

**EXPLANATORY MEMORANDUM TO**  
**THE SEXUAL OFFENCES ACT 2003 (REMEDIAL) ORDER 2011**

**2011 No.**

1. This explanatory memorandum has been prepared by the Home Office (“the Department”) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1. This order amends the Sexual Offences Act 2003 (“the 2003 Act”) to remedy an incompatibility with a Convention right in relation to the indefinite notification requirements contained in section 82(1) of the 2003. In *R (on the application of F (by his litigation friend F)) and Thompson (FC) v Secretary of State for the Home Department* [2010] UKSC 17, the Supreme Court of the United Kingdom made a declaration under section 4 of the Human Rights Act 1998 (“the 1998 Act”) on 21 April 2010 that “the indefinite notification requirements in section 82(1) of the Sexual Offences Act 2003 are incompatible with article 8 of the European Convention on Human Rights in so far as they do not contain any provision for the review of the justification for continuing the requirements in individual cases.”

- 2.2 This order introduces a mechanism by which a person subject to indefinite notification requirements under the 2003 Act can apply for a review and determination that those requirements may cease.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 This order will be the sixth remedial order to be made in accordance with section 10 of the Human Rights Act 1998. The Secretary of State considers that the conditions in section 10 of the 1998 Act are satisfied.

4. **Legislative Context**

- 4.1 Section 82(1) of the 2003 Act prescribes the periods during which a person convicted of an offence listed in Schedule 3 to the 2003 Act must comply with the notification requirements set out in Part 2 of the 2003 Act (in particular, sections 83 to 85). A person who, in respect of the offence, is sentenced to imprisonment for (amongst other things) a

term of 30 months or more is subject to notification requirements for an indefinite period.

- 4.2 In the absence of any mechanism for reviewing the indefinite notification requirement, the Supreme Court declared that this requirement was incompatible with a Convention right. This order is being made under the powers in section 10 of the 1998 Act with a view to introducing a mechanism for enabling a person to apply for a review of the indefinite notification requirements to which that person is subject.
- 4.3 The Department outlined the provisional timeline for responding to the Supreme Court judgment within 12 to 18 months of the finding in a letter to the Joint Committee on Human Rights dated 7 October 2010. Further, the Home Secretary made a statement before Parliament on 16 February 2011 setting out the Government's intention to bring forward proposals to remedy the legislative incompatibility.

## **5. Territorial Extent and Application**

- 5.1 This order extends and applies to England and Wales.
- 5.2 Criminal law (including the law governing aspects of the notification regime to which persons convicted of sex offences are subject) is a devolved matter, and Scotland and Northern Ireland are separately taking legislative steps, as they consider appropriate, in response to the decision of the Supreme Court.

## **6. European Convention on Human Rights**

- 6.1 The Parliamentary Under-Secretary of State for Equalities and Criminal Information has made the following statement:

In my view the provisions of the draft Sexual Offences Act 2003 (Remedial) Order 2011 are compatible with the Convention rights.

## **7. Policy background**

- *What is being done and why*

- 7.1 The 2003 Act was introduced in May 2004 and provided a comprehensive new legislative framework for sexual offences, covering offences against adults, children and familial sexual offences. It amended the law governing the notification requirements to which those convicted of sex offences are subject (commonly referred to as the 'sex offenders' register') and what civil orders are

available in relation to those regarded as posing a risk of committing sexual offences, which were originally introduced in the Sex Offenders Act 1997. An offender who is subject to the notification requirements is required to notify the police of their personal details, including (but not limited to) their: name, address, date of birth and national insurance number. Following the initial notification, this is done annually and whenever the prescribed details change.

- 7.2 The circumstances in which a person becomes subject to indefinite notification requirements are summarised in paragraph 4.1 above. Following the decision of the Supreme Court on 21 April 2010 in *R (on the application of F and Angus Aubrey Thompson) v Secretary of State for the Home Department* [2010] UKSC 17, the Department has worked with key partners, including the Association of Chief Police Officers (ACPO) and the National Offender Management Service (NOMS) to consider how best to give effect to the decision of the Supreme Court.
- 7.3 This order seeks to remedy the incompatibility by introducing a review mechanism for persons subject to the indefinite notification requirements under Part 2 of the 2003 Act. They will be entitled to apply for a review after a prescribed period (15 years from the date of their first release from custody, or 8 years in the case of those who were under 18 on the date of the conviction or other finding giving rise to the indefinite notification requirements). The application for review is made to the police for the area in which the applicant lives, and the police determine the application after considering a range of prescribed factors. The overarching purpose of this process is to assess the continued risk, if any, posed by the applicant.
- 7.4. The Department has considered options for making the necessary legislative amendment through primary legislation. However, in the absence of any suitable First Session bills to rectify the incompatibility and mindful of the need to avoid undue delay in remedying the incompatibility, the Department has taken the view that it is appropriate to seek to remedy the position by means of a remedial order under section 10 of the 1998 Act.

- ***Consolidation***

- 7.6 Not applicable.

## **8. Consultation outcome**

- 8.1 The Department has consulted closely with key partners, including the Association of Chief Police Officers (ACPO) and the National Offender Management Service (NOMS), before finalising the proposal contained in this order, and has ensured that colleagues across Government and the devolved administrations with a key interest were

consulted on the proposed legislative changes and in particular whether the changes proposed would have any unintended consequences.

8.2 The Department is also aware that this order will be subject to comprehensive Parliamentary scrutiny. The proposal to make this order must be laid before both Houses for an initial 60 day period. During this period, representations can be made and the Joint Committee on Human Rights is required to report on the proposal. In light of any representations and the views of the Joint Committee, this order may be subject to amendment. This order must thereafter be laid before Parliament for a further 60 day period, before resolutions from each House can be obtained.

## **9. Guidance**

9.1 Information on these changes will be made available through updates to the Department's website and guidance. Any changes will also be communicated to police forces in England and Wales via the Association of Chief Police Officers (ACPO).

## **10. Impact**

10.1 No impact on the private or voluntary sector is foreseen.

10.2 The impact on the public sector is less than £5 million.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the BIS website.

## **11. Regulating small business**

11.1 This order does not apply to small business.

## **12. Monitoring & review**

12.1 The effectiveness of the new scheme will be monitored on an ongoing basis by the Department, and information relevant to the review process will be stored on ViSOR (the database used to capture information on a range of offender types who are considered to pose a risk of harm to the public, including Registered Sex Offenders). There will be no formal evaluation of this policy.

## **13. Contact**

Deborah Child at the Home Office on 020 7035 0065 or email: [deborah.child@homeoffice.gsi.gov.uk](mailto:deborah.child@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.