



Home Office

# **IMPACT ASSESSMENT: REVIEWING OFFENDERS SUBJECT TO INDEFINITE NOTIFICATION REQUIREMENTS (PART 2 OF SEXUAL OFFENCES ACT 2003)**



<b>Title:</b> <b>Impact Assessment: Reviewing offenders subject to indefinite notification requirements (Part 2 of Sexual Offences Act 2003)</b>  <b>Lead department or agency:</b> Home Office <b>Other departments or agencies:</b> Ministry of Justice	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> HO
	<b>Date:</b> 14/06/2011
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Other
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## Summary: Intervention and Options

### What is the problem under consideration? Why is government intervention necessary?

On 21 April 2010, in the case of R (on the application of F and Angus Aubrey Thompson) v Secretary of State for the Home Department [2010] UKSC 17, the Supreme Court made a declaration of incompatibility under s. 4 of the Human Rights Act 1998 in respect of notification requirements for an indefinite period under Part 2 of the Sexual Offences Act 2003. The UK Government will take steps to rectify this legislative incompatibility. The Supreme Court specifically found indefinite notification requirements for sex offenders, with no opportunity for review, to be incompatible with Article 8 of the European Convention on Human Rights (ECHR).

### What are the policy objectives and the intended effects?

Following this judgment, the Home Office has worked with key partners, including the Association of Chief Police Officers (ACPO) and the National Offender Management Service (NOMS), in order to ascertain how best to give effect to the Court's judgment. The objective of the policy outlined in this IA is to:

1. Develop a fair and proportionate response to the Judgment which will amend Part 2 of the Sexual Offences Act 2003 to ensure compliance with Article 8 of the ECHR;
2. To respond to the judgment in a timely way;
3. To ensure that the policy developed strikes an appropriate balance between individual rights and public protection.

### What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing. It is not a practical option for the Home Office to ignore this judgment. The Home Office is required to take steps to remedy the legislative incompatibility. Options considered include:

Option 2: Automatic removal from the notification requirements after a fixed period of time;

Option 3: Police or Multi Agency Public Protection Arrangements (MAPPA) type review mechanism where offenders apply to be removed from the Sex Offenders Register;

Option 4: Court administered review mechanism where offenders apply to be removed from the notification requirements.

We recommend developing Option 3, which would involve an individual assessment of risk, based on information available to the Police and other agencies within the MAPPA framework.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 2/2017

**What is the basis for this review?** PIR. **If applicable, set sunset clause date:** Month/Year

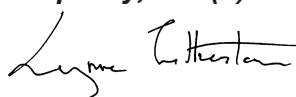
**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?**

Yes

**SELECT SIGNATORY Sign-off** For final proposal stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

Signed by the responsible Minister:



Date: 14 June 2011

# Summary: Analysis and Evidence

# Policy Option 2

## Description:

Automatic removal from the notification requirements after a fixed period of time

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/A	N/A	N/A

### Description and scale of key monetised costs by 'main affected groups'

It has not been possible to monetise the costs, realised in terms of a possible increase in the risk of re-offending, of this policy option.

### Other key non-monetised costs by 'main affected groups'

Amendments to the ViSOR database will be required.

It has not been possible to assess the impact of ending notification requirements on re-offending rates and detection rates. The impact on re-offending and detections is, therefore, not quantified.

Additionally, this option may increase pressure on police and other agency resources in terms of a potential increase in applications for other risk management tools such as Sexual Offences Prevention Orders.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/A	£1.2	£9.3

### Description and scale of key monetised benefits by 'main affected groups'

The benefit to the police (£1.2m annual average) will be realised in terms of a possible reduction in resources spent administering the required management of offenders whose notification requirements are discontinued. Under this policy option, notification requirements would automatically be discontinued after a fixed period of 15 year for all offenders irrespective of the level of risk they may pose.

### Other key non-monetised benefits by 'main affected groups'

This policy will realise a non-monetised benefit in terms of remedying the declaration of incompatibility in respect of notification requirements for an indefinite period under Part 2 of the Sexual Offences Act 2003. It is considered that this policy will achieve Article 8 compliance and avoid further, potentially expensive, legal challenge.

### Key assumptions/sensitivities/risks

Discount rate (%)

3.5

Assumes 100% of sex offenders will have their notification requirements discontinued 15 years after their initial notification. Benefits are realised in terms of a reduction in the police resources spent administering the required management of sex offenders, which is assumed to include home visits (ranging from annual visits for low risk offenders to monthly visits for very high risk offenders) as well as ViSOR updates three times a year.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	IN/OUT

# Summary: Analysis and Evidence

# Policy Option 3

## Description:

Police or Multi Agency Public Protection Arrangements (MAPPA) type review mechanism

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£0.0	High: -£7.8	Best Estimate: N/K

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.05	£0.0	<b>£0.0</b>
High	£0.07	£1.0	<b>£7.8</b>
Best Estimate	N/K	N/K	N/K

### Description and scale of key monetised costs by 'main affected groups'

The cost of reviewing sex offender notification requirements will fall predominantly on the police. The scale of the costs depends on the proportion of eligible sex offenders who apply for a review of their notification requirements, which cannot be predicted. The cost of producing guidance and developing a training module is likely to be around £50,000 - £70,000.

### Other key non-monetised costs by 'main affected groups'

Amendments to the ViSOR database will be required.

It has not been possible to assess the impact of ending notification requirements on re-offending rates and detection rates. The impact on re-offending and detections is, therefore, not quantified.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	N/K	N/K
High	Optional	N/K	N/K
Best Estimate	N/A	N/K	N/K

### Description and scale of key monetised benefits by 'main affected groups'

The benefit to the police will be realised in terms of a possible reduction in resources spent administering the required management of offenders whose notification requirements are discontinued under the review process. It has not been possible to estimate the proportion of reviews leading to discontinuation of notification requirements.

### Other key non-monetised benefits by 'main affected groups'

This policy will realise a non-monetised benefit in terms of remedying the declaration of incompatibility in respect of notification requirements for an indefinite period under Part 2 of the Sexual Offences Act 2003. It is considered that this policy will achieve Article 8 compliance and avoid further, potentially expensive, legal challenge.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Table E.2 within this assessment presents a range of scenarios to illustrate potential volumes of review applications. It is not possible to accurately estimate the proportion of relevant qualifying offenders who will seek a review. Therefore, a range has been applied to assume that between 0% and 100% of eligible sex offenders will apply to have their notification requirements reviewed. On average, a review is assumed to take up approximately 13 hours of police time as well as 6 hours of involvement from other agencies. It is currently not possible to predict the outcome of reviews as this will depend on individual level risk assessments. It has not been possible to estimate the volume of offenders who may have their notification requirements discontinued. Therefore, it has not been possible to assess what proportion of registered sex offenders will have their notification requirements continued and may be eligible for a further review 8 years after the initial review.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	IN/OUT

# Summary: Analysis and Evidence

# Policy Option 4

## Description:

Court administered review mechanism where offenders apply to be removed from the notification requirements.

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: - £0.0	High: - £28.7	Best Estimate: N/K

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Not quantified	£0.0	£0.0
High	Not quantified	£3.4	£28.7
Best Estimate	Not quantified	N/K	N/K

### Description and scale of key monetised costs by 'main affected groups'

The cost of reviewing sex offender notification requirements will fall predominantly on the courts, police, and the LSC. The scale of the costs depends on the proportion of eligible sex offenders who apply for a review of their notification requirements, which cannot be predicted. Therefore, it has been assumed that between 0 and 100% of those eligible for a review apply. It has not been possible to quantify the outcome of the review and therefore what proportion will be unsuccessful and subsequently appeal their review decision. The average annual cost will be around £0 - £3.4m.

