, current substance or alcohol misuse, and their employment status or their financial situation.

Through consideration of these factors, and assisted by tools such as OASys, a judgement will be made about: the behaviour or possible behaviour of concern; any other circumstances which may give rise to concern; the nature and extent of the harm which may arise and in what circumstances; and the probability of that happening. In the case of an offender on licence, this risk assessment will then be used to formulate a risk management plan, by which the risk factors identified may be managed and reduced. In practical terms, this may, for example, involve: assistance or advice with finding employment and managing personal finances; treatment for addiction; psychology courses to address offending behaviour; licence conditions prohibiting contact with criminal associates or victims; and restrictions on where the offender may live – such as a curfew, or a requirement to live at an approved hostel. While there are at present no statutory powers for practitioners to manage an offender's risk once their sentence has expired, beyond the general duty of the police to protect the public, Violent Offender Orders will be a useful tool which will allow risk to be managed over the longer term in cases where this is appropriate.

## **Can an individual appeal against a Violent Offender Order?**

The recipient of a Violent Offender Order will be able to appeal to the Crown Court against the making of the Order. There will also (in line with comparable civil orders) be powers for both the police and the subject to apply to the court during the course of the order to:

- vary the conditions of the Order;
- discharge the Order; or
- renew the Order for a further period (where a maximum length has been set by the court).

**Q5. Are there any potential problems associated with this process?**

**Q6. Should the police be able to apply for a Violent Offender Order at the point of conviction? What would the potential implications of this be, and for whom?**

## **Section 6 – How will a Violent Offender Order work?**

A Violent Offender Order will contain both prohibitions and certain administrative and other requirements. The latter may, for example, include a requirement that the subject be required to notify the police of their address, or of details of any vehicle which they own or use. The former may prohibit residence at a particular address – for example, where a victim or known criminal associates live; or contact with particular individuals; or entry to a specific location. The court will only impose conditions where they can be shown to be necessary to manage the risk. Guidance will clarify the sorts of conditions appropriate in various circumstances.

We propose that the court should not be restricted from including positive requirements as part of a Violent Offender Order, where these are necessary to manage risk. This may, for example, include a requirement to receive mental health treatment, to address substance abuse issues, or to address cognitive deficits (offending behaviour, anger management issues, etc.) through attendance on an accredited course. Such conditions may also include notification requirements such as informing the police of any change of address, of the registration and details of any vehicle owned or driven, or of details of any developing personal relationships.

There will be some restrictions on the scope for including positive requirements in a Violent Offender Order. As the Order will be a preventative, civil measure, the purpose of any requirement must be prevention, not punishment, so all conditions must be directly linked to risk. It would not be lawful to impose a punitive as opposed to a preventative requirement. This distinction (and any decision about the conditions to be imposed in any particular case) will, of course, be a matter for the courts.

Any requirement to receive treatment or attend a course will, of course, be dependent on the availability of resources. At present, there are a range of programmes and courses provided by the Probation Service for offenders on licence; but there is pressure on these resources, and they could not automatically be made available to subjects of Violent Offender Orders, so it could be necessary for local agencies to provide additional resources. Administrative and notification requirements will obviously not have similar resource implications.

**Q7. Should the courts be able to impose positive requirements on the subject of a Violent Offender Order? What would be the potential implications, and for whom?**

### **Storing information**

Information on those subject to a Violent Offender Order will be held on ViSOR (the Violent and Sex Offender Register). This is a computer database used to store and share information and intelligence on individuals identified

as posing a risk of serious harm to the public. It is currently used by the police, and is also being rolled out to the Prison and Probation services. There is already a commitment to place anyone who is in the MAPPA system on ViSOR. We propose that, as well as the primary information being held on ViSOR, there should be additional information on subjects of Violent Offender Orders, including details of the conditions of their Order.

**Q8. Are there any potential issues or problems with storing information on those subject to Violent Offender Orders on ViSOR?**

### **Monitoring and Enforcement**

Violent Offender Orders will be monitored and enforced by the police. The Order will not create a new duty for the police, but will instead provide a new tool to be used in protecting the public from dangerous individuals in the community. Subjects of the Orders may also be discussed at MAPPA or other multi-agency meetings to ensure that, where appropriate, there is multi-agency support.

### **Breach of a Violent Offender Order**

Breach of a Violent Offender Order will be a criminal offence punishable by up to five years' imprisonment. Where an individual has breached an Order, the police will be responsible for returning the case to court for breach proceedings.

**Q9. Are there any potential issues or problems with the proposed system for monitoring and enforcing Violent Offender Orders?**

## **Section 7 - Estimated numbers**

We estimate that the police are likely to apply for between 300 and 450 Violent Offender Orders annually. This estimate is based on numbers of high-risk violent offenders currently within the MAPPA system, and is made with the caveat that the decision to apply for an Order in any particular case will be an operational matter for the police, based on the circumstances of the case and an assessment of whether a Violent Offender Order is the most effective way of managing this individual's risk. As such, it is not possible to predict numbers with complete accuracy.

