



Home Office

**GUIDANCE ON REVIEW OF  
INDEFINITE NOTIFICATION  
REQUIREMENTS ISSUED UNDER  
SECTION 91F OF THE SEXUAL  
OFFENCES ACT 2003**



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# INTRODUCTION

1. This statutory guidance is issued by the Secretary of State under section 91F(1) of the Sexual Offences Act 2003 (“the 2003 Act”), which was inserted into the 2003 Act on 30 July 2012 by the Sexual Offences Act 2003 (Remedial) Order 2012 (“the remedial order”). It provides guidance to the chief officers of police in all areas in England and Wales (“the police”) in relation to the new process for reviewing the indefinite notification requirements applying to registered sex offenders under the 2003 Act.
2. As well as comprising guidance to the police, it is intended to assist other practitioners and agency partners, who are responsible for the management of offenders in the community, in their understanding and application of the new legislation.
3. Recipients of this guidance are expected to:
  - note changes to Part 2 of the 2003 Act made by remedial order;
  - note and put into operation the review process, including the use of the forms attached at Annexes A to E; and
  - consider whether any changes to their established procedures are required as a result of this guidance and communicate these to staff.
4. The police are asked to communicate the changes to relevant offenders living within each of their police areas. The Association of Chief Police Officers (ACPO) will issue separate guidance to all police forces to communicate the effect of these changes.
5. If you have any queries regarding this guidance, please contact:

**Interpersonal Violence: Policy & Delivery Team, Violent and Youth Crime Prevention Unit, Home Office, 4th Floor, Fry Building, 2 Marsham Street, London, SW1P 4DF**

**Email: SexOffenderManagement@homeoffice.gsi.gov.uk**

**Telephone: 0207 035 8430**
6. Further non-statutory guidance on Part 2 of the 2003 Act is available on the Home Office website: <http://www.homeoffice.gov.uk/publications/police/operational-policing/sexual-offences-act-2003?view=Binary>
7. It should be noted that Part 1 of the 2003 Act is the responsibility of the Ministry of Justice. Separate guidance on Part 1 is available from that department.

# CURRENT ARRANGEMENTS

1. Prior to the remedial order coming into force, the 2003 Act made provision to the effect that all sex offenders convicted of a relevant offence and sentenced to a period of imprisonment for 30 months or more became subject to indefinite notification requirements, without an opportunity for review.
2. Offenders who are sentenced to a term of imprisonment of less than 30 months will be subject to notification requirements for a fixed period of up to 10 years, in accordance with the 2003 Act (see table). The periods for which an individual is subject to the notification requirements are halved for offenders who are under 18 on the date of conviction, caution, or other finding. These periods have not been altered by the remedial order coming into force.
3. Offenders subject to notification for a fixed period (as described above) will have to comply with the notification requirements for the full term. Only those offenders subject to notification for an indefinite period (commonly referred to as lifetime registration) will be eligible to seek a review once a fixed period of time has elapsed; for adults this will be 15 years and for juveniles it will be 8 years.
4. The period of time for which an offender is subject to the notification requirements is prescribed by the 2003 Act; neither the police nor the judiciary have any discretion in this matter.

Where the (adult) offender is:	Notification period:
Sentenced to imprisonment for life or to a term of 30 months or more	Life
Detained in a hospital subject to a restriction order	Life
Sentenced to imprisonment for more than 6 months but less than 30 months imprisonment	10 years
Sentenced to imprisonment for 6 months or less	7 years
Detained in a hospital without being subject to a restriction order	7 years
Caution	2 years
Conditional discharge	The period of the conditional discharge
Any other description (i.e. community sentence, fine)	5 years

5. The 2003 Act requires offenders subject to the notification requirements to notify to their local police certain personal details and information, including (but not limited to) their name, address, date of birth and national insurance number. This is done initially (usually following release from custody), annually or whenever their details change.

## CALCULATING AN OFFENDER'S NOTIFICATION PERIOD

6. Offenders should be advised by the court at the time of sentencing of the length of time they will be subject to notification requirements. However, offender managers should ensure that offenders have been correctly advised of the length of time for which they will be required to notify.

## THE REMEDIAL ORDER (THE REVIEW MECHANISM)

7. The remedial order was laid before Parliament on 5 March 2012, in accordance with paragraph 2(a) of Schedule 2 to the Human Rights Act 1998, to remedy the incompatibility identified by the Supreme Court in *F & Thompson* in April 2010. After the remedial order was approved by Parliament, it came into force on 30 July 2012.
8. By virtue of the remedial order, offenders who are subject to the notification requirements under Part 2 of the 2003 Act for an indefinite period have been given the opportunity to apply for a review. Offenders will only be eligible to apply for a review after a fixed period of time has elapsed.

## AIMS

9. The remedial order ensures that the notification regime in the 2003 Act is no longer incompatible with Article 8 of the European Convention on Human Rights and that the Government complies with its obligations under section 6 of the Human Rights Act 1998.
10. By enabling those former offenders who are considered to no longer pose a risk to society to cease to be subject to the notification requirements, we believe that the police

will be able to focus their resources on the rigorous and effective management of those offenders who continue to pose such a risk. Offenders are not automatically released from the notification requirements; the police must be satisfied that they no longer pose a risk, or a sufficient risk.

## PRINCIPLES

11. The principles of the notification requirements remain. They continue to be an effective and legitimate tool for police to manage offenders in the community. As noted by Lord Phillips in the Supreme Court, the 'notification requirements pursue a legitimate aim'.
12. The introduction of a right to apply for a review of the requirements does not equate to a right to be automatically removed from the register. The police are required to consider a range of matters and factors, which include any representations from responsible bodies (operating within the Multi Agency Public Protection Arrangements framework) and victims.
13. A central aim of this guidance is to ensure fairness and consistency on the part of those responsible for undertaking the review, and in their application of the test to be applied by the police.
14. Public protection remains a priority and we will continue to work with the police and other agency partners to ensure community safety.

## WHAT IS NEW?

15. The remedial order has introduced a mechanism by which an offender who is subject to notification requirements for an indefinite period can apply for a review. All other aspects of the notification requirements

remain the same. Guidance on Part 2 of the Sexual Offences Act 2003 can be found on the Home Office website.

16. The review will require the police to consider the risk of sexual harm posed by a relevant offender and the effect of the continuation of the indefinite notification requirements on that offender.
17. Based on the information and intelligence obtained as part of the review, the police will determine whether they consider that an offender should cease to be, or remain subject to the notification requirements.
18. The remedial order does not mean that offenders will automatically cease to be subject to the requirements. Those who continue to pose a risk, or a sufficient risk, will remain subject to them, for life if necessary.
19. The police are best placed to assess the risk posed by an offender and determine whether they should remain subject to indefinite notification requirements. Nonetheless, the decision made by the police is subject to a right of appeal to the magistrates' court.

## CROSS-FORCE ISSUES

20. If an offender relocates and takes up residence in a new police area, the management of the offender will become the responsibility of that new police area.
21. Offenders are required by the notification requirements to inform police of any changes to the information they have provided about their residence arrangements (they must do so within 3 days of the change occurring). In the event that an offender notifies police of a new address which would result in that offender being managed by the police in a new area, the police in the existing area must

update ViSOR to reflect the change to the offender's residence and transfer the case in accordance with current ACPO guidance; this can be found at [www.acpo.police.uk/documents/crime/2010](http://www.acpo.police.uk/documents/crime/2010).