### Other key non-monetised costs by 'main affected groups'

Amendments to the ViSOR database will be required.

It has not been possible to assess the possible impact of ending notification requirements on re-offending rates and detection rates. The impact on re-offending and detections is, therefore, not quantified.

Additionally transitional costs will be incurred in terms of providing guidance and training to all affected agencies; most notably the police and court service.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/A	N/K	N/K

### Description and scale of key monetised benefits by 'main affected groups'

The benefit to the police will be realised in terms of a possible reduction in resources spent administering the required management of offenders whose notification requirements are discontinued under the review process. It has not been possible to estimate the proportion of reviews leading to discontinuation of notification requirements.

### Other key non-monetised benefits by 'main affected groups'

This policy will realise a non-monetised benefit in terms of remedying the declaration of incompatibility in respect of notification requirements for an indefinite period under Part 2 of the Sexual Offences Act 2003. It is considered that this policy will achieve Article 8 compliance and avoid further, potentially expensive, legal challenge.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Table E.4 within this assessment presents a range of scenarios to illustrate potential volumes of review applications. It is not possible to estimate accurately the proportion of relevant qualifying offenders who will seek a review. On average, a review is assumed to take up approximately 6 hours of police time, 6 hours of involvement from other agencies, and between one and five hours in a magistrates court. It has not been possible to estimate the proportion of offenders who will be unsuccessful in their review and so will wish to appeal in a crown court. An appeal is assumed to take between one and five hours in a crown court. Similarly it has not been possible to estimate the proportion of offenders who will be successful in their review application and so will no longer be subject to the notification requirements.

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	IN/OUT

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England and Wales				
From what date will the policy be implemented?	01/02/2012				
Which organisation(s) will enforce the policy?	Police (advised by other MAPPA agencies)				
What is the annual change in enforcement cost (£m)?	N/K				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> N/A		<b>Non-traded:</b> N/A		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> N/A		<b>Benefits:</b> N/A		
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	<b>Micro</b> N/A	<b>&lt; 20</b> N/A	<b>Small</b> N/A	<b>Medium</b> N/A	<b>Large</b> N/A
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties<sup>1</sup></b> <a href="#">Statutory Equality Duties Impact Test guidance</a>	Yes	20
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	
Human rights <a href="#">Human Rights Impact Test guidance</a>	Yes	23
Justice system <a href="#">Justice Impact Test guidance</a>	Yes	23
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	

<sup>1</sup> Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	Part 2, Sexual Offences Act 2003
2	Supreme Court Judgment: R (on the application of F (by his litigation friend F)) and Thompson (FC) (Respondents) v Secretary of State for the Home Department (Appellant) [2010] UKSC 17, Judgment given on 21 <sup>st</sup> April 2010
3	Cann et al. (2004) 'Sexual offenders discharged from prison in England and Wales: a 21 year conviction study', Legal and Criminological Psychology, 9, 1-10; 202-10
4	Ackerley et al. (1998) 'When Do Sex Offenders Stop Offending?' Research Bulletin, Home Office Research and Statistics Directorate, 39, Home Office, London, pp.51-57
5	Prentky et al. (1997) 'Recidivism rates among child molesters and rapists: a methodological analysis'. Law and Human Behaviour, 21(6), 635-659.
6	Thornton (2007) 'Scoring Guide for Risk Matrix 2000 9/SVC

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	0.065									
<b>Annual recurring cost</b>	N/K	N/K	N/K	N/K	N/K	N/K	N/K	N/K	N/K	N/K
<b>Total annual costs</b>	N/K	N/K	N/K	N/K	N/K	N/K	N/K	N/K	N/K	N/K
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>	N/K	N/K	N/K	N/K	N/K	N/K	N/K	N/K	N/K	N/K
<b>Total annual benefits</b>	N/K	N/K	N/K	N/K	N/K	N/K	N/K	N/K	N/K	N/K

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

# Evidence Base (for summary sheets)

## A. Strategic Overview

### A.1 Background

The Sexual Offences Act 2003, introduced in May 2004, provided a comprehensive new legislative framework for sexual offences, covering offences against adults, children and familial sexual offences. It also made amendments to the law governing the Sex Offender register and civil orders, originally introduced in the Sex Offenders Act 1997.

Currently, under Part 2 of the Sexual Offences Act 2003, a person who, in respect of an offence listed under Schedule 3 of the Act, is or has been sentenced to imprisonment for a term of 30 months or more, will become subject to the notification requirements for an indefinite period. Additionally, where an offender, in respect of the relevant offence, is made subject to a restriction order, the notification requirements apply for an indefinite period.

Recent figures indicate that there are 44,159 offenders in England and Wales who are subject to the notification requirements (commonly referred to as the Sex Offender register). Of these, approximately 25,310 are subject to the notification requirements for an indefinite period<sup>1</sup>.

On 21 April 2010, in the case of R (on the application of F and Angus Aubrey Thompson) v Secretary of State for the Home Department [2010] UKSC 17, the Supreme Court upheld an earlier decision of the Court of Appeal and made a declaration of incompatibility under s. 4 of the Human Rights Act 1998 in respect of notification requirements for an indefinite period under section 82 of the Sexual Offences Act 2003.

Importantly, the leading Supreme Court judge in this case, Lord Phillips, noted that the imposition of notification requirements pursue a legitimate aim but said that 'there must be some circumstances in which an appropriate tribunal could reliably conclude that the risk of an individual carrying out a further sexual offence can be discounted to the extent that continuance of notification requirements is unjustified<sup>2</sup>.'

Lord Phillips also noted in his judgment that registration systems for sexual offenders are not uncommon in other jurisdictions and that almost all of these have provisions for review. Other jurisdictions with review mechanisms include: Ireland, France, Australia, Canada, South Africa and the USA. The mechanisms differ across the various jurisdictions. A number of the systems include a review undertaken by a Court, while in France the review is undertaken by the prosecutor.

The UK Government is required to take steps to rectify this legislative incompatibility. As sex offender policy is a devolved matter, it is open to Scotland and Northern Ireland to legislate separately in response to the judgment. Following a period of consultation on The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010, this order was revoked and replaced by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011, which came into force on 28<sup>th</sup> January 2011.

### A.2 Groups Affected

The proposals as set out in this Impact Assessment will have effect in England and Wales only.

Sex offenders who are subject to the notification requirements for an indefinite period, victims of sexual crime, all police forces in England and Wales, agencies that make up the responsible authority (police, prisons, probation) and agencies with a duty to co-operate under the Multi-Agency Public Protection Arrangements, and the Home Office.

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<sup>1</sup> These figures are taken from the violent and sex offender register (ViSOR) and are accurate as at 31 October 2010.

<sup>2</sup> Judgment: R (on the application of F (by his litigation friend F)) and Thompson (FC) (Respondents) v Secretary of State for the Home Department (Appellant [2010] UKSC 17, para 57.



### **A.3 Consultation**

There has been no formal consultation process on the recommended option. The Home Office has worked closely with the agencies which will be affected by the proposals to develop the options for responding to the Supreme Court judgment.

