

POLICY NOTE

THE SEXUAL OFFENCES ACT 2003 (NOTIFICATION REQUIREMENTS) (SCOTLAND) REGULATIONS 2013

SSI 2013/216

1. The above instrument was made in exercise of the powers conferred by sections 85(5)(a), 86 and 138(4) of the Sexual Offences Act 2003 (“the 2003 Act”), as amended. Section 86 of the 2003 Act was amended by section 102(3) of the Criminal Justice and Licensing (Scotland) Act 2010 (“the 2010 Act”).

2. These Regulations represent the first use of the powers in section 86 of the 2003 Act.

Introduction

3. These Regulations amend the requirements as to the information which offenders, who are subject to the notification requirements of Part 2 of the 2003 Act, must notify to the police.

4. These Regulations amend the notification requirements in two ways. First, they require offenders to notify additional information when they intend to travel outside the United Kingdom (including replacing the existing requirement to notify foreign travel of three or more days with a requirement to notify all foreign travel). Secondly, they introduce a new requirement that offenders notify information to the police on a weekly basis where the offender does not have a sole or main residence in the UK.

Legislative context

5. An offender convicted of an offence which is listed in Schedule 3 to the 2003 Act (“a relevant offender”) becomes subject to the notification requirements set out in sections 83 to 86 of the 2003 Act. A person must also comply with the notification requirements if they become subject to one of the civil preventative orders under the 2003 Act (a sexual offences prevention order, or notification order). In accordance with these requirements, relevant offenders must initially notify to the police certain personal information including (but not limited to) their name, address, date of birth, bank account, credit and debit card details, and national insurance number. Following this initial notification, relevant offenders must notify this information annually, and whenever there are any changes to it. These requirements are set out in sections 83 to 85 of the 2003 Act.

6. Moreover, there is a requirement under section 86 of the 2003 Act to notify intended travel outside the United Kingdom for three or more days; the information includes the intended departure and return dates, foreign destination(s) and carriers.

7. These Regulations will introduce a new requirement to notify weekly if the relevant offender does not have a sole or main residence in the UK. These Regulations will also amend the existing requirements to notify foreign travel whereby:

- all foreign travel must be notified;
- notification may be given 12 hours before intended departure (in place of the existing minimum period of 24 hours); and
- information must also be notified about the dates on which they plan to be in intended additional destination countries and accommodation in these countries (currently they must only provide details of their first night's accommodation outside the UK).

Territorial Extent and Application

8. These Regulations apply to Scotland only. The Criminal law (including the law governing aspects of the notification regime to which relevant offenders are subject) is a devolved matter. The Scottish Government continues to work closely with its counterparts in the rest of the UK to ensure that there is alignment in the systems, where possible, and believes that the need to maximise public protection requires that sex offender notification be considered in the context of the UK as a whole. Accordingly these Regulations replicate provisions introduced by the Home Office in July 2012, namely the Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012 (SI 2012 No. 1876).

Policy Objectives

9. The 2003 Act was substantially brought into force in May 2004 and provides a comprehensive regime for the management of registered sex offenders. It amended the law, originally introduced in the Sex Offenders Act 1997, governing the notification requirements (commonly referred to as the 'sex offenders' register') and modified the civil preventative orders which are available for the purposes of managing individuals in the community who are considered to pose a risk of sexual harm.

10. The circumstances in which a person becomes subject to notification requirements are summarised in paragraph 5 above.

11. The notification requirements contained in the 2003 Act form an invaluable tool to the Police Service of Scotland and provide a robust framework for managing relevant offenders in the community. Public protection is a priority for the Scottish Government and it works closely with the police and other law enforcement agencies to ensure that the right tools and powers are available for the authorities to tackle serious sexual crimes and to bring perpetrators to justice. Each of the additional requirements introduced by these Regulations was identified by practitioners and experts as a priority area where action is required to prevent relevant offenders from seeking to exploit gaps in the system. The following paragraphs provide further information on the evidence informing this policy.