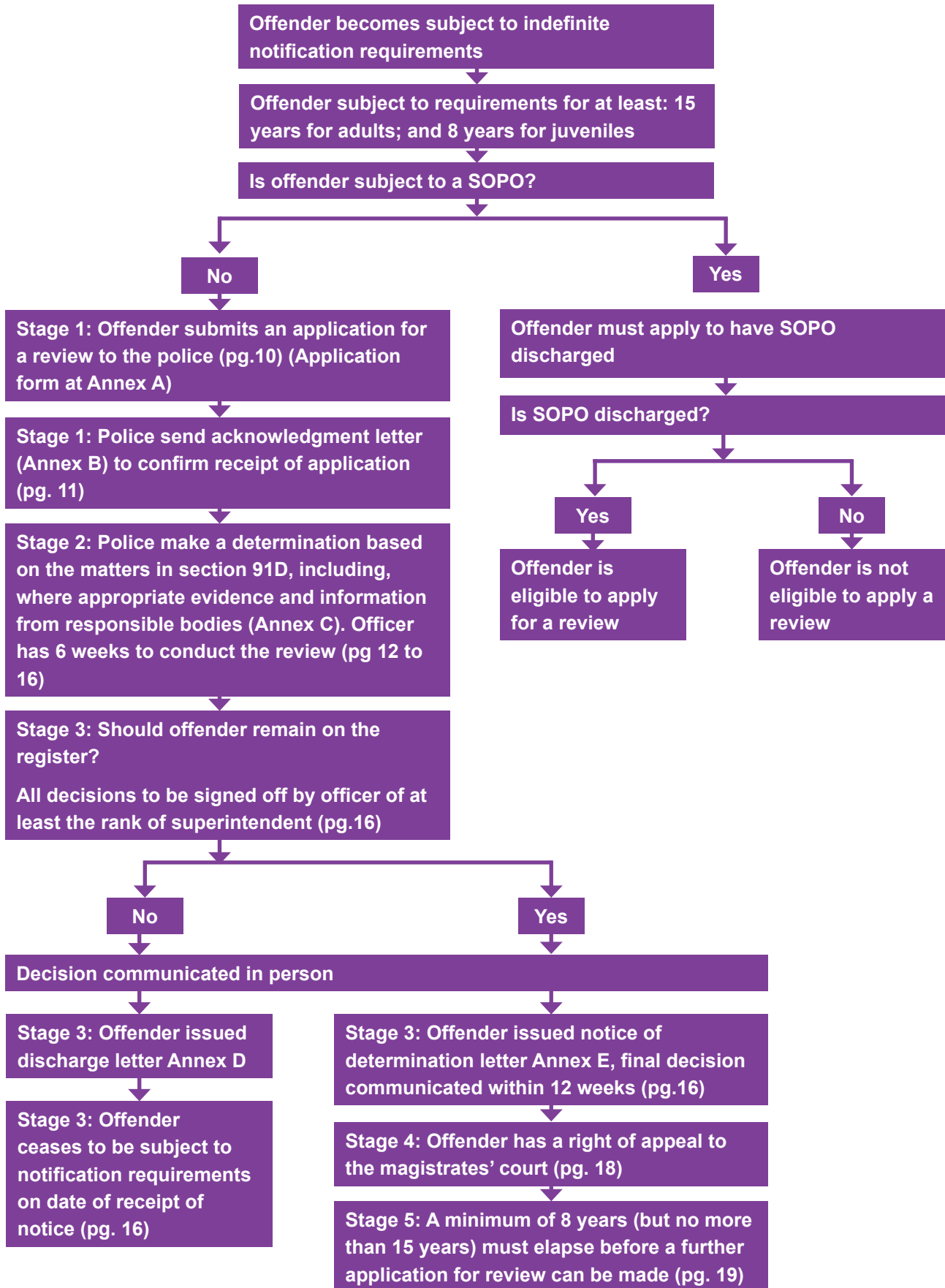
22. Where an offender has previously applied for a review and subsequently becomes managed by the police in a new area, the police in the new area should note the determination of the previous review and the further qualifying date set in accordance with that determination. Details of the further qualifying date will be logged on ViSOR, details of which can be found in the 'further review periods and maintaining records' section of this guidance.

## DEVOLVED ADMINISTRATIONS

23. Sex offender policy is a devolved matter. This statutory guidance is intended to address the process for the review of indefinite notification requirements in England and Wales.

## 2. THE PROCESS

### PROCESS MAP





## **WHO IS ELIGIBLE TO APPLY FOR REVIEW (SECTION 91A)**

1. The remedial order introduces a mechanism by which offenders subject to indefinite notification can seek a review to determine whether they can cease to be subject to those requirements.
2. Individuals subject to indefinite notification will only become eligible to seek a review once they have been subject to the indefinite notification requirements for a period of at least 15 years for adults and 8 years for juveniles.
3. In the event that an offender is the subject of a SOPO (sexual offences prevention order) or an interim SOPO, the order must be discharged under section 108 of the 2003 Act, before the offender may make an application for a review of the indefinite notification requirements<sup>1</sup>.
4. The ‘process map’ may be used by the police as a tool to assist in the steps taken during each review application.

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**1** To note: all offenders who are made subject to a SOPO will automatically become subject to notification requirements.

# STAGE 1: APPLICATION AND ACKNOWLEDGEMENT (SECTION 91B)

## ENGAGEMENT WITH RELEVANT OFFENDERS

1. This is an applicant led process. The onus is on the individual offender to remain up to date, in relation to the obligations and requirements whilst under management.
2. ViSOR does enable the police to confirm with offenders their eligibility and qualifying date if required.

## QUALIFYING DATES (SECTION 91B)

3. The date on which a relevant offender can apply for an application is referred to as the qualifying date and is defined as a date after the end of the 15 year period, calculated from the day on which the offender gives the relevant notification.
4. In the case of a relevant offender who is aged under 18 years on the relevant date, the period will be 8 years.
5. If the police make a determination under section 91C which results in the offender remaining subject to notification, the offender will become eligible to apply for a further review.
6. The date on which an offender may seek a further review is called the further qualifying date, and is a minimum period of 8 years (if considered necessary by the police, this period can be extended to a period up to but not exceeding 15 years).
7. The further qualifying date will be the day after the end of the 8 year or longer period (up to 15 years) and will be calculated from the date of determination.
8. The qualifying date cannot be earlier than the expiry of the fixed period as specified in a notification continuation order in accordance

with section 88A to 88I (this order is made in Scotland).

## MAKING AN APPLICATION (SECTION 91B)

9. This is an applicant led process; offenders will not be automatically removed from the register.
10. Offenders must be advised to continue to comply with their notification requirements until they receive written notice from the police that those requirements have ceased.
11. Section 91B of the 2003 Act (as amended by the remedial order) prescribes the process and other matters relevant to the application for review.
12. A relevant offender will be required to make an application to the police in the area in which the offender is recorded as residing or staying in accordance with the most recent notification under section 84(1) or 85(1).
13. Where an offender is recorded as residing or staying in more than one police area, the offender will be required to apply for review to the police in the police area in which the offender has resided or stayed for the most number of days during the 12 month period immediately preceding the date of the application (see section 91A(4) to (7) of the 2003 Act).
14. In the unlikely event that an offender has been residing or staying in two police areas in the relevant 12 month period, for an equal number of days, the offender may choose the area to which the application be made.
15. An application must be made in writing and should be made using the 'application form to seek a review of indefinite notification requirements under the Sexual Offences Act 2003' which can be found at Annex A.

**APPLICATION – ACKNOWLEDGMENT  
AND NOTICE TO RESPONSIBLE BODIES  
(SECTION 91B)**

16. An application for a review must be acknowledged by the police within 14 days of receipt. An acknowledgement letter is attached at Annex B.
17. On receipt of an application for review, the police may notify one or more responsible bodies that the application has been made.
18. In the event that a responsible body is notified of an application and holds information considered to be relevant to the application, that body must in accordance with section 91B(9) of the 2003 Act provide the police with the information within 28 days of being notified.

# STAGE 2: REVIEW AND DETERMINATION (SECTION 91C AND 91D)

## REVIEW OF APPLICATION

1. Section 91C of the 2003 Act provides that a qualifying relevant offender must satisfy the relevant chief 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.
2. An offender must, therefore, provide with the application reasons for seeking the review which should be supported by as much information and evidence the offender considers relevant to the criteria described above.
3. As Stage 1 of this guidance indicates, the application must be made in writing and the police should be prepared to remind applicants of this requirement. An application form can be found at Annex A.
4. In making a determination, the police must consider the matters set out in section 91D(1) of the 2003 Act. In doing so, the police must:
  - a. have regard to any information received from a responsible authority;
  - b consider the risk of sexual harm posed by the offender and the effect on the offender of continuing to remain subject to the notification requirements; and
  - c. the factors set out in section 91D(2).

A full list of the factors in section 91D(2) is set out below.

5. Offenders are responsible for detailing in their application any factors which are relevant to the effect on them of remaining subject to the requirements notification.