As there is no suitable Bill available that would provide a vehicle to take the required legislative amendment forward, the Home Office will seek to amend the current law by way of a (non-urgent) remedial Order made under section 10(2) of the Human Rights Act 1998. As part of the remedial Order process, the proposals will be subject to Parliamentary scrutiny. The proposal for the draft remedial Order will be laid before both Houses for an initial 60 day period, during which time representations can be made by Members and Lords, and the Joint Committee on Human Rights is required to report on the proposal for the draft Order. In light of any representations received, amendments may be made and a draft Order will be laid before Parliament for a further 60 day period. The Order will only be made and brought into effect once it is approved by both Houses.

## **B. Rationale**

The Supreme Court declaration of incompatibility in the case of *R v F and Thompson* requires that the Government take steps to remedy the relevant primary legislation and it is not a practical option for the Government to do nothing in the light of this ruling. The Government has chosen to use the Remedial Order process as we consider that this issue should be addressed expeditiously but there are no suitable First Session bills to rectify the incompatibility.

## **C. Objectives**

Following the Supreme Court judgment, the Home Office has worked with key partners, including the Association of Chief Police Officers (ACPO), and the National Offender Management Service (NOMS) in order to ascertain how best to give effect to the ruling. The objective of the recommended policy option outlined in this Impact Assessment is to respond to the judgment in a timely way and to develop a fair and proportionate response, which strikes an appropriate balance between individual rights and public safety.

## **D. Options**

### **Option 1: Do nothing**

To do nothing would mean that there would be no mechanism for reviewing the indefinite notification requirements and no way for individuals subject to notification requirements for an indefinite period to be removed from the Sex Offender register. It is not a practical option for the Home Office to do nothing in response to the Supreme Court finding of Article 8 incompatibility.

Should the Home Office fail to act in responding to the judgment, this would leave the Government vulnerable to further claims for compensation including from offenders bringing cases direct to the Court in Strasbourg, which has the power to award compensation for the same human rights breaches that the Supreme Court found in this case.

The Supreme Court cannot strike down legislation which it rules is incompatible with the ECHR. It is for Parliament to legislate to correct any incompatibility. In practice, the Government of the day has always responded to declarations of incompatibility – whether in Strasbourg or by the Supreme Court or Law Lords – by making proposals to remedy these incompatibilities.

### **Option 2: Automatic removal from the notification requirements after a fixed period of time.**

This option would only partly meet the Government's objective. In effect, this option would extend the existing arrangements under section 82 of the Sexual Offences Act 2003 for sentences of less

than 30 months, where the length of sentence determines the duration of the notification requirements.

There would be safeguards to this option in respect of offenders assessed to present a significant continuing risk, where the police could apply to the courts for a Sexual Offences Prevention Order (SOPO) which would bring the offender back into registration requirements. However, there is a risk to this option that there may be instances where continuing notification would be appropriate but the circumstances of that individual would not meet the higher threshold required to obtain a SOPO. There is a further risk that this option may have the effect of placing increased pressure on police and other agency resources in view of a potential increase in applications for other risk management tools, including SOPOs.

### **Option 3: Police or Multi Agency Public Protection Arrangements (MAPPA) type review mechanism where offenders apply to be removed from the notification requirements**

Following a fixed period of time subject to the notification requirements (15 years from the point of first notification for adults and 8 years for juveniles), an offender would be eligible to apply to their local police for a review of these requirements. This review would be completed on the basis of a range of factors, including any information that could be provided from other Responsible Authority and Duty to Co-operate agencies as defined within the Multi-Agency Public Protection Arrangements (MAPPA). Where, on the basis of the available information, the decision making officer considers that notification should continue, the offender would be invited to submit any further evidence or information that has not previously been considered, that they would wish to be considered as part of the review process.

It is the Government's view that this would provide a proportionate response to the Supreme Court ruling, ensuring that there would be an individual assessment of risk before an offender is removed from the notification requirements. Where it is determined that an offender continues to pose a risk, they will remain on the sex offenders' register and will do so for life, if necessary.

### **Option 4: Court administered review mechanism where offenders apply to be removed from the notification requirements.**

This option would involve a court administered review of an individual's indefinite notification requirements. The police would provide the information required to assess the level of risk the individual poses to the public, or any member of the public, with input from other Responsible Authority and Duty to Co-operate agencies as defined within the Multi-Agency Public Protection Arrangements (MAPPA), in line with the process outlined under option 3. This option would include a full merits right of appeal to the courts.

It is the Government's view that this option would be a prohibitively expensive and bureaucratic process, which would not provide a significantly more robust process than that which would be achieved by a process administered by the agencies which operate within the MAPPA framework (as outlined within option 3).

## **E. Appraisal (Costs and Benefits)**

### **Option 1: Do Nothing**

#### **COSTS**

- There may be a risk of further Judicial Reviews and failing to act in responding to the judgment would leave the Government vulnerable to further claims for compensation including from offenders bringing cases direct to the Court in Strasbourg, which has the power to award compensation for the same human rights breaches that the Supreme Court found in this case.
- There may be a risk of inefficient allocation of Police resources since persons who have been sentenced to imprisonment for a term of 30 months or more in respect of an offence listed under Schedule 3 of the Sexual Offences Act 2003 would stay subject to notification requirements indefinitely, irrespective of the level of risk they pose.

## **BENEFITS**

- Notification requirements would continue to be a risk management tool indefinitely for persons who have been sentenced to imprisonment for a term of 30 months or more in respect of an offence listed under Schedule 3 of the Sexual Offences Act 2003.

It has not been possible to quantify the cost of not remedying the declaration of incompatibility in respect of notification requirements for an indefinite period under Part 2 of the Sexual Offences Act 2003, the risk of further Judicial Reviews, or the possibility of compensation payment claims.

Furthermore, it has not been possible to quantify the benefit of continued risk management for an indefinite period of time through notification requirements because it is not possible to determine to what extent notification requirements impact reoffending rates. Using reconviction rates as a proxy for reoffending behaviour is not appropriate in this case: notification requirements may reduce reoffending while actually increasing reconvictions since they may have a positive impact on the level of detections.

### **Option 2: Automatic removal from the notification requirements after a fixed period of time**

#### **One-in, One-Out**

It is not envisaged that the recommended policy option will have any impact on business. Therefore, no burden reduction is required.

## **COSTS**

- The increased risk of reoffending, and/or increased difficulty of detection, which would not be managed by an individual risk assessment mechanism.
- It is possible that applications for Sexual Offences Prevention Orders (SOPOs) and other risk management tools may increase as a means of continued risk management, since there will be no formal review mechanism assessing risk. Applications for SOPOs would be expected to be more resource intensive than a police led review as outlined in Option 3.

## **BENEFITS**

- Under the assumption that there is no increase in the applications for alternative risk management tools, such as SOPOs, this may be a simple and less resource intensive option.

It has not been possible to quantify the unmanaged risk of reoffending inherent in this option because it is not possible to determine to what extent notification requirements impact reoffending rates. Using reconviction rates as a proxy for reoffending behaviour is not appropriate in this case: notification requirements may reduce reoffending while actually increasing reconvictions since they may have a positive impact on the level of detections.

Furthermore, it has not been possible to estimate the possible increases in applications of alternative risk management tools such as SOPOs, which have, therefore, not been quantified.

### **Option 3: Police or Multi Agency Public Protection Arrangements (MAPPA) type review mechanism where offenders apply to be removed from the notification requirements**

#### **Eligibility for review**

An offender who is subject to indefinite notification requirements would be eligible to apply to the police for a review 15 years after the date of their initial notification. This period would be 8 years for an offender who is under the age of 18 on the date of initial notification. It is proposed that an offender who is the subject to a Sexual Offences Prevention Order (SOPO) would be required to discharge the SOPO before seeking a review of their indefinite notification.

