
DRAFT STATUTORY INSTRUMENTS

2012 No.

The Sexual Offences Act 2003 (Remedial) Order 2012

Amendment of the Sexual Offences Act 2003

3. After section 91 insert—

“91A Review of indefinite notification requirements: qualifying relevant offender

(1) A qualifying relevant offender may apply to the relevant chief officer of police for a determination that the qualifying relevant offender is no longer subject to the indefinite notification requirements (“an application for review”).

(2) A qualifying relevant offender means a relevant offender who, on the date on which he makes an application for review, is—

- (a) subject to the indefinite notification requirements; and
- (b) not subject to a sexual offences prevention order under section 104(1) or an interim sexual offences prevention order under section 109(3).

(3) The “indefinite notification requirements” mean the notification requirements of this Part for an indefinite period by virtue of—

- (a) section 80(1);
- (b) section 81(1); or
- (c) a notification order made under section 97(5).

(4) In this Part, the “relevant chief officer of police” means, subject to subsection (5), the chief officer of police for the police area in which a qualifying relevant offender is recorded as residing or staying in the most recent notification given by him under section 84(1) or 85(1).

(5) Subsection (6) applies if a qualifying relevant offender is recorded as residing or staying at more than one address in the most recent notification given by him under section 84(1) or 85(1).

(6) If this subsection applies, the “relevant chief officer of police” means the chief officer of police for the police area in which, during the relevant period, the qualifying relevant offender has resided or stayed on a number of days which equals or exceeds the number of days on which he has resided or stayed in any other police area.

(7) In subsection (6), “the relevant period” means the period of 12 months ending on the day on which the qualifying relevant offender makes an application for review.

91B Review of indefinite notification requirements: application for review and qualifying dates

(1) An application for review must be in writing and may be made on or after the qualifying date or, as the case may be, the further qualifying date.

(2) Subject to subsection (7), the qualifying date is—

- (a) where the qualifying relevant offender was 18 or over on the relevant date, the day after the end of the 15 year period beginning with the day on which the qualifying relevant offender gives the relevant notification; or
- (b) where the qualifying relevant offender was under 18 on the relevant date, the day after the end of the 8 year period beginning with the day on which the qualifying relevant offender gives the relevant notification.
- (3) Subject to subsections (4) to (6), the further qualifying date is the day after the end of the 8 year period beginning with the day on which the relevant chief officer of police makes a determination under section 91C to require a qualifying relevant offender to remain subject to the indefinite notification requirements.
- (4) Subsection (5) applies if the relevant chief officer of police, when making a determination under section 91C to require a qualifying relevant offender to remain subject to the indefinite notification requirements, considers that the risk of sexual harm posed by a qualifying relevant offender is sufficient to justify a continuation of those requirements after the end of the 8 year period beginning with the day on which the determination is made.
- (5) If this subsection applies, the relevant chief officer of police may make a determination to require a qualifying relevant offender to remain subject to the indefinite notification requirements for a period which may be no longer than the 15 year period beginning with the day on which the determination is made.
- (6) If subsection (5) applies, the further qualifying date is the day after the end of the period determined under that subsection.
- (7) The qualifying date must not be earlier than the expiry of the fixed period specified in a notification continuation order made in relation to a qualifying relevant offender in accordance with sections 88A to 88I(1).
- (8) The relevant chief officer of police within 14 days of receipt of an application for review—
- (a) must give an acknowledgment of receipt of the application to the qualifying relevant offender, and
- (b) may notify a responsible body that the application has been made.
- (9) Where a responsible body is notified of the application for review under subsection (8)(b) and holds information which it considers to be relevant to the application, the responsible body must give such information to the relevant chief officer of police within 28 days of receipt of the notification.
- (10) In this section “the relevant notification” means the first notification which the relevant offender gives under section 83, 84 or 85 when he is first released after—
- (a) being remanded in or committed to custody by an order of a court in relation to the conviction for the offence giving rise to the indefinite notification requirements;
- (b) serving a sentence of imprisonment or a term of service detention in relation to that conviction;
- (c) being detained in hospital in relation to that conviction.
- (11) For the purposes of this Part—
- (a) “responsible body” means—
- (i) the probation trust for any area that includes any part of the police area concerned,

(1) These sections were inserted into the 2003 Act by the Sexual Offences Act 2003 (Remedial) (Scotland) Order [S.S.I. 2011/45](#). These provisions have the effect of remedying the incompatibility in Scotland, and amend the 2003 Act insofar as it extends to Scotland only.

- (ii) in relation to any part of the police area concerned for which there is no probation trust, each provider of probation services which has been identified as a relevant provider of probation services for the purposes of section 325 of the Criminal Justice Act 2003⁽²⁾ by arrangements under section 3 of the Offender Management Act 2007⁽³⁾,
 - (iii) the Minister of the Crown exercising functions in relation to prisons (and for this purpose “prison” has the same meaning as in the Prison Act 1952⁽⁴⁾), and
 - (iv) each body mentioned in section 325(6) of the Criminal Justice Act 2003, but as if the references in that subsection to the relevant area were references to the police area concerned;
- (b) “risk of sexual harm” means a risk of physical or psychological harm to the public in the United Kingdom or any particular members of the public caused by the qualifying relevant offender committing one or more of the offences listed in Schedule 3.

