

## **Q+A - Public Safety (Public Protection Orders) Bill**

### **What are public protection orders (PPO)?**

A public protection order is a court order that will allow the detention of very high risk individuals at a secure facility within prison precincts.

PPOs are civil detention orders for individuals who have served a prison sentence, but still pose a very high risk of imminent and serious sexual or violent offending.

The introduction of PPOs follows the Government's commitment at the last election to introduce civil detention orders for the most high-risk offenders.

### **Why are PPOs necessary?**

Despite serving prison terms, a few dangerous offenders are highly likely to reoffend once they have been released.

Existing mechanisms, such as preventive detention and extended supervision orders, allow authorities to monitor, manage and/or recall offenders to prison.

However, sometimes these tools are not adequate to protect the public and/or can only remain in place for a limited time. PPOs will protect the public and ensure individuals subject to them have many of the same civil rights as ordinary citizens.

### **Who would receive PPOs?**

Only a very small number of people are likely to be subject to PPOs: individuals who have served a prison sentence for a serious sexual or violent offence AND who still have a very high risk of imminent and serious sexual or violent offending.

An order could be applied for such offenders when they are:

- within 6 months of being released at the end of their sentence, or
- subject to the most intensive form of extended supervision order.

The following definitions apply:

- *very high risk* means that offending is considered extremely likely
- *serious* means that the predicted offending would cause serious physical or psychological harm to one or more other persons, and
- *imminent* means that the offending is expected to occur when, provided with a suitable opportunity, the offender would immediately inflict serious physical or psychological harm to one or more other persons.

### **What criteria will be used to determine if an individual should be subject to a PPO?**

The legal test for an order will be high, requiring that a person must pose a very high risk of imminent and serious sexual or violent offending.

Offenders will undergo a comprehensive risk assessment.

The Bill provides that a person must have all of the following four characteristics to a high level:

- an intense drive or urge to enact the particular form of offending
- very poor self-regulatory capacity, evidenced by general impulsiveness, high emotional reactivity, and inability to cope with or manage stress and difficulties
- absence of understanding and concern for the impacts of their offending on actual or potential victims
- poor interpersonal relationships and/or social isolation.

### **How many people would be subject to PPOs?**

Officials estimate that about five to 12 offenders would meet the criteria of public protection orders over the next decade.

All offenders will have either had or been offered comprehensive treatment during their time in prison. Many will be child sex offenders. Adult sex offenders and a very small number of other violent offenders may also meet the criteria.

### **Who will decide who is detained?**

The High Court will decide whether an individual will be subject to a PPO.

The Chief Executive of Corrections will apply to the Court for a PPO. The Court will then decide, on the balance of probabilities, if the individual meets the criteria.

### **Can individuals oppose the imposition of a PPO?**

At the time the Crown applies to the High Court for an order, individuals will have the opportunity to show that the Crown has not established that they meet the risk criteria.

### **Can a public protection order be cancelled?**

Detainees who are subject to an order can also ask the Court to review their detention at any time. If they no longer meet the test, they will be released and placed on a protective supervision order, which is similar to an extended supervision order.

### **What restrictions would PPOs place on individuals?**

Individuals subject to a PPO will be housed in a residence located within the secure perimeter of a prison and monitored by staff. Conditions within the residence will be monitored by independent inspectors and the Ombudsman.

Each resident will have a management plan that will set out any restrictions they are subject to, as well as any identified needs.

Detention would be protective rather than punitive. Residents would have as many of the civil rights of ordinary citizens as possible without endangering the community,

themselves, other detainees, staff in the facility or the orderly functioning of the facility.

### **How long could someone be subject to a PPO?**

A PPO can be indefinite. If a person continues to pose a very high risk of imminent and serious sexual or violent offending, they will continue to be detained, possibly for the rest of their life.

However, detainees will also have pathways to release. Each individual will have a management plan that identifies goals that could contribute to their eventual release.