#### **Process**

Following receipt of an application from an eligible offender, the police would be required to contact other Responsible Authority and relevant Duty to Co-operate agencies, as defined within the

MAPPA, to request any relevant intelligence or information that should be considered as part of the review process.

The decision-making officer would complete a review based on any information received and a range of factors as outlined within the proposed legislation. It is proposed that this review would be completed within 6 weeks of the expiry of the period of time for information to be submitted from other agencies and that the outcome of the review would be communicated in person within this period. At this stage, the decision-making will involve other agencies within the MAPPA framework where the risk level or risk information dictates.

If the decision-making officer determines that an offender should no longer be subject to the notification requirements, this decision would be signed off by a senior officer of not less than superintendent rank and would be effective from the date the decision is served, in person, on the offender.

It is not proposed that this process would include a right of appeal. It is considered that the policy would provide a full opportunity for an individual to present any submission or evidence to demonstrate that, on the balance of probabilities, they do not pose a risk of sexual harm to the public, or any particular members of the public, in the United Kingdom, and for this to be taken into account within the review process. Should the decision-making officer determine that it is appropriate to continue notification, they would be required to advise the offender of their 'Intention to continue notification'. The Notice of 'Intention to continue notification' would have to include an explanation of the reasons for the decision and would have to invite the offender to submit any further evidence or information that has not previously been considered and that they wish to be considered as part of the review process, within 28 days of being served with the notice of 'Intention to continue notification'.

Upon expiry of the period of time provided for the offender to submit further representations, the decision-making officer and, where appropriate, other agencies involved, would have to review any further information provided and the final 'Order continuing notification' would be served upon the offender, in person, and within a further 6 week period. This decision would be authorised by a senior officer of not less than superintendent rank.

It is proposed that an offender would be entitled to seek a further review after an eight year period has expired from the date of the earlier decision to continue notification (and at eight year intervals thereafter should the review be unsuccessful). Where there are exceptional circumstances which would justify doing so, it would be open to the police to set a longer period of up to 15 years before the offender could seek another review.

## **COSTS**

The costs associated with this option would be absorbed by the agencies to which they fall and would primarily be met by the police service.

### **Transitional costs**

There would be one off transitional costs in terms of producing guidance and developing a training module. These costs would be incurred in the first year and would be likely to be around £50,000 - £70,000<sup>3</sup>.

### **Cost of a review**

It is envisaged that, on average, a review would take up approximately 13 hours of police time as well as 6 hours of involvement from other agencies. On the basis of this, the average cost of a review is, therefore, estimated at £760<sup>4</sup>.

### **Estimated volumes eligible for a review**

Estimated volumes of reviews have been modelled using sentencing data provided by the Ministry of Justice. Offenders sentenced to a custodial sentence of 30 months or more for a sexual offence

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<sup>3</sup> These estimates are based on costs incurred developing similar guidance and training modules in the past.

<sup>4</sup> These figures are based on hourly police costs estimated in 2008, which rely heavily on ASHE (Annual Survey of Hours and Earnings) and CIPFA (Chartered Institute of Public Finance and Accounting) data. The underlying data has not been updated, the hourly cost estimates have simply been updated to account for inflation using the Treasury GDP deflator series.

(as defined under the Sexual Offences Act 2003) are currently subject to lifetime notification requirements. They would be eligible for a review of their notification requirements 15 years (8 years for juveniles) after their first notification, which is within 3 days of their release from custody.

In order to estimate the point at which offenders would be eligible for a review, it is assumed that, on average, offenders serve 60% of their sentence<sup>5</sup>. It is assumed that those sentenced to an indeterminate sentence (life and indeterminate sentence for public protection) serve approximately 9 years in custody<sup>6</sup>. Average sentence length served is assumed to be constant over time and equal for adults and juveniles, and male and female offenders.

The proportion of those subject to lifetime notification requirements who were juveniles at the point of sentencing has been estimated using data from the Police National Computer (PNC) (2000-2008). The proportion is assumed to be constant over time and across sentencing bands.

Notification requirements were introduced in 1997. Offenders who were in custody at this time were also added to the register and, if sentenced to a custodial sentence of 30 months or more, subject to lifetime notification requirements. The volume of offenders serving a custodial sentence of 30 months or more for a sexual offence in 1997 is approximated assuming that the volume sentenced annually pre-1997 was equal to those sentenced in 1997.

The maximum number of offenders eligible for a review of their notification requirements is estimated at approximately 1,200 annually on average. Details of the estimated maximum volumes, and associated costs, are summarised in table E.1 below<sup>7</sup>.

<b>Table E.1 Estimated maximum number of offenders eligible for a review of their indefinite notification requirements and associated costs of the reviews</b>		
<b>Year</b>	<b>Offenders Eligible for Review</b>	<b>Costs (£m)</b>
0	143	0.1
1	1,201	0.9
2	1,201	0.9
3	1,202	0.9
4	1,244	1.0
5	1,207	0.9
6	1,217	0.9
7	1,229	0.9
8	1,337	1.0
9	2,048	1.6

#### **Proportion of eligible offenders applying for a review or their notification requirements**

Table E.1, above, illustrates the maximum number of offenders eligible for a review of their indefinite notification requirements. It is not possible to predict what proportion of those eligible for a review of their notification requirements would apply for a review. For the purpose of modelling volumes, and associated costs, several scenarios are illustrated below. It is assumed that offenders who do not apply for a review of their notification requirements in the first year in which they are eligible to do so continue to be eligible for a review in subsequent years.

Table E.2, below, summarises the estimated average annual volumes, average annual cost, and total cost (present value) associated with different scenarios around the proportion of eligible offenders applying for a review of their notification requirements.

<sup>5</sup> This is based on data published in the Offender Management Caseload Statistics (2008).

<sup>6</sup> This is based on data published in the Offender Management Caseload Statistics (2008).

<sup>7</sup> The figures presented in table E.1 are based on the assumption that the maximum number of offenders apply for a review of their notification requirements and that half of those not reconvicted for a violent or sexual offence in the 15 years leading up to the review will have their notification requirements discontinued. Sensitivity analyses around these assumptions are presented below.

<b>% of eligible offenders who apply for a review</b>	<b>0%</b>	<b>25%</b>	<b>50%</b>	<b>75%</b>	<b>100%</b>
<b>Estimated average annual volume of reviews<sup>9</sup></b>	0	800	1,000	1,100	1,200
<b>Estimated average annual cost</b>	£0.0m	£0.6m	£0.8m	£0.8	£0.9m
<b>Estimated total cost (present value)</b>	£0.0m	£4.9m	£6.4m	£6.9m	£7.8m

It is unlikely that none of the eligible offenders will apply to have their notification requirements reviewed. This scenario would be similar to do ‘do nothing’ option briefly outlined in section D in that none of the indefinite notification requirements would be reviewed.

The impact of changing the underlying assumption around the proportion of eligible offenders who may apply to have their notification requirements reviewed is illustrated in Table E.2 above. Given that offenders who do not choose to have their notification requirements reviewed in the first year that they are eligible to do so may apply for a review at a later stage, the cost estimates are not hugely volatile to this assumption.