## FACTORS FOR DETERMINATION (SECTION 91D(2))

6. Section 91D(2) of the 2003 Act lists the factors which the police must take into account when determining an application for review. This is not an exhaustive list but is intended to provide police with an evidential framework with which they can assess the risk posed by the applicant and the effect on that applicant of continuing to be subject to the requirements. The factors are:
  - a. the seriousness of the offence in relation to which the qualifying relevant offender became subject to the indefinite notification requirements;
  - b. the period of time which has elapsed since the qualifying relevant offender committed the offence (or other offences);
  - c. where the qualifying relevant offender falls within section 81(1), whether the qualifying relevant offender committed any offence under section 3 of the Sex Offenders Act 1997;
  - d. whether the qualifying relevant offender has committed any offence under section 91;
  - e. the age of the qualifying relevant offender at the qualifying date or further qualifying date;
  - f. the age of the qualifying relevant offender at the time the offence referred to in paragraph (a) was committed;
  - g. the age of any person who was victim of any such offence (where applicable) and the difference in age between the victim and the qualifying relevant offender at the time the offence was committed;

- h. any assessment of the risk posed by the qualifying relevant offender which has been made by a responsible body under the arrangements for managing and assessing risk established under section 325 of the Criminal Justice Act 2003;
  - i. any submission or evidence from a victim of the offence giving rise to the indefinite notification requirements;
  - j. any convictions or findings made by a court (including by a court in Scotland, Northern Ireland or countries outside the United Kingdom) in respect of the qualifying relevant offender for any offence listed in Schedule 3 other than the one referred to in paragraph (a);
  - k. any caution which the qualifying relevant offender has received for an offence (including for an offence in Northern Ireland or countries outside the United Kingdom) which is listed in Schedule 3;
  - l. any convictions or findings made by a court in Scotland, Northern Ireland or countries outside the United Kingdom in respect of the qualifying relevant offender for any offence listed in Schedule 5 where the behaviour of the qualifying relevant offender since the date of such conviction or finding indicates a risk of sexual harm;
  - m. any other submission or evidence of the risk of sexual harm posed by the qualifying relevant offender;
  - n. any evidence presented by or on behalf of the qualifying relevant offender which demonstrates that the qualifying relevant offender does not pose a risk of sexual harm; and
  - o. any other matter which the relevant chief officer of police considers to be appropriate.
7. It would be considered best practice for the police to give consideration to the Risk Management Plan in advance of considering an application for review; this should inform the police as to what responsible bodies (if any) from whom they can obtain relevant information.

#### OVERSEAS OFFENCES

- 8. An act committed abroad will be treated as an offence, if it would have constituted an offence under the law in the country concerned. It must also be classified as an offence, if it had occurred in the United Kingdom, as an offence listed in Schedule 3 to the 2003 Act.
- 9. Where an act committed overseas has not resulted in a conviction, caution or finding (in accordance with the approach outlined above), the police may also consider the behaviours exhibited by the relevant offender in relation to the act in question.

#### RECORDING THE DETERMINATION

- 10. The police should make a written record of their consideration of the matters described above using the form at Annex C to ensure that they can demonstrate that they have applied the proper test and applied relevant factors and matters.
- 11. Factors, other than those set out in section 91D(2), which have been considered as relevant should also be recorded. In the event that an offender appeals the police determination to the magistrates' court, the court is likely to want to assess the process by which the police made the determination

and this will include an assessment of the factors and other matters the police took into account.

### **STANDARD CHECKS:**

12. The police will need to undertake a number of checks at the initial stage of their review. ViSOR, the Police National Database, and PNC should be checked to verify that the offender is eligible to make an application for review in accordance with the prescribed criteria.
13. The police should also give consideration to the barred list and engage with the Independent Safeguarding Authority (ISA).
14. These initial checks will also provide background information regarding the management of the case to date, which may indicate further factors (if any) for consideration.

### **INFORMATION FROM RESPONSIBLE BODIES:**

15. One or more of the responsible bodies are expected to be able to provide the police with information or evidence which is relevant to the determination process. When notifying any responsible authority that an application has been made or considering information provided to them as a result of such a notification, the police must note that any information about an applicant (including any information in relation to an application for review) is personal data or sensitive personal data. As such, it must be obtained, processed and retained in accordance with data protection law as set out in common law (including in accordance with the applicant's rights under Article 8 of the European Convention on Human Rights) or under the Data Protection Act 1998. The police should, therefore, consider whether it is appropriate

or necessary to engage with bodies that have a current or previous interest or involvement in the management of the offender.

16. Where a responsible body provides information to the police which indicates a risk, the police should consider engaging with other bodies to obtain further information relating to the area of concern and whether it is appropriate that the offender should cease to be subject to the indefinite notification requirements.
17. In the event that the police notify a responsible body that an application has been made, this should ordinarily be given in writing. It is accepted that written communication may not be feasible in all circumstances; in this instance, the fact of the communication should be recorded in writing. A review form can be found at Annex C.
18. Where a Multi Agency Public Protection Arrangements (MAPPA) meeting is due to take place during the period when the police are considering an application for review, it could be considered good practice to use this forum to communicate to responsible bodies that the application has been made and to request any information relevant to it. Minutes from the MAPPA meeting would provide a record of the formal notification and request for information.

### **ASSESSMENT OF SEXUAL HARM & RISK ASSESSMENT TOOLS**

19. The outcome of the review will, in many cases, be largely determined by the police assessment of the risk of sexual harm posed by an individual. There are a number of tools which can assist in making this assessment.
20. RM2000 (Risk Matrix 2000 S & V Scale) is a static risk assessment tool which is used in

relation to adult male sex offenders who were over the age of 16 at the time of the offence. This tool is used by the police, probation and prison service and provides the risk of re-conviction for offenders grouped (low, medium, high, very high risk of reconviction) by certain historic criteria (number of court appearances for a sexual offence, age etc). All adult males subject to registration will have an RM 2000 score. There is no equivalent static risk assessment tool for women or for males who offended before they were 16.

21. The actual risk of sexual harm that an individual presents is related to certain dynamic psychological factors (i.e. they may be subject to change over time, usually slowly) as well as the static historic factors. There are also personal and environmental factors that research demonstrates may reduce the likelihood of sexual harm, known as protective factors. Adoption of a tool which would take an individual's dynamic risk and protective factors into consideration is currently under consideration for use by police, probation and prisons. Once in use, such a tool should assist in informing the review.

22. Police will have access to any historical risk assessment information that is recorded on ViSOR, including that from other agencies.

23. Where such information is available, the offender's current situation and risks should be compared with this past information. Change in a positive direction, combined with there being no intelligence that would lead to the conclusion the offender is still a sexual risk, along with the presence of protective factors such as stable accommodation; work; and supportive relationships may lead to a conclusion that registration is no longer required to manage the offender's risk of sexual harm.

24. The police may wish to give consideration to the reoffending behaviours of female offenders during an assessment of risk. Research indicates that the reoffending rate of women is significantly lower, but it should be noted that women will have increased opportunity for engagement with children due to their social engagement patterns.

25. Further information on risk assessment can be found on page 58 of the MAPPA guidance: [www.justice.gov.uk/offenders/multi-agency-public-protection-arrangements](http://www.justice.gov.uk/offenders/multi-agency-public-protection-arrangements).



## STAGE 3: DECISION

### DETERMINATION OF REVIEW (SECTION 91C)

1. Following the receipt of notification from the police of an application for review, responsible bodies must, within 28 days of the notification, provide information to the police which they consider relevant to the assessment of the risk of sexual harm.
2. At the end of this 28 day period, the police must determine the application for review and give notice of that determination to the offender within 6 weeks. In essence, the notice of determination should be communicated to the applicant within 12 weeks of receipt of the application for review.

### DISCHARGE OF NOTIFICATION:

3. If it is considered that, taking into account the matters set out in section 91D (described above), the offender has been able to satisfy the police that it is not necessary for the purpose of protecting the public from the risk of sexual harm for that offender to remain subject to indefinite notification he or she should be issued with a discharge letter. A copy of this letter can be found at Annex D.
4. In this case, the offender will cease to be subject to notification requirements on the date of receipt of the notice of determination.

### CONTINUATION OF NOTIFICATION:

5. In the event that the offender is considered to continue to pose a risk of sexual harm and the police determine that the offender should remain subject to indefinite notification requirements, the offender should be given a notice of determination letter as found at Annex E.

