Draft Order laid before Parliament under paragraph 2(a) of Schedule 2 to the Human Rights Act 1998 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No.

CRIMINAL LAW, ENGLAND AND WALES

The Sexual Offences Act 2003 (Remedial) Order 2012

Made - - - -

Coming into force - -

The indefinite notification requirements in section 82(1) of the Sexual Offences Act 2003(**1**) have been declared(**2**) under section 4 of the Human Rights Act 1998(**3**) to be incompatible with a Convention right(**4**).

The Secretary of State considers that there are compelling reasons for proceeding by way of remedial order(**5**) to make such amendments to the Sexual Offences Act 2003 as she considers necessary to remove the incompatibility.

In accordance with paragraph 2(a) of Schedule 2 to the Human Rights Act 1998, a draft of this instrument was laid before Parliament and was approved by resolution of each House of Parliament, a document containing a draft of this instrument having previously been laid before Parliament in accordance with paragraph 3(1) of that Schedule.

Accordingly, the Secretary of State makes the following Order in the exercise of the powers conferred by section 10(2) of, and paragraph 1(1)(a), (c) and (d), (2) and (3) of Schedule 2 to, the Human Rights Act 1998:

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Sexual Offences Act 2003 (Remedial) Order 2012 and shall come into force 14 days after the day on which it is made.

(2) This Order extends to England and Wales only.

(3) In this Order, "the 2003 Act" means the Sexual Offences Act 2003.

(**1**) 2003 c. 42.
(**2**) By the Supreme Court in the case of The Queen on the application of F and another v Secretary of State for the Home Department [2010] UKSC 17.
(**3**) 1998 c. 42.
(**4**) See section 1(1) of the Human Rights Act 1998 for the definition of "the Convention rights" and section 21(1) of that Act for the definition of "the Convention".
(**5**) See section 21(1) of the Human Rights Act 1998 for the definition of "remedial order".

Amendment of the Sexual Offences Act 2003

2. The 2003 Act is amended in accordance with article 3.

3. After section 91 insert—

"**Review of indefinite notification requirements: qualifying relevant offender**

91A.—(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.

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

91B.—(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(**6**).

(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,

(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(**7**) by arrangements under section 3 of the Offender Management Act 2007(**8**),

(**6**) 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.
(**7**) 2003 c. 44.
(**8**) 2007 c. 21.

(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(**9**)), 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.

Review of indefinite notification requirements: determination of application for review

91C.—(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).

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

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

(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).

(**9**) 1952 c. 52.