### **Continuation / Discontinuation of notification requirements**

Each review will assess the level of risk an offender poses on a case by case basis and this policy does not prescribe the risk assessment tool to be used in the review process. It is, therefore, not possible to predict the outcome of the reviews in terms of continuation of notification requirements. Since it has not been possible to reliably estimate the volume of offenders who will continue to be subject to notification requirements, it has not been possible to quantify the cost of those applying for subsequent reviews.

### **Caveats**

Using sentencing data (1997-2008) in order to model the volume of offenders eligible for a review is not ideal. It is likely that there could be double counting of offenders who have been sentenced for a sexual offence more than once in this time period.

Sentencing statistics are provided by primary offence. Offenders may be sentenced for several offences, one of which made them subject to lifetime notification requirements but which may, possibly, not be the primary offence. These offenders would not be accounted for in the estimated volumes. Additionally, offenders who were not sentenced in England or Wales but who were added to the Violent and Sex Offender Register (ViSOR) as a consequence of a notification order will not be included in these volumes.

The proportion of offenders who are under the age of 18 at the point of sentencing is estimated using data from the PNC (2000-2008). The proportion is assumed to be constant over time and across sentencing bands.

There would be no costs imposed on an offender in seeking a review. It would be open to the offender to decide whether they would apply for review in person or by post. Where an offender is subject to a SOPO, that offender would be required to seek to discharge the SOPO, as provided for under section 108 of the Sexual Offences Act 2003, before seeking a review of their indefinite notification requirements. However, we are satisfied that funding the legal costs of discharging a SOPO is within scope of criminal legal aid and would be subject to the standard interests of justice test and means test. Each legal aid application would be considered on its own merit but in the light of this, we do not consider that this policy approach would be an unreasonable fetter on an offender’s ability to seek review by the police which would raise European Convention on Human Rights (ECHR) incompatibility issues.

<sup>8</sup> The figures illustrated in Table E.2 are based on the assumption that half of those offenders who have their notification requirements reviews and have not been reconvicted for a violent or sexual offence will have their notification requirements discontinued. A sensitivity analysis around this assumption is provided below.

<sup>9</sup> Rounded to the nearest hundred.

It has not been possible to assess the possible impact of ending notification requirements on re-offending rates and detection rates. The impact on re-offending and detections is, therefore, not quantified. Additional risks such as the potential increase in applications to discharge SOPOs which would fall to the Ministry of Justice and the possibility of Judicial Reviews have not been quantified.

## **BENEFITS**

There are resource savings that could result from introducing a review mechanism for those subject to indefinite notification requirements. By enabling the police to discontinue notification in cases where it is determined, on the balance of probabilities and in the absence of any information that indicates a continuing risk of harm to the public, that it would be appropriate to do so, police resources may focus on those offenders who pose a higher and continuing risk. This will enable savings to be made in relation to police time in completing periodic notification, regular assessments, home visits and other management requirements.

The estimated benefits are based on MAPPA guidance (2009), which suggests that police officers should aim to visit registered sex offenders at their registered address at the following frequency:

<b>Risk</b>	<b>Per Year</b>
Very High	12
High	4
Medium	2
Low	1

In addition, police are also required to review registered sex offender (RSO) cases every 4 months and update the record on ViSOR.

It has not been possible to estimate the proportion of sex offender that may have their notification requirements discontinued. Therefore, the benefits have not been quantified.

## **Option 4: Court administered review mechanism where offenders apply to be removed from the notification requirements.**

### **COSTS**

- Police resources involved in supplying relevant information required to conduct a risk assessment, as well as involvement from other Responsible Authority and Duty to Co-operate agencies as defined within the Multi-Agency Public Protection Arrangements (MAPPA).
- Court costs involved in administering the review as well as appeals of review outcomes.
- Legal aid costs involved in the initial review and any appeals.
- Training will need to be provided to police officers and other agencies required to provide information relevant for the assessment of risk in the review. Additionally, training may be required for magistrates in how to conduct a review of notification requirements.

The cost of this option is estimated at an annual average of £0m - £3.4m. The Net Benefit (present value) over 10 years is estimated to be between -£0.0 m and -£28.7m. These estimates are based on the following assumptions:

#### Resources

- Providing information for an assessment of risk requiring approximately 6hrs of police time as well as 6hrs of involvement from other agencies.
- A review of an individual's notification requirements taking between one and five hours in a magistrates court.
- An appeal taking between one and five hours in a crown court.
- 18% of applicants being eligible for legal aid in the magistrates court and all applicants being eligible for legal aid in the crown court.

#### Volumes

- The volume of offenders eligible for a review of their notification requirements has been estimated using the method described in Option 3 above.
- It has not been possible to predict what proportion of those offenders who seek a review are successful and have their notification requirements discontinued. Similarly, it has not been possible to predict what proportion of applicants will be unsuccessful and therefore appeal their review decision.

Table E.4, below, summarises the estimated average annual volumes, average annual cost, and total cost (present value) associated with the different scenarios around the proportion of eligible offenders applying for a review of their notification requirements. As stated above, it has not been possible to predict what proportion of offenders who seek a review will be successful and what proportion will wish to have their review decision appealed. It is possible for an offender to appeal the review hearing decision, which would take place in a crown court. While it is not possible to estimate the proportion of offenders who are unsuccessful in their application for review, it is likely that those who are will appeal that decision.

<b>% of eligible offenders who apply for a review</b>	<b>0%</b>	<b>25%</b>	<b>50%</b>	<b>75%</b>	<b>100%</b>
<b>Estimated average annual volume of reviews<sup>11</sup></b>	0	800	1,000	1,100	1,200
<b>Estimated average annual cost of reviews<sup>12</sup></b>	£0.0m	£2.3m	£3.0m	£3.3m	£3.4m
<b>Estimated total cost (present value)</b>	£0.0m	£18.6m	£24.5m	£27.2m	£28.7m

It is unlikely that none of the eligible offenders will apply to have their notification requirements reviewed. This scenario would be similar to do 'do nothing' option briefly outlined in section D in that none of the indefinite notification requirements would be reviewed.

#### **BENEFITS**

- Providing a thorough review process, which provides a method of managing risk, as well as a right of appeal.

The benefits of this option are expected to be similar to those quantified in Option 3. Equally, it has not been possible to quantify these.

<sup>10</sup> The figures illustrated in Table E.4 are based on the assumption that half of those offenders who have their notification requirements reviews and have not been reconvicted for a violent or sexual offence will have their notification requirements discontinued.

<sup>11</sup> Rounded to the nearest hundred

<sup>12</sup> This is calculated assuming 3 hours of court time is required. This is the best estimate of the unit cost.



## **F. Risks**

Reviewing indefinite notification requirements of registered sex offenders under section 82 of the Sexual Offences Act 2003 is a new intervention which is required in the light of the Supreme Court declaration of Article 8 incompatibility in the case of R v F & Thompson. As such there are a number of estimates made within this assessment. There are the following unknowns in relation to this policy:

- The actual volumes of applications for review;
- The impact of the review mechanism on subsequent applications for civil Orders and applications for the discharge of SOPOs;
- The threshold for removal and the volumes of offenders whose indefinite notification requirements will be discontinued as a result of the review process;
- The potential impact of ending notification requirements on re-offending rates and detection rates.
- The actual costs and savings that will result.

It is envisaged that the preferred policy outlined here will enable costs to be kept to a minimum. We will work with the police and agencies within MAPPA to develop clear guidance and training to ensure that processes are aligned nationally and the review process is applied fairly and consistently across England and Wales.