6. The notice of determination must contain a statement of reasons for the decision to ensure that the applicant is aware, for example, that subsequent offences or behaviours exhibited since the offender became subject to notification were relevant to the determination.
7. The examples given above are by no means exhaustive and the statement of reasons should make specific reference to all the matters set out in section 91D (as well as in the above chapter).
8. In the event that intelligence has been a factor, the police should give consideration as to whether it is appropriate for the intelligence to be disclosed in accordance with the requirements of the data protection regime, in particular where it contains information regarding a third party or may result in an individual being put at risk.
9. The police should inform offenders of their appeal rights. Further guidance in relation to the appeal can be found in the ‘appeals’ chapter of this document.
10. Offender managers should ensure that offenders understand that, subject to any appeal they can bring, they remain subject to indefinite notification and will continue to do so until there is a decision to the contrary as a result of any future review.

### CONSULTING WITH VICTIMS

11. Protecting the public from the risk of sexual harm and preventing members of the community from becoming victims is a priority, as is the welfare of existing victims. It is essential that this focus is maintained throughout the review process.



12. Section 91D(i) provides for any submission or evidence from a victim of the offence giving rise to the indefinite notification requirements. We recognise that there are practical difficulties associated with locating existing victims, which will be further complicated by the length of time which will have elapsed since conviction and sentencing. In some cases this could be 30 years or more. In addition, it is important to remember that many victims will have chosen to rebuild their lives and may not want a reminder of the past. That is why the decision to consult with a victim should be taken by the police, on a case by case basis. Moreover, any disclosure of information to third parties (which include victims) must comply with data protection law and the police are expected to include these considerations in their case by case assessment.

13. To reduce these practical difficulties, victims that arose following the changes coming into force will be given the opportunity to register their interest in providing any submission or evidence with the police. Following sentencing of the offender, victims will be informed of their ability to provide a submission in the event of a review being sought; where they choose to do so they will register their interest and provide police with their contact details through the Victim Contact Scheme.

14. It should be noted that the legislation only requires the police to consider as a factor any evidence or submission from victims of the offence giving rise to the relevant offender becoming subject to indefinite notification. Any evidence from victims of other offences committed by the offender (whether prior to or after the relevant index offence) is not a factor which the police are required to consider under section 91D(2)(i), although it may be a relevant factor in the determination.

15. However, Section 91D(2)(m) provides for any submission or evidence of the risk of sexual harm. If the police regard the submission or evidence presented by victims of a non-index crime to be relevant to the assessment of risk it may be given consideration under the aforementioned section. The police should remain sensitive to this issue, in the event that a victim of the non-index crime wishes to provide evidence.

#### COMMUNICATING A DETERMINATION:

16. The decision to communicate a determination to victim(s) should be taken on a case by case basis.

17. The decision to contact a victim in relation to a review or the determination of a review should be taken at a local police level. We would highlight the sensitivities around this as well as the requirement on the police to comply with their duties under data protection law.

## STAGE 4: APPEALS PROCESS (SECTION 91E)

1. Offenders who believe that they have grounds to challenge the determination made by the police have a right of appeal to the magistrates' courts.
2. Offenders will have a period of 21 days beginning with the day on which they received the notice of determination to bring such appeal. They may do so by way of a complaint to the court.
3. In accordance with section 8 of the Courts Act 2003, an appeal may be made to any magistrates' court in a local justice area which includes any part of the police area in which the police made the notice of determination.
4. Offenders who appeal to the magistrates' court should be advised that they will remain subject to the indefinite notification requirements whilst their appeal is outstanding and awaiting determination by the courts, and they will only cease to be subject to those requirements if the court allows their appeal. In those circumstances, the offender ceases to be subject to the requirements on the date on which the court makes an order allowing the appeal.
5. Offenders who express their intention to appeal should also be advised that they will be liable to pay a court fee, and may also be liable to pay costs of the appeal should it be dismissed.
6. It should be noted that there is no prescribed onward right of appeal from the decision of the magistrates' court, although its decision will remain subject to any avenues of appeal to, or review by, the higher courts in accordance with existing court rules.
7. It is a matter for offenders as to whether they seek their own legal advice in relation to an appeal to the magistrates' court.
8. In any appeal to the magistrates' court, the police will be the 'respondent'.
9. The police should be prepared to demonstrate to the court the matters they took into account in making their determination, including their consideration of the matters set out in section 91D(1) and the factors set out in section 91D(2).

## STAGE 5: FURTHER REVIEW PERIODS (S.91B)

1. If the police determine that the offender's application should be refused on the basis of their assessment that the applicant does continue to pose a sufficient risk of sexual harm, the offender will continue to remain subject to indefinite notification requirements in accordance with the 2003 Act.
2. Offenders will be eligible to seek a further review of their indefinite notification requirements following the expiry of an additional period. This will be a minimum 8 year period but must not exceed a period of 15 years. This is explained further in the 'qualifying and further qualifying dates' section of this guidance.
3. Once the police have made a determination, they will advise the offender of the further qualifying date.

### MAINTAINING RECORDS

4. Changes to the ViSOR database have been made to assist the police in managing information obtained as part of the review process and produce relevant materials via the database.
5. The database has been programmed to ensure that the review process can only be initiated for those offenders who meet the eligibility requirements (outlined above).
6. In support of the review process, the database has been expanded to enable the user to record details of the whole review process.
7. The amendment permits the user to document a comprehensive record of the review process, allowing the officer to exhibit that consideration of all factors has been given. This has been constructed in alignment with the review criteria as prescribed in legislation, and in accordance

with the considerations that should be taken into account when undertaking an assessment of current risk (i.e. dynamic risk and protective factors).

8. Where an offender's review results in a continuation of the indefinite notification requirements making it necessary to continue management under that notification regime, the reviewing officer must update ViSOR accordingly. On selecting 'continue', the reviewing officer will be required to provide details of the decision and subsequent action taken including the issuing of the order continuing notification. The reviewing officer will also be responsible for calculating and recording the date an offender will be eligible to seek a further review.
9. In the event that police decide that the offender should cease to be subject to notification, the database should be documented to reflect this decision and the case archived in accordance with current ViSOR policy.
10. It is imperative that details recorded on the ViSOR database are accurate; failure to maintain details relating to an offender and his or her case may cause ramifications for future management.

## 3. FREQUENTLY ASKED QUESTIONS

**Q. Who will this apply to?**

A. This policy applies only to individuals who are subject to the notification requirements for an indefinite period, under section 82(1) of the Sexual Offences Act 2003.

A sex offender who is sentenced to imprisonment for life or for a term of 30 months or more will be subject to the notification requirements for life. The remedial order, which came into force on 30 July 2012, allows offenders subject to the requirements for life, to apply for a review after a fixed period of time. Prior to the remedial order coming into force, there was no opportunity for review.

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.

**Q. When will an offender be able to seek a review?**

A. This policy gives the offenders the right to seek a review of their indefinite notification regime only once they have completed a minimum period of time subject to the notification requirements (15 years from the point of first notification following release from custody for the index offence for adults and 8 years for juveniles).

The most serious sex offenders, who are subject to a Sexual Offences Prevention Order (SOPO), will not be able to apply for a review unless they apply successfully to have it discharged.

An offender who is subject to a SOPO (or an interim SOPO) can already seek

to discharge (or vary) their SOPO under section 108 of the Sexual Offences Act 2003 and must do so before seeking a review of their indefinite notification requirements.

**Q. When did this legislation come into force?**

A. The Sexual Offences Act 2003 (Remedial) Order 2012 came into force on 30 July 2012. This means that no adult offenders will become eligible to apply for a review of their notification requirements before September 2012, 15 years from the introduction of the notification requirements under the Sex Offenders Act 1997.

**Q. Will an offender have a right of appeal?**

A. The review mechanism provides for a right to appeal against an initial police decision to the magistrates' court. Offenders appealing to the magistrates' court would be required to pay a fee, currently £200 to begin proceedings and may be liable for the costs of the hearing should the appeal be dismissed.

**Q. Will offenders be eligible for legal aid?**

A. No. These appeals will be a civil legal matter and will not be covered by either the civil or criminal legal aid schemes. This means that for offenders seeking to appeal the police determination to the magistrates' courts, legal aid will not be available, except in very exceptional circumstances.

**Q. What input will victims have in the decision to discontinue notification?**

A. 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 an offender subject to indefinite notification, the age of the victim, the difference in age between the victim and offender at time the offence was committed and importantly, any submission or evidence provided by the victim. 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.