Foreign Travel

12. The police, along with a number of other public protection agencies and organisations, including CEOP (the Child Exploitation and Online Protection Agency) and ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes), have strongly lobbied for the "three-day loophole" to be closed to require notification of all foreign travel.

13. Indeed ECPAT UK published a report 'Off the Radar Protecting Children from British Sex Offenders who Travel' (February 2011) which highlights the problem of travelling sex offenders. It states that given how quick and easy it is to travel nowadays, '*British sex offenders can easily travel abroad (to European countries and beyond), commit child sex abuse offences and return home within this 3-day period.*' This puts children at risk in countries such as Albania, and Romania, both of which are mentioned in this report and can be easily visited from the UK in under three days¹.

14. Evidence from the ECPAT UK report also suggests that there may be displacement of sex offender activity from other travelling sex offender hot spots, such as South East Asia, due to proactive measures taken by countries to combat the crimes of travelling sex offenders suggesting that travelling sex offending in Europe may increase.

15. For its part CEOP records 20 per cent of activity by travelling sex offenders as having taken place in European countries in 2008/09, which, given their proximity to the UK, suggests that activity could have taken place within 3 days and so would not currently require notifying the police².

16. CEOP also notes that over the last 20 years the number of visits abroad by UK residents has more than doubled. Low-cost travel also creates opportunities for those who travel abroad to offend³.

17. Figures on foreign travel produced in March 2013 by The Office for National Statistics show that the vast majority of foreign travel from the UK is to the European mainland. Indeed there is a continuing trend towards shorter haul trips abroad. Visits to European destinations from the UK have grown by 1% in the past 12 months while those to North America and Other Countries have fallen by 5% and 4% respectively⁴. Most European destinations can be reached within a few hours.

18. The current requirement to notify the police only of travel of three days or more has created a position where registered sex offenders can travel and, cumulatively, spend a significant period of time abroad out with the knowledge of the police.

19. The new requirement to notify all foreign travel will enable the police to engage more pro-actively with international enforcement agencies and, where appropriate, utilise existing tools such as foreign travel orders to manage any risk identified from the additional information notified.

1

http://www.ecpat.org.uk/sites/default/files/off_the_radar_-_protecting_children_from_british_sex_offenders_who_travel.pdf

² http://ceop.police.uk/Documents/strategic_overview_2008-09.pdf

³ [http://ceop.police.uk/Documents/Strategic_Overview_2009-10_\(Unclassified\).pdf](http://ceop.police.uk/Documents/Strategic_Overview_2009-10_(Unclassified).pdf)

⁴ <http://www.ons.gov.uk/ons/rel/ott/overseas-travel-and-tourism---monthly-release/february-2013/stb-monthly-overseas-travel-and-tourism--february-2013.html#tab-Trends-in-visits-abroad-by-UK-Residents--Reference-tables-3-4-5->

Homeless Sex Offenders

20. The definition of “home address” in the 2003 Act includes a location at which the offender can be regularly found.

“(a) the address of his sole or main residence in the UK, or

(b) where he has no such residence, the address or location of a place in the UK where he can be regularly be found and, if there is more than one such place, such one of those places as the person may select”

21. This means that where an offender is homeless or has no fixed abode his “home address” is defined as an address or location where he can be regularly found. This might, for example, be a shelter, a friend’s house, a caravan or a park bench.

22. While it is the case that some offenders are genuinely homeless and, therefore, not able to notify a sole or main residence, there is some concern that the provisions as currently apply in Scotland could allow these offenders to abscond more easily and could be exploited by offenders who have a bona fide address but wish to evade the attention of the police.

23. Legislative changes were introduced in section 102 of the Criminal Justice and Licensing (Scotland) Act 2010 giving the Scottish Ministers the power to bring forward Regulations under the 2003 Act, which set out how frequently RSOs who do not have a sole or main residence in the UK, must verify their personal details to the police.