91C Review of indefinite notification requirements: determination of application for review

(1) The relevant chief officer of police must, within 6 weeks of the latest date on which any body to which a notification has been given under section 91B(8)(b) may give information under section 91B(9)—

- (a) determine the application for review, and
- (b) give notice of the determination to the qualifying relevant offender.

(2) For the purposes of the determination of an application for review under this section, a qualifying relevant offender must satisfy the relevant chief officer of police that it is not necessary for the purpose of protecting the public or any particular members of the public from sexual harm for the qualifying relevant offender to remain subject to the indefinite notification requirements.

(3) If the relevant chief officer of police determines under this section that the qualifying relevant offender should remain subject to the indefinite notification requirements, the notice of the determination must—

- (a) contain a statement of reasons for the determination, and
- (b) inform the qualifying relevant offender that he may appeal the determination in accordance with section 91E.

(4) If the relevant chief officer of police determines under this section that a qualifying relevant offender should not remain subject to the indefinite notification requirements, the qualifying relevant offender ceases to be subject to the indefinite notification requirements on the date of receipt of the notice of determination.

(5) The Secretary of State may by order amend the period in subsection (1).

91D Review of indefinite notification requirements: factors applying to determination under section 91C

(1) In determining an application for review under section 91C, the relevant chief officer of police must—

(2) 2003 c. 44.
(3) 2007 c. 21.
(4) 1952 c. 52.

- (a) have regard to information (if any) received from a responsible body;
 - (b) consider the risk of sexual harm posed by the qualifying relevant offender and the effect of a continuation of the indefinite notification requirements on the offender; and
 - (c) take into account the matters listed in subsection (2).
- (2) The matters are—
- (a) the seriousness of the offence in relation to which the qualifying relevant offender became subject to the indefinite notification requirements;
 - (b) the period of time which has elapsed since the qualifying relevant offender committed the offence (or other offences);
 - (c) where the qualifying relevant offender falls within section 81(1), whether the qualifying relevant offender committed any offence under section 3 of the Sex Offenders Act 1997⁽⁵⁾;
 - (d) whether the qualifying relevant offender has committed any offence under section 91;
 - (e) the age of the qualifying relevant offender at the qualifying date or further qualifying date;
 - (f) the age of the qualifying relevant offender at the time the offence referred to in paragraph (a) was committed;
 - (g) the age of any person who was a victim of any such offence (where applicable) and the difference in age between the victim and the qualifying relevant offender at the time the offence was committed;
 - (h) any assessment of the risk posed by the qualifying relevant offender which has been made by a responsible body under the arrangements for managing and assessing risk established under section 325 of the Criminal Justice Act 2003;
 - (i) any submission or evidence from a victim of the offence giving rise to the indefinite notification requirements;
 - (j) any convictions or findings made by a court (including by a court in Scotland, Northern Ireland or countries outside the United Kingdom) in respect of the qualifying relevant offender for any offence listed in Schedule 3 other than the one referred to in paragraph (a);
 - (k) any caution which the qualifying relevant offender has received for an offence (including for an offence in Northern Ireland or countries outside the United Kingdom) which is listed in Schedule 3;
 - (l) any convictions or findings made by a court in Scotland, Northern Ireland or countries outside the United Kingdom in respect of the qualifying relevant offender for any offence listed in Schedule 5 where the behaviour of the qualifying relevant offender since the date of such conviction or finding indicates a risk of sexual harm;
 - (m) any other submission or evidence of the risk of sexual harm posed by the qualifying relevant offender;
 - (n) any evidence presented by or on behalf of the qualifying relevant offender which demonstrates that the qualifying relevant offender does not pose a risk of sexual harm; and

(5) 1997 c. 51.

(o) any other matter which the relevant chief officer of police considers to be appropriate.

(3) In this section, a reference to a conviction, finding or caution for an offence committed in a country outside the United Kingdom means a conviction, finding or caution for an act which—

- (a) constituted an offence under the law in force in the country concerned, and
- (b) would have constituted an offence listed in Schedule 3 or Schedule 5 if it had been done in any part of the United Kingdom.

91E Review of indefinite notification requirements: appeals

(1) A qualifying relevant offender may appeal against a determination of the relevant chief officer of police under section 91C.

(2) An appeal under this section may be made by complaint to a magistrates' court within the period of 21 days beginning with the day of receipt of the notice of determination.

(3) A qualifying relevant offender may appeal under this section to any magistrates' court in a local justice area⁽⁶⁾ which includes any part of the police area for which the chief officer is the relevant chief officer of police.

(4) If the court makes an order that a qualifying relevant offender should not remain subject to the indefinite notification requirements, the qualifying relevant offender ceases to be subject to the indefinite notification requirements on the date of the order.

91F Review of indefinite notification requirements: guidance

(1) The Secretary of State must issue guidance to relevant chief officers of police in relation to the determination by them of applications made under section 91B.

(2) The Secretary of State may, from time to time, revise the guidance issued under subsection (1).

(3) The Secretary of State must arrange for any guidance issued or revised under this section to be published in such manner as the Secretary of State considers appropriate.”

(6) Section 8 of the Courts Act 2003 (c. 39) introduced new provision in relation to local justice areas.