A number of studies have been considered in the development of this policy which analyse reconviction rates of convicted sex offenders over a follow-up period of 20-25 years. There is no evidence that a point can be reached at which a sex offender presents no risk of re-offending. Approximately a quarter of the previously convicted offenders were reconvicted for a sexual offence within this time period, the majority (over 80%) of whom were reconvicted within 10 years. This proportion increases to a third if all violent offences are considered rather than just sexual offences.

The three studies considered suggest that the risk of reconviction for a sexual offence persists throughout the follow-up period. The risk of reconviction after ten years decreases to approximately three per cent for any sexual offence and five per cent for any violent and sexual offence. It is noted that the risk of reconviction is slightly lower for those convicted of a less serious sexual offence in the first instance.

It is considered that this policy is a fair and proportionate response to the Supreme Court judgment which found the lack of any prospect for review to be incompatible with Article 8 of the ECHR, and that it strikes an appropriate balance between individual rights and public safety. In view of the continuing presence of risk following release from custody the Government does not consider that it would be appropriate to introduce a mechanism which would consist of automatic removal from the Sex Offender register after a fixed period of time (option 2), which would include no individual assessment of risk before an offender's notification requirements would cease.

## **G. Enforcement**

Enforcement of this policy will be by the police and other Responsible Authority and Duty to Co-operate agencies as defined within the Multi-Agency Public Protection Arrangements (MAPPA), with oversight from the Home Office.

## **H. Summary and Recommendations**

The table below outlines the costs and benefits of the proposed changes.

<b>Table H.1 Costs and Benefits</b>		
<b>Option</b>	<b>Costs</b>	<b>Benefits</b>
<b>2</b>	£N/K	£N/K
	Cost to: <ul style="list-style-type: none"> <li>• society in terms of a unmanaged, and possibly increased, risk of reoffending.</li> <li>• the police in decreased ability to manage risk and possible adverse effect on detecting offences.</li> <li>• police and courts in the risk of increased applications for alternative risk management tools.</li> </ul>	Benefits to: <ul style="list-style-type: none"> <li>• the police/courts in providing a mechanism that is potential not resource intensive.</li> <li>• It is considered that this policy will achieve Article 8 compliance and avoid further, potentially expensive, legal challenge.</li> </ul>
<b>3</b>	£50k-£70k (one-off) + £0.8m/year	£N/K
	<ul style="list-style-type: none"> <li>• Amendments to the ViSOR database will be required.</li> </ul>	<ul style="list-style-type: none"> <li>• It is considered that this policy will achieve Article 8 compliance and avoid further, potentially expensive, legal challenge.</li> </ul>
<b>4</b>	£0m/year - £3.4m/year	£N/K
	<ul style="list-style-type: none"> <li>• Amendments to the ViSOR database will be required.</li> <li>• Training will have to be provided to the police, other agencies required to provide information for the assessment of risk, as well as magistrates regarding the review of notification requirements and assessment of risk.</li> </ul>	<ul style="list-style-type: none"> <li>• It is considered that this policy will achieve Article 8 compliance and avoid further, potentially expensive, legal challenge.</li> </ul>
Source:		

Option 3 is the preferred option. The Government recommends that the proposal for the draft remedial Order is approved to introduce a review mechanism of the indefinite notification requirements of registered sex offenders, which will remedy the Article 8 incompatibility of Part 2 of the Sexual Offences Act 2003, as outlined within option 3.

## I. Implementation

The Government plans to implement these changes through a non-urgent remedial Order made under section 10(2) of the Human Rights Act 1998. It is envisaged that subject to parliamentary business, the review mechanism will be in force across England and Wales in early 2012. Detailed practitioner guidance will be developed and training will be provided to the police and other agencies involved in the review process.

Although it is envisaged that there will be some individuals who will be eligible to apply for review immediately (i.e. those who were under the age of 18 on the date of their initial notification), the policy will not become effective for adults until summer 2012, 15 years after the notification requirements originally came into force (on 1st September 1997).

## **J. Monitoring and Evaluation**

The effectiveness of the new scheme will be monitored on an ongoing basis by the Home Office and information relevant to the review process will be stored on ViSOR.

It is envisaged that this policy will achieve the objective of remedying the Supreme Court declaration of Article 8 incompatibility in relation to Part 2 of the Sexual Offences Act 2003.

## **K. Feedback**

The Home Office has regular contact with the police and NOMS and attends regular meetings of the ACPO Public Protection Working Group. Feedback on how the review mechanism is working can be received and discussed through these channels.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p><b>Basis of the review:</b> [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];</p>
<p><b>Review objective:</b> [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p><b>Review approach and rationale:</b> [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p><b>Baseline:</b> [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p><b>Success criteria:</b> [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p><b>Monitoring information arrangements:</b> [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p>
<p><b>Reasons for not planning a review:</b> [If there is no plan to do a PIR please provide reasons here]</p>

## Annex 2. Specific Impact Tests

### Statutory Equality Duties

#### Equality Impact Assessment

##### **Background**

The Government is required to take steps to remedy the declaration of incompatibility made by the Supreme Court in the case of *R (on the application of F and Angus Aubrey Thompson) v Secretary of State for the Home Department [2010] UKSC 17*, in relation to the indefinite notification requirements under section 82(1) of the Sexual Offences Act 2003. It was the view of the Supreme Court that 'there must be some circumstances in which an appropriate tribunal could reliably conclude that the risk of an individual carrying out a further sexual offence can be discounted to the extent that continuance of notification requirements is unjustified'.

In the light of this declaration of incompatibility, the Government is seeking to introduce a review mechanism whereby an offender who has been made subject to the notification requirements for an indefinite period may seek a review of those requirements after a fixed period of time in the community. This review will be completed by the police, with input from other Responsible Authority and Duty to Co-operate agencies as defined within the Multi Agency Public Protection Arrangements (MAPPA).

##### **Groups affected by this change in policy**

There are two main categories of individuals / groups which may be affected by this new policy; perpetrators and victims of the sexual offences which make an individual subject to the notification requirements for an indefinite period. It is important that both are considered as part of the EIA.

This policy will apply only to registered sex offenders who have been made subject to the notification requirements for an indefinite period under Part 2 of the Sexual Offences Act 2003. This will include a person who, in respect of an offence listed under Schedule 3 of the Act, is or has been sentenced to imprisonment for life or for a term of 30 months or more. Where a person who, in respect of the offence or finding, is or has been admitted to hospital subject to a restriction order, an indefinite period of notification beginning with that date will also apply.

Sex offenders are not a homogenous group. However, there are various ways in which we can describe the demographic characteristics of offender populations. Most data will either examine the characteristics of sub groups of individuals who have been convicted of offences; or alternatively they may consider sub groups (e.g. covering only imprisoned offenders). The general sex offender population (ie anyone convicted of a sex offence) and the imprisoned sex offender populations are of course different in their composition. The latter will be influenced by the presence of offenders serving longer sentences for more serious offences.

##### *Age*

An analysis of the criminal careers of offenders convicted of serious sexual assault (Soothill et al 2002) analysed the age and prior offending characteristics of 1,057 offenders in England and Wales. The average of sex offenders (including juveniles) was under 29 years and the average age at first conviction was 21 years; less than 2 per cent of this sample of offenders was under the age of 16. Because of the nature of the sampling (offenders over the age of 45 were excluded from the analysis), the average figures understate the average age of offenders.