It is expected that the Criminal Justice Bill, the legislative vehicle through which Violent Offender Orders are likely to be introduced, will contain a number of measures which will generate both costs and savings for police authorities. While final decisions on the measures to be included in the Bill will be taken in the light of this and other consultations; it is anticipated that, taken together, there will be an overall net saving for police authorities - and as such there will be no need for Government to provide additional funding to police authorities to meet the costs arising from violent offender orders. The Home Office will cover costs incurred elsewhere in the Criminal Justice System for Violent Offender Orders.

We estimate that between 45 and 70 orders will be breached each year, and that approximately that number of prison places could be required. This figure is arrived at by extrapolating breach rates of supervision licences and SOPOs.

**Q10. Do you have any comments on our estimated numbers?**

**Q11. Do you have any additional comments on any other aspects of this policy?**

## **Section 8 – Case Study**

Mr A is a 31-year-old man. He has a considerable number of previous convictions, mostly for acquisitive offending, but some for (primarily minor) violent offences, mostly relating to drunken arguments or fights, including one conviction for ABH relating to an assault in which a man was quite seriously injured. He has received a number of short prison sentences, some suspended, as well as fines and community sentences. Prior to the current index offence, he had not been convicted of any offence for eight years.

He is currently nearing the end of an 18-month sentence for ABH, following an assault on his wife. At the trial, a picture emerged of an abusive relationship, and an entrenched pattern of behaviour in which the defendant would regularly get drunk and physically intimidate or assault his wife (although she had not previously complained to the police). Although the offender had committed a 'specified offence' (one listed in Schedule 15 of the Criminal Justice Act 2003), the court did not assess him as 'dangerous' (and therefore warranting a public protection sentence). He expressed remorse for his actions at his trial, and did not have a recent history of convictions for violence.

Mr A was released on licence after nine months, with conditions that he must not reside at or enter the family home, must not approach or contact his wife and, must address his alcohol misuse and anger management issues through attendance on an appropriate course. He continued to express remorse; his behaviour was good; he did not abuse alcohol while in prison; and he stated that he intended to comply with the conditions of his licence, and not to re-offend. He was assessed as presenting a medium risk of re-offending with a high degree of potential harm, and was managed at MAPPA Level 2.

Although Mr A initially seemed to be complying with his licence, it came to the attention of his probation officer that he had been secretly meeting his wife, who had chosen to resume the relationship. The police were called to a disturbance at the family home by neighbours, where they found the offender drunk and extremely angry. Although he had not assaulted his wife, he made a number of threats against her in front of police officers, who believed that he would have assaulted her had they not arrived. He was arrested and returned to prison for breaching his licence, and on reviewing his case, the Parole Board considered him too high a risk to be released again before the end of his sentence. He is now due to be released at that point, and will not be subject to any form of ongoing supervision or control.

While in prison following his recall, Mr A blamed his wife for his incarceration, and stated to prison and probation staff that he intends to 'have it out with her' when he is released. He has bragged that, as he will have served his time, there is nothing which the authorities can do to stop him returning to the family home or contacting his wife. He has also been involved in a number of fights with other prisoners, has been found in possession of hooch (illicitly brewed alcohol), and has been a generally unco-operative inmate.

The police, probation and prison services are highly concerned about the risk posed by Mr A, which they believe to have increased considerably as a result of his return to prison and the circumstances surrounding that. They believe that he is likely to confront his wife, and that she is at risk of serious harm from him, both immediately on his release from prison and in the long-term if the relationship continues. They also believe that, as he has lost his accommodation and his job due to this prison sentence, is resorting to alcohol to deal with a stressful situation, is exhibiting impulsive and reckless behaviour, and is presenting strong anti-authority views, there is a risk of him returning to the violent and acquisitive offending of his youth. These factors have all been identified as causal in his earlier offending.

Under the present arrangements there would be no means by which Mr A's behaviour could be controlled, and the police would be powerless to act until he had committed a potentially very serious offence. A Violent Offender Order in this case would offer an effective degree of control, and in conjunction with close monitoring by the police, could ensure that the risk of harm to the offender's wife, and to the public more generally, is minimised. An Order could include conditions that the offender not contact his wife, not enter the family home or surrounding area, notify the police of any new relationships (so as to protect any new partner), and possibly (resources permitting) that he address his violent offending and alcohol misuse by attendance on appropriate courses. Compliance with these conditions would be broadly indicative of a general willingness to lead a law-abiding life and to resettle successfully into the community, and would serve to reduce the risk of a further violent offence being committed. Breach of the conditions would indicate behaviour likely to elevate risk, and would allow the offender to be arrested and, if necessary, removed from the community at an early stage, hopefully before he has had the opportunity to do harm.