- Offender Management

24. One of the key purposes of the notification requirements is to allow for effective monitoring of registered sex offenders. It is arguable that homeless offenders typically lead more transient lifestyles and that more regular notification will help to make the monitoring process as effective as possible.²⁵ Assessing the suitability of the offender’s accommodation (as well as knowing their location) is a core part of offender management. Where the offender does not have a permanent residence, there appears to be a basis for suggesting that the environmental risk assessment is likely to be more difficult, due to the less stable situation. For example, the likely turn-over of residents in a hostel setting will inevitably impact on the process. Where, for example, an offender is sleeping rough or is a traveller, the challenges will most probably be exacerbated.

26. The National Accommodation Strategy for Sex Offenders in Scotland⁵ (NASSO) states that one of the key responsibilities of the Sex Offender Liaison Officer (SOLO) is to ‘*monitor, with the Responsible Authorities, where sex offenders under MAPPA are housed and identify any issues about the over-concentration of such offenders in particular areas*’. It may be more difficult to ascertain the position in relation to homeless offenders, and the input that would have been available if allocating housing will not be present.

27. In April 2005 the Social Work Inspection Agency report published a report into the management of a registered sex offender living in a homeless persons’ unit who abducted a

⁵ <http://www.scotland.gov.uk/Publications/2012/02/7066/0>

two-year-old child from her home and sexually assaulted her with intent to rape. Among other things the report notes that *‘Finding the right accommodation for sex offenders is a vital component of effective risk management. It contributes both to the effective protection of the public and to the personal safety of the offender. It is important to recognise that, for the most part, knowing where a sex offender is and being able to monitor and manage them effectively is one of the strongest safeguards for the public.’*⁶

28. The police recognise the benefits of weekly notification for those sex offenders who have abused their no fixed abode status as a way of evading notification and frustrating the police in their attempts to manage them. Among other things, it should reduce police time spent in ascertaining the whereabouts of relevant offenders between their annual notifications and monitoring them throughout the year, allowing police greater contact with such offenders so that they are better placed to assess risk. As outlined below, those offenders who are notifying as having no fixed abode are also considered to pose a greater risk and therefore would require closer management by police, which weekly notification should provide.

- Homelessness and Offending

29. The link between homelessness and offending is well-established. The Criminal Justice Social Work Development Centre for Scotland published a briefing paper in April 2008 which examined the links between homelessness and offending, which, among other things found that the relationship between homelessness, offending and imprisonment was complex, with homelessness potentially increasing the chances of offending and/or being imprisoned, and imprisonment increasing the likelihood of becoming homeless⁷.

30. The 2008 briefing note also noted the following:

‘McIvor and Taylor (2000) found evidence that offending is disproportionately high among those who are homeless. Research in England and Wales also found that a third of prisoners were not in stable accommodation before imprisonment and one in twenty were sleeping rough (Social Exclusion Unit, 2002). In Scotland, approximately 3,000 ex-prisoners submit homelessness applications each year (Pawson, Davidson & Netto, 2007). There is, therefore, a clear relationship between homelessness and offending. The causal relationships, if any, are, however, complex (Adamczuk, 2007; Hickey, 2002; Shelter Cymru, 2004).’

31. In taking these measures forward the following research endeavour and policy reviews were also noted.

32. The Scottish Office Social Work Services Inspectorate publication ‘A Commitment to Protect: Supervising Sex Offenders: Proposals for More Effective Practice’ (1997) stated that *‘Homeless and highly mobile offenders are very hard to monitor and supervise effectively’*.

33. A review in 2000, (Barkley and Collet) concluded that support, coupled with stable accommodation, directly addresses the dynamic risk factors associated with further

⁶ http://www.scswis.com/index2.php?option=com_docman&task=doc_view&gid=196&Itemid=7

⁷ <http://www.cjsw.ac.uk/sites/default/files/Briefing%20Paper%2011.pdf>

offending, and enables individuals to benefit from supervision and other forms of treatment. The authors also cited (Roberts, 2000), which research, concluded that offenders whose main problem was housing or accommodation were significantly less likely to complete behaviour modification programmes than offenders who did not have the same problem.

34. The Report of the Expert Panel on Sex Offending (2001) made the following comments *'those subject to the notification requirements who do not have permanent accommodation and are of no fixed abode often present an increased risk of re-offending linked to a lack of the stability that might otherwise be provided by suitable permanent accommodation'*.