Since 1 April 2001 the Probation Service has had a duty to consult and notify victims of sexual or other violent offences (as defined in Schedule 15 of the Criminal Justice Act 2003) about release arrangements in all cases where an offender receives a custodial sentence of 12 months or more.

Furthermore, through the Victim Contact Scheme, when a victim of crime accepts an offer to meet with a Victim Liaison Officer, there are a number of decisions of which the victim will be notified which may be taken at key stages throughout the offender's sentence and which are likely to have a significant impact on the victim of the offence.

**Q. What will be the rank of the determining officer?**

A. The authority sits with the Chief Constable of Police which is delegated to a Superintendent to authorise all determinations. An offender manager will give consideration to the assessment of risk in accordance with the factors outlined in the legislation. All determinations will be subject to the scrutiny of a Detective Inspector and a Superintendent.

**Q. How will a determination be recorded?**

A. An application form for use by an offender seeking a review of their indefinite notification requirements can be found at annex A. All other letters and a review form can be found at annexes B to E.

# DEFINITIONS

The definitions outlined below are set out in the 2003 Act (as amended by the Sexual Offences 2003 (Remedial) Order 2012) and are intended to provide a clearer understanding of the terms used in the legislation as they also appear in this guidance.

**The 2003 Act:** means the Sexual Offences Act 2003.

**Further qualifying date:** means the day after the end of the 8 year period beginning with the day the police determine an application for review (the police have the power to require an offender to remain subject to notification for a further period of up to but no longer than 15 years).

**Indefinite notification requirements:** notification for an indefinite period by virtue of section 82 of the 2003 Act. These also apply by virtue of a notification order made under section 97(5).

**Relevant chief officer of police:** means the chief officer for the police area in which the qualifying relevant offender is recorded as residing or staying in accordance with the most recent notification (under sections 84(1) or 85 (1) of the 2003 Act); if the offender resides or stays at more than one address, the relevant chief officer of police is the chief officer for the area in which the offender has, during the preceding 12 months, resided or stayed for longer than in any other area.

**Relevant notification:** means the first notification given by the offender under section 83, 84 or 85 following the first occasion on which the offender is released from detention (imprisonment, committed to custody by court or detained in hospital).

**Relevant offender:** means an offender who is convicted of a relevant offence, found not guilty of such an offence by reason of insanity, found to be under a disability and to have done the

act charged against him in respect of such an offence, or (in England and Wales and Northern Ireland) cautioned in respect of such an offence.

**Relevant offence:** means an offence listed in Schedule 3 to the 2003 Act.

**Relevant period:** means the period of 12 months ending on the day on which the qualifying relevant offender makes an application for review.

**Responsible body:** means the probation trust or providers of probation services, the Minister of the Crown exercising functions in relation to prisons and each body mentioned in section 325(6) of the Criminal Justice Act 2003, which include (but are not limited to):

- every youth offending team
- the Ministers of the Crown exercising functions in relation to social security, child support, war pensions, employment and training
- every local authority acting in the exercise of its relevant functions
- every local housing authority
- every private registered provider of social housing or registered social landlord which provides or manages residential accommodation
- every Health Authority or Strategic Health Authority
- every Primary Care Trust or Local Health Board
- every NHS trust
- every person who is designated by the Secretary of State as a provider of electronic monitoring services.

**Risk of sexual harm:** means a risk of physical or psychological harm to the public or a part of the public in the United Kingdom caused by the offender committing a relevant offence.

**Qualifying date:** means a date after the end of the 15 year period beginning with the day on which the offender gives the relevant notification, where the offender is aged 18 or over on the relevant date (the period is 8 years if the offender was under 18 on the relevant date); if the offender is the subject of a notification continuation order under section 88A to 88I of the 2003 Act (which relates to the review of indefinite notification requirements in Scotland), the qualifying date cannot be earlier than the date of expiry of the notification continuation order made in Scotland.

**Qualifying relevant offender:** means a relevant offender who on the date of the application for review is subject to indefinite notification requirements and is not subject to a SOPO, or an interim SOPO.



# ANNEXES

Annex A: Application to seek a review of indefinite notification requirements under the Sexual Offences Act 2003

Annex B: Acknowledgment letter

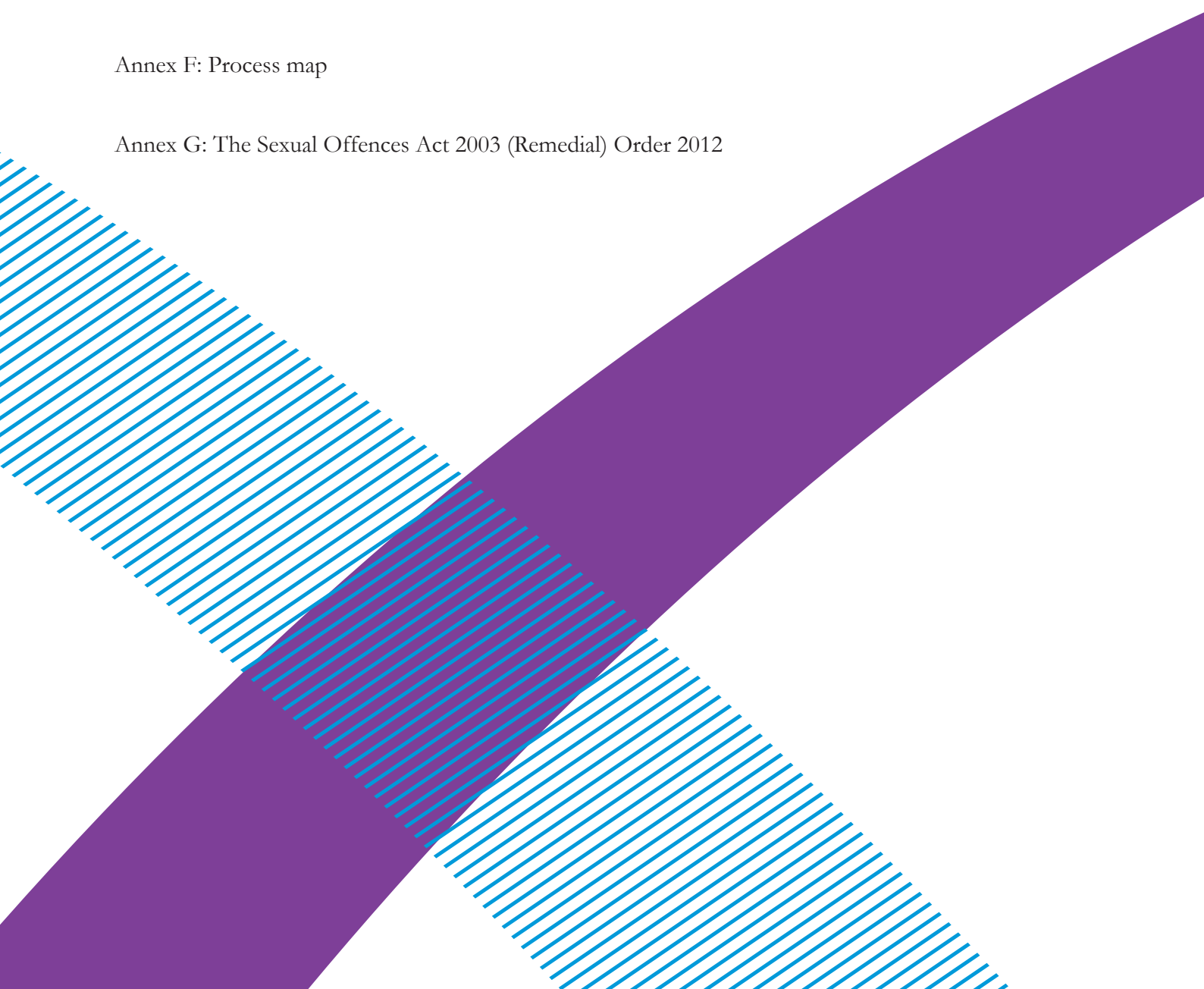
Annex C: Review form

Annex D: Discharge letter

Annex E: Notice of determination

Annex F: Process map

Annex G: The Sexual Offences Act 2003 (Remedial) Order 2012





# ANNEX A

Version 1, July 2012.