## **Section 9 – Example Conditions**

This table identifies potential risk factors, and the sorts of conditions which may be imposed as part of a Violent Offender Order to manage them, as well as some of the limitations of the Orders in terms of their conditions.

<b>Risk Factors</b>	<b>Possible Requirements/Prohibitions</b>
Chaotic lifestyle (instabilities relating to employment, accommodation, health, finances, etc.)	<p>Positive requirements, e.g. receiving medical or mental health treatment, residing at a specified address, etc.</p> <p>In terms of accommodation, could prohibit residence at specified addresses, e.g. living with partner who had been victim of DV, with associates with whom subject has committed offences or abused drugs/ alcohol.</p>
Drug/ alcohol use.	<p>Positive requirement to address addiction/ abuse.</p> <p>Drugs are already illegal. Little/ no scope for prohibition of drinking alcohol – difficult to enforce, e.g. Drinking Banning Orders only prohibit drinking in public or licensed premises, and could not reasonably ban from drinking at home.</p>
Unstable/ destructive relationships.	Prohibit contact with partner who is domestic violence victim, or with whom unstable relationship increases risk of offending.
Criminal/ violent associates, membership of extremist organisations.	<p>Prohibit contact with criminal associates/ previous accomplices.</p> <p>Prohibit membership of specified groups/ organisations.</p>
Owns or has access to a weapon.	Difficult - firearms and most other actual weapons are illegal, as is carrying item such as kitchen knife - which is not illegal in itself - in the context of it being used as offensive weapon.
Has possession of paraphernalia related to violent offending (e.g. balaclava, baseball bat) or extremist	Where otherwise innocuous item has previously formed part of modus operandi, could prohibit possession of

material.	such item.  Prohibit possession of leaflets/ DVDs/ other material promoting extremist viewpoint where that viewpoint has driven previous offending.
Mental illness/ personality disorder	Compliance with treatment.
Contact with previous victims/ other persons at risk.	Prohibit contact.
Areas/ locations/ situations where offending is more likely to take place.	Prohibit entry to specified address/ road/ area, e.g. town centre where drunken disorder is problem, address/ area where victim of domestic violence lives.
Lack of contact/ monitoring/ supervision.	Positive requirement for notification of e.g. address (as with sex offenders register), details of employment, vehicle registration, etc.

## **ANNEX A – PARTIAL EQUALITY IMPACT ASSESSMENT**

### **VIOLENT OFFENDER ORDERS**

#### **EQUALITY IMPACT ASSESSMENT**

The Home Office is required to carry out an Equality Impact Assessment (EIA) on all new policies to support the delivery of the Home Office aims and values. EIA is a systematic and evidence based consideration of how a policy will impact upon different communities.

There is a legal obligation to equality assess for race, disability and gender impact. However, the Home Office has adopted a best practice approach to policy making by ensuring colleagues consider the impact of policies on all equality strands e.g. gender identity; religion, belief and non belief; sexual orientation; and age.

In this context we would welcome your views on the potential impact, both positive and negative, of Violent Offender Orders on these equality strands.

We know from research that violence affects certain sectors of society more than others, both in terms of those who commit crimes of violence and those who are victims. For example, white males between the ages of 10-25 are most likely to commit offences of violence, followed by black males within the same age group. Males of mixed ethnicity between the ages of 26-65 are most likely to commit serious offences (this does not necessarily include only violent offences) followed by white males between the ages of 10-25. Women are less likely to commit violent or serious offences, but among the female population women of mixed ethnicity between the ages of 10-25 are most likely to commit both.<sup>1</sup>

Young men between the ages of 16-24 are most at risk of being a victim of violent crime, as are the unemployed and people living in deprived areas. Non-whites are marginally more likely to be victims of violent crime than white people<sup>2</sup>. We do not, however, currently have similar data on the impact of violence among religious groups, or with respect to disability, gender identity or sexual orientation.

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<sup>1</sup> Minority Ethnic Groups and Crime: findings from the Offending, Crime and Justice Survey 2003 - Clare Sharp and Tracey Budd

<sup>2</sup> Violent Crime Overview, Homicide and Gun Crime 2004/5 - Kathryn Coleman, Celia Hird and David Povey; Crime in England and Wales 2005/6 - Alison Walker, Chris Kershaw and Sian Nicholas

**Q12. What is the potential impact, both positive and negative, of Violent Offender Orders in terms of:**

- **race;**
- **disability;**
- **gender;**
- **gender identity;**
- **religion, belief and non-belief;**
- **sexual orientation; and**
- **age?**