35. The Panel went on to comment that *'...such individuals and the transient nature of their lifestyle can cause difficulties for the police in keeping track of their movements'*.

36. Recommendation 2 of Professor George Irving's report, "Registering the Risk: Review of Notification Requirements, Risk Assessment and Risk Management of Sex Offenders" (July 2005) provided that *'Notifiable sex offenders of no fixed abode should be required to report daily or on a frequency set by the police to the office holding the register. It has been found from practice that many sex offenders initially claim to be homeless but that a requirement to report frequently often results in rapid disclosure of an address. Few have been found to be genuinely homeless'*.

37. In December 2008 the California Sex Offender Management Board published a report 'Homelessness Among Registered Sex Offenders in California: The Numbers, the Risks and the Response'⁸. One conclusion reached was that *'The evidence shows that homelessness increases the risk that a sex offender may re-offend'*. This is supplemented by additional explanatory text.

38. Progressive homelessness legislation and policy means that, increasingly, a person should only find themselves with 'no fixed abode' in rare circumstances – raising the concern that those in such circumstances may have manufactured the situation in order to avoid monitoring and supervision.

39. This convincing body of evidence and opinion demonstrates a widespread shared belief among academics and practitioners that those of no fixed abode pose a greater risk of re-offending and that the further tightening of notification periods would reduce that risk. Moreover there is a general consensus that the theoretical risk is sufficient to justify introducing such a measure, the general view being that the numbers would be small and that, accordingly, resource implications, sanctions and other practicalities of implementing such further restriction would be minimal.

ECHR

40. The ECHR issues which arise in respect of these Regulations have been considered. The key issues are whether imposing additional requirements on relevant offenders could be seen to be sufficiently burdensome to amount to a penalty in terms of Article 7 of the ECHR

⁸ http://www.cdcr.ca.gov/Parole/Sex_Offender_Facts/docs_SOMB/Housing_2008_Rev.pdf

and whether they would interfere with a right to private life in a way that could not be justified (Article 8 of the ECHR). It is considered that the Regulations are compatible in this respect.

41. As set out in paragraphs 12-19 above, the requirement to provide details of all foreign travel set down in the Regulations is directed at public protection, particularly protecting children from British Sex Offenders who Travel abroad by ensuring that their location is known, even when outside the UK.

42. It is of note that the minimum notice period has been shortened to 12 hours, which will help to minimise the burden on short-notice travellers.

43. Regarding the more frequent notification requirements for offenders with no sole or main residence, the objective is to enhance the existing provisions which support the effective management of relevant offenders. A definitive timescale for notification is required as it is not competent to delegate this decision to the police or any other responsible authority. When deciding upon an appropriate timeframe, the rights of the offender must be balanced against the wider public interest. The decision was made that daily notification would be overly onerous. Weekly notification is deemed more proportionate and it also fits with the equivalent provision in England and Wales. Should more frequent notification be deemed necessary, there are other mechanisms available.

44. The notification requirements of Part 2 of the 2003 Act provide that a 'relevant offender' is required to notify the police of certain information. Section 87(1)(a) of the 2003 Act provides that such a person gives the required notifications by attending at any of the police stations prescribed by the Scottish Ministers, of which there are 85 throughout Scotland. Their geographic spread is aimed at ensuring that relevant offenders do not have to travel too far to notify their personal information or changes thereto.

45. The measures are considered to be proportionate, particularly when the slight inconvenience caused to relevant offenders of having to notify the required information more frequently is balanced against the reasons why relevant offenders are being required to notify this information (public protection and prevention of re-offending).

Consultation

46. These Regulations form part of the implementation of the Criminal Justice and Licensing (Scotland) Act 2010, which the Scottish Parliament approved in June 2010. The Association of Chief Police Officers in Scotland, the Police Service of Scotland, CEOP were consulted on the instrument.

Financial Effects

47. The instrument has no financial effects on the Scottish Government's program expenditure.

17 May 2013