## **APPLICATION FORM TO APPLY FOR THE REVIEW OF INDEFINITE NOTIFICATION REQUIREMENTS UNDER THE SEXUAL OFFENCES ACT 2003**

Information for the offender:

An application for review of the indefinite notification requirements made under section 91A of the Sexual Offences Act 2003 must be made in writing. The applicant should complete this form, with all sections completed as fully as possible.

The review process (and timescales for the police and other agencies) begins on receipt of an application which has been made in the appropriate format.

**1. Surname**

**2. Forename(s)**

**3. Any other names currently or previously used**

**4. Date of Birth**

**5. National Insurance Number**

**6. Date and location of first notification to the police (following any period spent in detention for the relevant offence) (if known)**

**Please Note:** You may not make an application for a review until a date at least 15 years after the date of your first notification to the police (following any period spent in detention for the relevant offence). If you were under 18 on the date of your conviction or finding, this minimum period is 8 years.

**7. Date of discharge of Sexual Offences Prevention Order (if applicable)**

**Please Note:** If you are currently subject to a Sexual Offences Prevention Order (SOPO) or an interim SOPO, you must discharge the order at the appropriate court prior to making an application for a review of your notification requirements. If you need further information on how to discharge a SOPO, it is recommended that you seek independent legal advice.

**8. Reasons for applying for a review**

Please state the reasons why you are making an application for a review of your indefinite notification requirements. You will need to demonstrate:

- How your circumstances now, compared to those at the time of your offence, mean that you no longer pose a risk of reoffending;
- The way you behave now, compared to your behaviour during earlier periods when you have been subject to the notification requirements, means that you no longer need to be subject to those requirements to manage the risk you pose.

You should consider including information about:

- Where you live, how long you have lived there, the stability of your living arrangements, who you live with, for how long you have lived in these circumstances;
- Relationships with any children under 18;
- How you fill your time e.g. employment, employer, for how long, hobbies and interests;

- Details of any health or support services with which you are currently engaged;
- Completion of any treatment programmes relevant to your offending history;
- Your attitude to your offending and how you make sure you will not offend again;
- How other people (with information from them if you have it) consider that you do not pose a risk of reoffending;
- Any other information that you consider demonstrates you no longer pose a risk of sexual harm.

Please Note that all information relevant to your application should be provided at the earliest opportunity and should be included in this application.

**9. Please submit completed application forms (including any evidence) to the Chief Officer of your relevant force.**

**10. Declaration**

I hereby declare that I wish to make an application for a review of the requirement that I must continue to notify information to the police under Part 2 of the Sexual Offences Act 2003.

Signature .....

Date .....

[Please provide further details if this application is being made on behalf of another person].

# ANNEX B

Version 1, July 2012.

## Acknowledgement Letter

[POLICE HEADER]

Telephone:

Facsimile:

Email:

Your Ref:

Our Ref:

[DATE]

Dear...

This letter is formal acknowledgement of receipt of your application for a review of your indefinite notification requirements, made in accordance with section 91A of the Sexual Offences Act 2003. This was received on [insert date].

We will consider your application and you will be notified of our decision within 12 weeks of the date of receipt of your application.

If it is determined that you should no longer remain subject to the notification requirements, your notification requirements will cease on the date you receive your notice of the determination.

If it is determined that you must remain subject to the notification requirements, you will receive a notice of determination which contains a statement of reasons for that determination. You may appeal against this decision within 21 days of receiving the notice.

Yours sincerely,

Served by (name / rank / role):

Signature (officer / staff member serving):

Signature (offender):

Time:

Date:

# ANNEX C

Version 1, July 2012.

## REVIEW OF INDEFINITE NOTIFICATION REQUIREMENTS

### PART 1: OFFENDER DETAILS

Name	
Date of Birth	
Address	
ViSOR Record No	
Date review is due	

### PART 2: SUMMARY OF MATTERS TAKEN INTO ACCOUNT IN MAKING THE DECISION

1.	Offence that made the relevant offender subject to the notification requirements for an indefinite period. Taking into consideration: <ul style="list-style-type: none"> <li>• Seriousness</li> <li>• Correct description of offence (indictment / complaint and extract conviction)</li> <li>• Sentence</li> <li>• Sentencing report</li> </ul>
2.	Period of time which has elapsed since the relevant offender committed the offence (or offences)
3.	Length of time under management - date of first notification
4.	Age of the relevant offender at the time the offence (or offences) referred to at paragraph 1

5.	Age of any victim of any such offence (where applicable) and the difference in age between the victim and the relevant offender at the time the offence was committed
6.	Age of relevant offender at the time of the review
7.	Details of any subsequent offence(s) under section 3 of the Sex Offenders Act 1997 (failure to comply with notification requirements)
8.	Details of any subsequent offence(s) committed under section 91 of the Sexual Offences Act 2003 (failure to comply with notification requirements)
9.	Details of convictions or findings made by a court in respect of the relevant offender for any other offence listed in Schedule 3 to the Sexual Offences Act 2003
10.	Details of any caution which the relevant offender has received for an offence which is listed in Schedule 3 to the Sexual Offences Act 2003
11.	Details of any criminal proceedings for any offences listed in Schedule 3 to the Sexual Offences Act 2003 that have been instituted against the relevant offender, but which have not been concluded
12.	Details of any criminal proceedings, convictions or other findings in relation to any sexual offences committed in Scotland, Northern Ireland or any other country outside the United Kingdom

13.	Victim consideration given, where appropriate
14.	Details of engagement with responsible bodies through MAPPA meetings, where appropriate

**PART 3: RISK ASSESSMENT**

15.	<p>Current RM2000 Risk Assessment</p> <ul style="list-style-type: none"> <li>• For MAPPA Level 1 Offenders where a lead agency is primarily responsible</li> <li>• For MAPPA Level 2/3 Offenders where local inter-agency management is used under the joint arrangements for managing and assessing risk established under section 325 of the Criminal Justice Act 2003</li> </ul>
16.	Any other submission or evidence of the risk of sexual harm posed by the relevant offender to the public, or any particular members of the public, in the United Kingdom (including by MAPPA partners)
17.	Any submission or evidence presented by or on behalf of the relevant offender which demonstrates that the relevant offender does not pose a risk of sexual harm to the public in the United Kingdom or any particular members of the public caused by the relevant offender committing an offence listed in Schedule 3 to the Sexual Offences Act 2003

**PART 4: RECOMMENDATION**

The relevant offender continues to remain subject to the notification requirements under Part 2 of the Sexual Offences Act 2003		YES	NO
Justification			

Signed \_\_\_\_\_ Offender Manager

Date \_\_\_\_\_

Recommendation supported by Detective Inspector, Offender Management		YES	NO
Additional Comment			

Signed \_\_\_\_\_ Detective Inspector

Date \_\_\_\_\_

**PART 5: DECISION**

The relevant offender is to be notified that he/she remains subject to the notification requirements		YES	NO
Rationale			

Signed \_\_\_\_\_ Superintendent

Date \_\_\_\_\_

**PART 6: NOTIFICATION CONTINUATION**

Earliest available date for subsequent review
Date letter sent to relevant offender

Signed \_\_\_\_\_ Superintendent

Date \_\_\_\_\_



# ANNEX D

Version 1, July 2012.

## Discharge Letter

[POLICE HEADER]

Telephone:

Facsimile:

Email:

Your Ref:

Our Ref:

[DATE]

Dear...

Having considered your application, it has been determined in accordance with section 91C of the Sexual Offences Act 2003 that you should no longer remain subject to the notification requirements of Part 2 of the Act.

Your notification requirements cease on the date of your receipt of this letter.

Yours sincerely,

Served by (name / rank / role):

Signature (officer / staff member serving):

Signature (offender):

Time:

Date:

# ANNEX E

Version 1, July 2012.

## Notice of Determination

[POLICE HEADER]

Telephone:

Facsimile:

Email:

Your Ref:

Our Ref:

[DATE]

Dear...

Further to your application made on [insert date], it has been determined in accordance with section 91C of the Sexual Offences Act 2003 that you must remain subject to the notification requirements. Please see below a statement of reasons.

You will be entitled to make a further application for review no earlier than [8] years from the date of this determination.

Statement of Reasons: (elaborate or delete as appropriate)

You have failed to 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 you to remain subject to the indefinite notification requirements.