Also, each PPO will be annually reviewed by a review panel and by the High Court at least every five years. If a detainee no longer meets the imminence test, they will be released, and placed under a protective supervision order. Protective supervision orders would also be reviewed regularly or on application to the High Court.

### **Who will sit on the Review Panel?**

The panel will be appointed by the Minister of Justice. There will be six members – two will be judges or former judges, two will be Parole Board members and two will be registered psychologists and/or psychiatrists. The Minister of Justice must be satisfied that a person appointed has experience and expertise in assessing the potential of individuals to pose a high risk to public safety.

### **What are the differences between PPOs and other measures, such as extended supervision orders and preventive detention?**

PPOs will complement extended supervision orders and preventive detention.

- Extended supervision orders (which are set when an offender is released) can be made for up to 10 years for child sex offenders. The conditions imposed can range from parole-style supervision through to very intensive extended supervision, in which an individual is monitored and/or accompanied at all times.

Extended supervision orders do not necessarily keep the public safe from future offending by very high risk individuals, because their conditions must eventually be removed.

PPOs could be made for offenders who are already subject to the most intensive form of extended supervision orders, and could last indefinitely.

- Preventive detention (which is imposed when an offender is sentenced) is an indefinite sentence and provides a level of protection similar to a public protection order. However, preventive detention sentences may not have been imposed on some individuals who, at the end of their imprisonment, turn out to still pose a very high risk.

PPOs would not replace preventive detention sentences.

**Are there any precedents for this type of detention order?**

Civil detention orders are already used as part of other regimes that protect the community from harm. These include detaining people with a highly contagious disease, or individuals who have mental health or intellectual disability issues that make them a danger to others or themselves.

The Bill does not affect the functioning of other civil detention regimes.

**Does the Bill override offenders' rights?**

The Bill appropriately balances the right of New Zealanders to be free from almost certain serious harm versus the liberty rights of offenders who have served their sentence.

By holding individuals in a civil detention facility and allowing them a high degree of autonomy where possible, the system responds proportionately to the legitimate objective of protecting citizens from almost certain harm.

**Will individuals who offend overseas be subject to PPOs?**

The Bill allows an application to be made in respect of someone who recently returned to New Zealand and had been convicted of the overseas equivalent of a New Zealand serious sexual or violent offence.

**Is the legislation consistent with human rights legislation and international obligations?**

PPOs are civil orders, not criminal punishments, and their sole purpose is to protect the community from near certain future harm. We do not believe the orders are a form of "double jeopardy."

Furthermore, the test for handing down an order will have a very high bar; the system will have strong checks and balances to ensure orders are applied appropriately and reviewed regularly; and offenders will have as many civil rights as practicable.

**Is it possible someone will be given a PPO who shouldn't be?**

That is very unlikely, given the high bar and the range of evidence the High Court will require before imposing a PPO.

A PPO is not a one-off prediction that someone will reoffend. Instead, there will be an ongoing re-evaluation of the justification for their detention.

Persons subject to a PPO will have their detention regularly reviewed, their management plans will consider their eventual release and they will be able to seek Court reconsideration of their detention at any time.

**Is it possible someone who should be given a PPO won't be, and will seriously reoffend?**

The Government believes detaining someone past their sentence will only be justified where there is a very high risk of imminent and serious sexual or violent offending.

Without this threshold, continuing to detain someone would amount to arbitrary detention, which would be illegal.

**What will the Government do if a court refuses to apply a PPO to an offender, because the court believes the order is inconsistent with the Bill of Rights?**

The Government is confident that a person who is at very high risk of imminent and serious sexual or violent offending will have a PPO made against them.

The PPO legislation has been designed to be as consistent as possible with the Bill of Rights.

Any limit to the individual's rights will be justified by the danger the public faces if that person is not securely managed.

**When will the PPO law come into effect?**

The Public Safety (Public Protection Orders) Bill has been introduced to the House. Members of the public will have an opportunity to have their say on the legislation when it is referred to select committee.

The law is likely to come into effect sometime in 2013.