##### *Ethnic background*

Data provided by the HM Prison Service on the ethnic background of imprisoned male sex offenders in England and Wales indicate that 82 per cent are white; 10 per cent are Black / Black British; 6 per cent are Asian / Asian British; and 2 per cent are other / mixed. Ethnicity is not recorded for 0.4 per cent of the population (data cited in Cowburn, M, Lavis, V. and Walker T (2008) 'Black and minority ethnic sex offenders', *Prison Service Journal*, 178, pp44-49. A simple comparison against self reported ethnic background of the population as a whole (from the Census) would suggest that both Black/Black British and Asian/Asian British groups are over represented in the imprisoned sex offender population.

Cowburn *et al* also indicate that BME sex offenders are markedly over represented in the younger age groups of imprisoned sex offenders.

Victim safety, preventing re-victimisation and avoiding the creation of new victims is fundamental to the police and other MAPPA agencies' public protection role. A range of factors will be taken into account in the review decision, including the seriousness of the offence which made offender subject to indefinite notification and the age of the victim and difference in age between victim and offender at time the offence was committed. Additionally, officials have worked closely with the Victim Policy Team in NOMS who have responsibility for the Victim Contact Scheme, which informs victims of key stages in an offender's sentence. Guidance for Victim Liaison Officers (VLOs) will be updated to reflect that at the time of the exit interview from this scheme, victims should be advised of the date at which the relevant offender will become eligible to seek a review and should be advised of the options open to them (i.e to submit representations to the police or notify the police of any concerning behaviour). The proposal for the draft order provides that where a victim gives any submission or evidence to the police, this will be considered within the review. Officials will ensure that both VLO guidance and practitioner guidance on administering the review mechanism is clear as to engagement with victims, where appropriate.

There will be a robust review and assessment of the level of continuing risk posed by the individual in giving consideration to whether it would be appropriate to discontinue the individual's indefinite notification requirements. Where it is determined that an offender continues to pose a risk they will remain subject to the notification requirements and will do so for life, if necessary. It is considered that this is a fair and proportionate response to the Supreme Court judgment which found the lack of any prospect for review to be incompatible with Article 8 of the ECHR, which strikes an appropriate balance between individual rights and public safety.

### **Consultation**

There has been no formal public consultation process on the proposal for the draft remedial Order. As the Home Office is seeking to amend the current law by way of a (non-urgent) remedial Order made under section 10(2) of the Human Rights Act 1998, the Order will be subject to Parliamentary scrutiny. The proposal for the draft remedial Order will be laid before both Houses for an initial 60 day period, during which time representations can be made by Members and Lords, and the Joint Committee on Human Rights is required to report on the proposal for the draft Order. In light of any representations received, amendments may be made and a draft Order will be laid before Parliament for a further 60 day period. The Order will only be made and brought into effect once it is approved by both Houses.

The Home Office 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 for the draft Remedial 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. The Home Office will continue to engage with interested parties as the proposal for the draft remedial Order is progressed through Parliament.

### **Assessment**

In the development of this policy the Home Office has given due consideration to the impact it will have on different groups and has given particular consideration to the potential impact, both positive and negative, of the policy in terms of:

- Race
- Disability
- Gender
- Gender Identity
- Religion, belief and non-belief
- Sexual orientation
- Age

**Race:** From the available evidence, data relating to offender populations is outlined above. The proposed policy will be equally accessible to all offenders who are subject to the notification requirements for an indefinite period once they have completed qualifying period. It is not envisaged that the policy will disproportionately affect any particular ethnic group.

**Disability:** The proposals for the review mechanism include provision for the application to be made in writing or in person. Detailed practitioner guidance will be developed which, subject to the proposals being successfully progressed through Parliament, will be available from Summer / Autumn 2011. This guidance will seek to ensure that the review process is fully accessible to all eligible offenders.

**Gender:** This policy will apply equally to both males and females who have been made subject to the notification requirements under section 82(1) of the Sexual Offences Act 2003 for an indefinite period. It is acknowledged that there are a number of approved assessment tools which are used by the agencies that make up the Responsible Authority (police, prisons, probation) under the Multi Agency Public Protection Arrangements to conduct an assessment of the risk posed by the relevant sex offender, and that different tools are used in the assessment of risk of males and females. The Home Office will be working with key partners and experts to develop practitioner guidance and the detail of the basis for the review decision.

'Ultimately, formal risk assessments inform professional judgements and underpin defensible decision-making. The key principle for MAPPA agencies is that risk assessments, undertaken by individuals within agencies, should be based on the use of tools and procedures currently approved for use within that agency. Agency protocols and procedures must be carefully adhered to and current guidance on the use of the respective tools must be followed' [section 7.9 MAPPA Guidance, version 3.0, 2009]. This new policy will operate within the existing MAPPA framework.

**Gender Identity:** It is not considered that this policy highlights any issues specific to gender identity.

**Religion / Belief and non-belief:** It is not considered that this policy highlights any issues specific to religion or belief.

**Sexual Orientation:** It is not considered that this policy highlights any issues specific to sexual orientation.

**Age:** Under these proposals, an offender (who is 18 years or over on the date of their Initial Notification) would become eligible to apply for a review 15 years after the date of their initial notification following their release from custody. This period would exclude any circumstances where an offender is required to notify before their custodial sentence for the qualifying offence commences (i.e. when an offender is bailed before sentencing). For an offender who was under the age of 18 on the date of their Initial Notification, that offender would become eligible to apply for a review 8 years from the date of making their initial notification following release from custody. The difference in review periods is in line with the fixed notification periods within section 82(1) of the Sexual Offences Act 2003 (for offences of less than 30 months) where periods are halved where a person is under 18 on the date of their conviction or finding.

As noted above, detailed practitioner guidance will be developed and training will be provided to the police and other agencies involved in the review process. It is envisaged that this would detail all necessary considerations in completing a review, details of the process and what is required at each stage, and further detail on the factors which form the basis for the review decision. This will ensure that frontline professionals identify and respond appropriately and consistently to individuals seeking a review and that the review process is applied consistently and fairly across England and Wales.

Furthermore, agencies operating within the MAPPA framework are committed to equal access to services for all groups, particularly in relation to race, gender, age, religious belief, sexuality, sexual orientation and disability. In undertaking its work, MAPPA agencies will be sensitive and responsive to people's differences and needs and will integrate this understanding into the delivery of their functions to ensure that nobody is disadvantaged as a result of their belonging to a specific social group. This commitment is outlined within section 1.5 of the MAPPA Guidance, version 3.0, 2009.

It is the Government's view that the proposal for the draft Remedial Order fully remedies the legislative incompatibility found in relation to Part 2 of the Sexual Offences Act 2003 and strikes an appropriate balance between individual rights and public safety and it is not considered that any particular group will be disproportionately affected by the proposed policy.

## **Ancillary**

It is considered that, where an offender is subject to a Sexual Offences Prevention Order (SOPO), it would be necessary for that offender to discharge the Order, as provided for under section 108 of the Sexual Offences Act 2003, before they would be eligible to seek a review of their indefinite notification requirements. The basis for this policy proposal is that it would not be practical to require police forces to conduct a review where the outcome could not bring to an end an individual's indefinite notification requirements whilst that individual remains subject to the SOPO, for which notification is an automatic consequence. If an offender is successful in discharging their SOPO on application to a Magistrates' Court, they could then seek a review of their indefinite notification requirements, subject to meeting the other eligibility requirements.

In adopting this approach we are satisfied that funding the legal costs of discharging a SOPO is within scope of criminal legal aid and would be subject to the standard interests of justice test and means test. Each legal aid application would be considered on its own merit but in the light of the above, we do not consider that this policy approach would be an unreasonable fetter on their ability to seek review by the police which would raise ECHR incompatibility issues.