The reasons for this determination are [the list below is not exhaustive] –

- The seriousness of your offence(s) (i.e. ...)
- Breach(es) of your notification requirements (i.e. ...)
- Other convictions or cautions (i.e. ...)
- The assessment of risk posed by you (e.g. ...)
- Other matters considered to be relevant (e.g. ...)

You may appeal against this decision to a magistrates' court for any part of the police area to which you made your application. If you wish to do so, you must apply to the magistrates' court within 21 days of the date when you received this letter. You may have to pay a fee to the court before your appeal will be listed for hearing. More information can be obtained from the magistrates' court.

Yours sincerely,

Served by (name / rank / role):

Signature (officer / staff member serving):

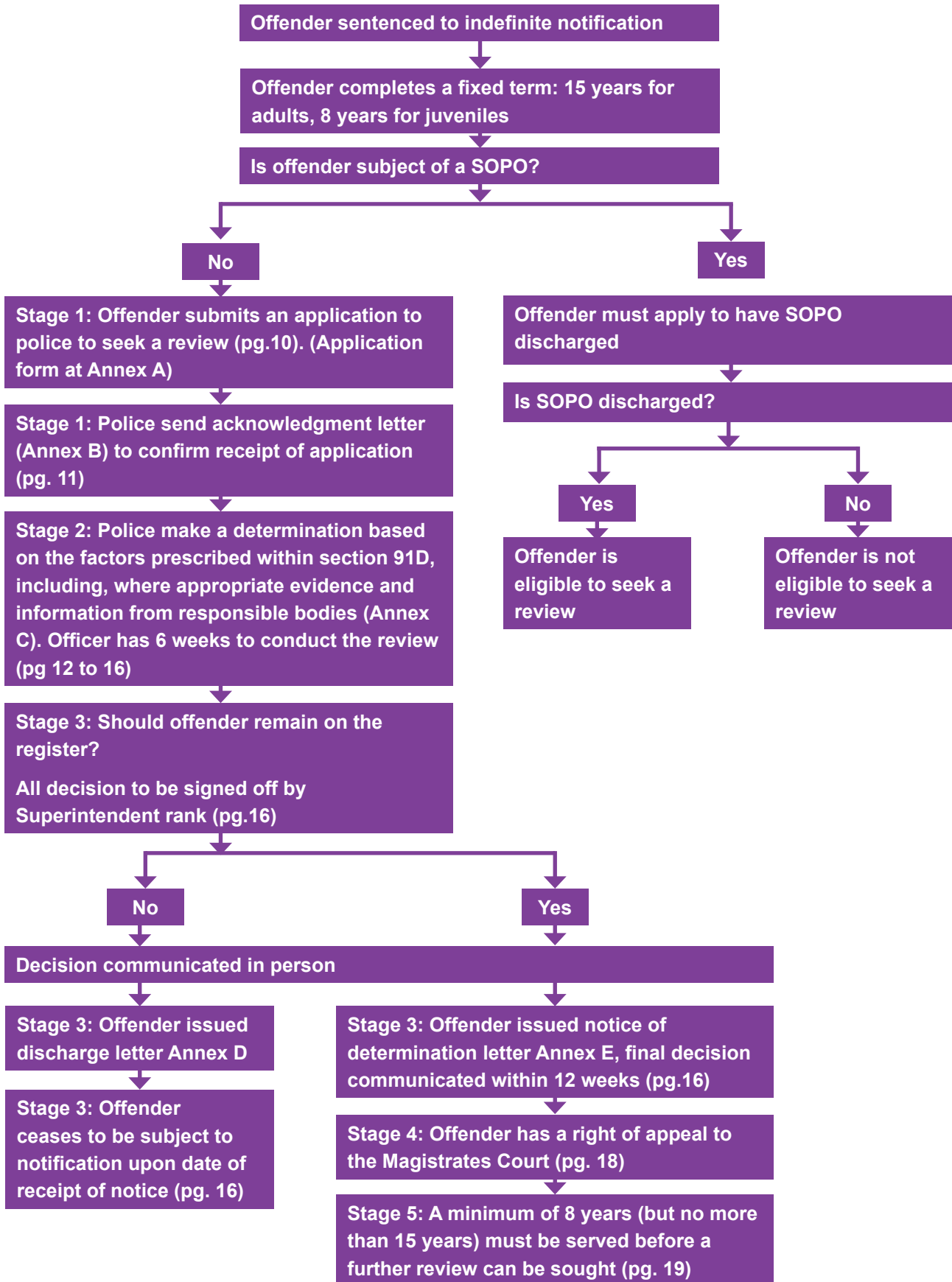
Signature (offender):

Time:

Date:

# ANNEX F

## PROCESS MAP



# ANNEX G

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## STATUTORY INSTRUMENTS

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**2012 No.**

### **CRIMINAL LAW, ENGLAND AND WALES**

#### **The Sexual Offences Act 2003 (Remedial) Order 2012**

*Made* - - - - *16th July 2012*

*Coming into force* - - *30th July 2012*

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

The Secretary of State considers that there are compelling reasons for proceeding by way of remedial order<sup>(5)</sup> 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.

#### **Amendment of the Sexual Offences Act 2003**

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

3. After section 91 insert—

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(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”.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) where the qualifying relevant offender was 18 or over on the relevant date, the day after the end of the 15 year period beginning with the day on which the qualifying relevant offender gives the relevant notification; or
- (b) where the qualifying relevant offender was under 18 on the relevant date, the day after the end of the 8 year period beginning with the day on which the qualifying relevant offender gives the relevant notification.

(3) Subject to subsections (4) to (6), the further qualifying date is the day after the end of the 8 year period beginning with the day on which the relevant chief officer of police makes a determination under section 91C to require a qualifying relevant offender to remain subject to the indefinite notification requirements.

(4) Subsection (5) applies if the relevant chief officer of police, when making a determination under section 91C to require a qualifying relevant offender to remain subject to the indefinite notification requirements, considers that the risk of sexual harm posed by a qualifying relevant offender is sufficient to justify a continuation of those requirements after the end of the 8 year period beginning with the day on which the determination is made.

(5) If this subsection applies, the relevant chief officer of police may make a determination to require a qualifying relevant offender to remain subject to the indefinite notification requirements for a period which may be no longer than the 15 year period beginning with the day on which the determination is made.

(6) If subsection (5) applies, the further qualifying date is the day after the end of the period determined under that subsection.

(7) The qualifying date must not be earlier than the expiry of the fixed period specified in a notification continuation order made in relation to a qualifying relevant offender in accordance with sections 88A to 88I(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),
  - (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.

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

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

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

(2) For the purposes of the determination of an application for review under this section, a qualifying relevant offender must satisfy the relevant chief officer of police that it is not necessary

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(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.

(9) 1952 c. 52.

for the purpose of protecting the public or any particular members of the public from sexual harm for the qualifying relevant offender to remain subject to the indefinite notification requirements.

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

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

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

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

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

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

- (a) have regard to information (if any) received from a responsible body;
- (b) consider the risk of sexual harm posed by the qualifying relevant offender and the effect of a continuation of the indefinite notification requirements on the offender; and
- (c) take into account the matters listed in subsection (2).

(2) The matters are—

- (a) the seriousness of the offence in relation to which the qualifying relevant offender became subject to the indefinite notification requirements;
- (b) the period of time which has elapsed since the qualifying relevant offender committed the offence (or other offences);
- (c) where the qualifying relevant offender falls within section 81(1), whether the qualifying relevant offender committed any offence under section 3 of the Sex Offenders Act 1997<sup>(10)</sup>;
- (d) whether the qualifying relevant offender has committed any offence under section 91;
- (e) the age of the qualifying relevant offender at the qualifying date or further qualifying date;
- (f) the age of the qualifying relevant offender at the time the offence referred to in paragraph (a) was committed;
- (g) the age of any person who was a victim of any such offence (where applicable) and the difference in age between the victim and the qualifying relevant offender at the time the offence was committed;
- (h) any assessment of the risk posed by the qualifying relevant offender which has been made by a responsible body under the arrangements for managing and assessing risk established under section 325 of the Criminal Justice Act 2003;
- (i) any submission or evidence from a victim of the offence giving rise to the indefinite notification requirements;
- (j) any convictions or findings made by a court (including by a court in Scotland, Northern Ireland or countries outside the United Kingdom) in respect of the qualifying relevant offender for any offence listed in Schedule 3 other than the one referred to in paragraph (a);
- (k) any caution which the qualifying relevant offender has received for an offence (including for an offence in Northern Ireland or countries outside the United Kingdom) which is listed in Schedule 3;

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<sup>(10)</sup> 1997 c. 51.



- (l) any convictions or findings made by a court in Scotland, Northern Ireland or countries outside the United Kingdom in respect of the qualifying relevant offender for any offence listed in Schedule 5 where the behaviour of the qualifying relevant offender since the date of such conviction or finding indicates a risk of sexual harm;
  - (m) any other submission or evidence of the risk of sexual harm posed by the qualifying relevant offender;
  - (n) any evidence presented by or on behalf of the qualifying relevant offender which demonstrates that the qualifying relevant offender does not pose a risk of sexual harm; and
  - (o) any other matter which the relevant chief officer of police considers to be appropriate.
- (3) In this section, a reference to a conviction, finding or caution for an offence committed in a country outside the United Kingdom means a conviction, finding or caution for an act which—
- (a) constituted an offence under the law in force in the country concerned, and
  - (b) would have constituted an offence listed in Schedule 3 or Schedule 5 if it had been done in any part of the United Kingdom.

### **91E Review of indefinite notification requirements: appeals**

- (1) A qualifying relevant offender may appeal against a determination of the relevant chief officer of police under section 91C.
- (2) An appeal under this section may be made by complaint to a magistrates’ court within the period of 21 days beginning with the day of receipt of the notice of determination.
- (3) A qualifying relevant offender may appeal under this section to any magistrates’ court in a local justice area<sup>(11)</sup> which includes any part of the police area for which the chief officer is the relevant chief officer of police.
- (4) If the court makes an order that a qualifying relevant offender should not remain subject to the indefinite notification requirements, the qualifying relevant offender ceases to be subject to the indefinite notification requirements on the date of the order.

### **91F Review of indefinite notification requirements: guidance**

- (1) The Secretary of State must issue guidance to relevant chief officers of police in relation to the determination by them of applications made under section 91B.
- (2) The Secretary of State may, from time to time, revise the guidance issued under subsection (1).
- (3) The Secretary of State must arrange for any guidance issued or revised under this section to be published in such manner as the Secretary of State considers appropriate.”

Home Office  
16th July 2012

*Lynne Featherstone*  
Parliamentary Under-Secretary of State

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Sexual Offences Act 2003 (“the 2003 Act”) to remedy an incompatibility with a Convention right in relation to the indefinite notification requirements contained in section 82(1) of the 2003 Act. This Order extends to England and Wales only.

In the case of R (on the application of F (by his litigation friend F)) and Thompson (FC) v Secretary of State for the Home Department [2010] UKSC 17 the Supreme Court of the United Kingdom on 21st April 2010 made a declaration under section 4 of the Human Rights Act 1998 that the “indefinite notification

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<sup>(11)</sup> Section 8 of the Courts Act 2003 (c. 39) introduced new provision in relation to local justice areas.

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.”

Article 3 of this Order inserts sections 91A to 91G into Part 2 of the 2003 Act. These provisions provide a mechanism for a relevant offender to apply to the police for a review of the requirement that the relevant offender remain subject to the indefinite notification requirements which apply by virtue of section 82(1) of the 2003 Act.

Section 91A makes provision for a qualifying relevant offender to apply to the relevant chief officer of police for a determination that the qualifying relevant offender ceases to remain subject to the indefinite notification requirements. This section defines a “qualifying relevant offender” and the “relevant chief officer of police”. A qualifying relevant offender (“the offender”) is a relevant offender (defined in section 80(1) of the 2003 Act as a person who is subject to the notification requirements under Part 2 of the 2003 Act) who is subject to the indefinite notification requirements, and who is not subject to a sexual offences prevention order (under section 104(1) of the 2003 Act) or an interim sexual offences prevention order (under section 109(3) of the 2003 Act). The relevant chief officer of police is the chief officer for the police area in which the qualifying relevant offender is recorded as residing or staying in the most recent notification given by him (under sections 84(1) or 85(1) of the 2003 Act). If the offender resides or stays at more than one address, the relevant chief officer of police is the chief officer for the area in which the offender has, during the preceding 12 months, resided or stayed for longer than in any other area.

Section 91B enables an offender to apply for a review on or after the qualifying date or further qualifying date, and prescribes the initial steps which the police must take on receipt of the application for review. This section defines the “qualifying date” as a date after the end of the 15 year period beginning with the day on which the offender gives the relevant notification, where the offender is aged 18 or over on the relevant date. The period is 8 years if the offender was under 18 on the relevant date.

“Relevant notification” is defined in subsection (10) and means the first notification given by the offender (whether under section 83, 84 or 85 of the 2003 Act) following the first occasion on which the offender is released from detention (the forms of detention are set out in subsection (10)(a) to (c)) to which the offender is subject as a result of the conviction for the offence giving rise to the indefinite notification requirements.

“Relevant date” is defined in section 82(6) of the 2003 Act. If the offender has been made the subject of a notification continuation order under sections 88A to 88I of the 2003 Act (these sections contain provision for the review of indefinite notification requirements in relation to an offender in Scotland), the qualifying date cannot be earlier than the date of expiry of a notification continuation order made in Scotland.

The relevant chief officer of police (“the police”), on receipt of an application for review, must within 14 days give the offender an acknowledgment of receipt and may notify a responsible body that the application has been made. A “responsible body” is defined, in relation to the police area concerned, as the local probation board (or relevant provider of probation services), the Minister of the Crown exercising prison functions and the bodies mentioned in section 325(6) of the Criminal Justice Act 2003. A responsible body, if it holds relevant information, must give such information to the police within 28 days of being notified of the application.

Section 91B also defines the “further qualifying date” as the day after the end of the 8 year period beginning with the day on which the police determine an application for review under section 91C, but reserves to the police a power to require the offender to remain subject to the indefinite notifications for a period which may be no longer than the 15 year period beginning with the day on which the police determine an application for review under section 91C. The police can only exercise this power if the police consider that the risk of sexual harm posed by the offender is sufficient to justify a continuation of the indefinite notification requirements after the end of the 8 year period described above. “Risk of sexual harm” is defined in subsection (10) as meaning a risk of physical or psychological harm to the public or a part of the public in the United Kingdom caused by the offender committing an offence under Schedule 3 to the 2003 Act.

Section 91C prescribes the steps which the police must take following receipt of an application and the basis on which the application is determined. The police must determine the application within 6 weeks of

the latest date on which any responsible authority may provide information under section 91B(9), and give notice of the determination to the offender. Unless the offender satisfies the police that it is not necessary for the purpose of protecting the public for him to remain subject to the indefinite notification requirements, the police will determine that those requirements will continue to apply. If so, the police must include with the notice of determination a statement of reasons and inform the offender of his right of appeal.

An offender ceases to be subject to the indefinite notification requirements on the date of receipt of a notice of determination under this section.

Section 91C(5) enables the Secretary of State to make an order amending the period specified in section 91C(1), which governs the time by which the police must determine an application for review.

Section 91D prescribes the facts and matters which the police must consider in determining an application for review under section 91C. The police must have regard to any information received from a responsible body, consider the risk of sexual harm posed by the offender and the effect on him of a continuation of the notification requirements, and take into account the factors prescribed in subsection (2). These factors relate (amongst other things) to the circumstances of the offence which gave rise to the indefinite notification requirement to which the offender is subject, any assessment of the risk posed by the offender prepared by any responsible authority, evidence from a victim of the offence which gave rise to the indefinite notification requirements, a conviction or other finding made by a court in England and Wales in relation to the subsequent commission of an offence under Schedule 3 to the 2003 Act by the offender or a conviction or finding by a court in another country in relation to an equivalent offence.

Section 91E sets out a right of appeal in respect of the determination by the police that an offender must remain subject to the indefinite notification requirements or that the offender may not make a further application for review for a period specified in section 91B(5). The appeal may be made to the magistrates' court by complaint within 21 days of the receipt of the notice of determination.

Section 91F requires the Secretary of State to issue guidance to the police in relation to their determination of applications for review. The Secretary of State may issue revised guidance from time to time, and any guidance must be published in a manner which the Secretary of State considers to be appropriate.