## **Monitoring**

Information on individuals subject to notification requirements for an indefinite period and details of any application for a review will be stored on ViSOR.

The Home Office will continue to engage with interested parties as the proposal for the draft remedial Order is progressed through Parliament. We will review this EIA alongside development of the practitioner guidance.

## **Social Impacts**

### Human Rights

It is considered that this policy will remedy the declaration of incompatibility that was made by the Supreme Court in the case of R (on the application of F and Angus Aubrey Thompson) v Secretary of State for the Home Department [2010] UKSC 17, in relation to Part 2 of the Sexual Offences Act 2003.

### Justice

This policy does not create any new offence or criminal penalty. However, it is acknowledged that the policy may have a bearing on applications to discharge Sexual Offences Prevention Orders (provided for under section 108 of the Sexual Offences Act 2003). Funding the legal costs of discharging a SOPO is within scope of criminal legal aid and would be subject to the standard interests of justice test and means test. Each legal aid application would be considered on its own merit. It is also acknowledged that Judicial Review is a risk with this policy approach and that this may have a bearing on legal aid costs. The Ministry of Justice have been consulted and included in the development of this policy.



Impact Assessment: Reviewing offenders subject to indefinite notification requirements (Part 2 of Sexual Offences Act 2003).

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## **Required Information (Paragraph 3 of Schedule 2 to the Human Rights Act 1998)**

### ***1. Explanation of the incompatibility which the proposed draft Sexual Offences Act 2003 (Remedial) Order 2011 seeks to remove including particulars of the relevant declaration, finding or order of the United Kingdom Court or the European Court of Human Rights***

The Sexual Offences Act 2003 (“the 2003 Act”), introduced in May 2004, provided a comprehensive new legislative framework for sexual offences, covering offences against adults, children and familial sexual offences. It also 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. A person 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 their details change.

Under Part 2 of the 2003 Act, a person who, in respect of an offence listed in Schedule 3 to the 2003 Act, is or has been sentenced to imprisonment for life or for a term of 30 months or more, will become subject to the notification requirements for an indefinite period. The notification requirements will also apply to those made subject to an unrestricted hospital order or a restricted hospital order following a finding of unfitness to plead or not guilty by reason of insanity (under section 5 of the Criminal Procedure (Insanity) Act 1964). Where a person who, in respect of the offence or finding, is or has been admitted to hospital subject to a restriction order, an indefinite period of notification beginning with that date will also apply.

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 Supreme Court upheld an earlier decision of the Court of Appeal and made a declaration under section 4 of the Human Rights Act 1998 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”.

Importantly, the leading Supreme Court judge in this case, Lord Phillips, noted that the imposition of notification requirements pursued a legitimate aim but said that “there must be some circumstances in which an appropriate tribunal could reliably conclude that the risk of an individual carrying out a further sexual offence can be discounted to the extent that continuance of notification requirements is unjustified”. In other words, the Supreme Court concluded that the indefinite notification requirements without review under section 82(1) of the 2003 Act could not be proportionate in all cases.

The Home Office is accordingly taking steps to remedy the legislative incompatibility identified by the Supreme Court in the case of *R (on the application of F and Angus Aubrey Thompson) v Secretary of State for the Home Department* [2010] UKSC 17.

## **2. Statement of the reasons for proceeding by way of a remedial Order**

The Government recognises that it is generally desirable to make amendments to primary legislation by way of a bill. It is considered that in remedying the legislative incompatibility identified in section 82(1) of the 2003 Act, there are compelling reasons for proceeding under section 10 of the Human Rights Act 1998 to make a remedial order rather than by way of primary legislation.

The issue identified by the Supreme Court in the case of *R (on the application of F and Angus Aubrey Thompson) v Secretary of State for the Home Department* [2010] UKSC 17, was that the absence of the opportunity for review of indefinite notification requirements constituted a disproportionate interference with an individual's right to respect for private and family life (under article 8 of the ECHR). The Government takes this issue very seriously and considers that steps should be taken to address this incompatibility expeditiously, in line with the recommendations of the Joint Committee on Human Rights (JCHR). In the absence of any suitable First Session bills to rectify the incompatibility, and mindful of the need to avoid undue delay, it is the view of the Government that it is appropriate to seek to remedy the incompatibility in the 2003 Act by means of the available process for making remedial orders under section 10 of the Human Rights Act 1998.

The Government intends to use the remedial order process to remove the incompatibility, by way of the non-urgent procedure. The Government reviewed the factors that indicate when it is appropriate to use the urgent route. These include the significance of rights affected, the seriousness of the consequences of not remedying the incompatibility, the adequacy of compensation arrangements, the number of people affected by the incompatibility, and any alternative ways of mitigating the effect of the incompatibility pending primary legislation, as outlined by the Joint Committee on Statutory Instruments (JCSI) in its Seventh Report. The Government has concluded that this approach would not be suitable, given the time that has elapsed since the decision of the Supreme Court was handed down and the need for robust Parliamentary consideration of the balance to be struck between individual rights and public safety.

Following the decision of the Supreme Court on 21 April 2010, the Government has worked with key partners including the Association of Chief Police Officers (ACPO) and the National Offender Management Service (NOMS) in order to ascertain how best to give effect to the Supreme Court's decision, and to develop a fair and proportionate response to it, which fully accords with the Government's priority of safeguarding public protection. The Home Secretary made a statement to the House of Commons on 16<sup>th</sup> February setting out the Government's intention to bring forward proposals to

remedy the legislative incompatibility. The Government is now in a position to lay the proposal for the draft remedial order.

Sex offender policy is a devolved area and Scotland has decided to legislate separately on this issue, in response to a similar case dealing with the indefinite notification regime (*Mr A v The Scottish Ministers*). In view of the way the Human Rights Act 1998 is incorporated into the Scotland Act 1998, the Scottish government are required to act swiftly and have proceeded by way of an urgent remedial order. Following a period of consultation on the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010, this order was revoked and replaced by the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011, which came into force on 28<sup>th</sup> January 2011.

### **3. Statement of the reasons for making an Order in the terms proposed**

The proposed draft Sexual Offences Act 2003 (Remedial) Order 2011 seeks to introduce a mechanism for reviewing the indefinite notification requirements under section 82(1) of the 2003 Act.

The review process outlined within the proposal for the draft Remedial Order would be triggered by an offender who is subject to indefinite notification requirements making an application to the police. In a typical case, the offender would be entitled to make an application fifteen years following that offender's release from custody.

The review process would be completed by the police on the basis of a range of factors, including information provided from the bodies comprising the Responsible Authority (e.g. the police and provider of probation services) and Duty to Co-operate agencies (e.g. housing authority, Primary Care Trust) which operate within the Multi-Agency Public Protection Arrangements (MAPPA) framework established under section 325 of the Criminal Justice Act 2003. It is considered that this would provide a fair and proportionate response to the decision of the Supreme Court, ensuring that there is robust consideration of all available information and an individual assessment of risk before an offender is removed from the notification requirements.

The process requires the police to make an initial determination in relation to which the offender would be entitled to make representations. If the offender does so, the police must carry out a further review of the matters contained in those representations before making a final determination.

It is the Government's view that the proposal for the draft Remedial Order fully remedies the legislative incompatibility found in relation to the indefinite notification requirements in section 82(1) of the 2003 Act, and strikes an appropriate balance between individual rights and public safety.