



Home Office

Lynne Featherstone MP
PARLIAMENTARY UNDER SECRETARY OF STATE

2 Marsham Street, London SW1P 4DF
www.homeoffice.gov.uk

Dr Hywel Francis MP
Chair Joint Committee of Human Rights
Committee Office
House of Commons
7 Milbank
London SW1P 3JA

15 JUN 2012

Dear Hywel,

JOINT COMMITTEE ON HUMAN RIGHTS – REPORT ON THE SEXUAL OFFENCES ACT 2003 (REMEDIAL) ORDER 2012.

I am writing in response to the above report which your Committee published on 28 May 2012 following its scrutiny of the draft Sexual Offences Act 2003 (Remedial) Order 2012.

I am grateful to the Committee for its thorough examination of the remedial order and our earlier proposal for the draft Sexual Offences Act 2003 (Remedial) Order 2011. I am pleased that the Committee has acknowledged the revisions made by the Government and, in light of these revisions, has reported that the draft remedial order now removes the ECHR incompatibility identified by the Supreme Court in the case of *F & Thompson*. Below I have addressed the individual points raised in the report.

Scope of the right of appeal to the magistrates' court

- Section 91B(5) - clarification of the offender's ability to appeal against the determination and the offender's ability to appeal against the "further review period".

It is intended that an offender will be able to appeal against either the determination to maintain notification requirements or the decision by the police to extend the period before which the offender can make a further application for review. The police are only permitted to exercise the power to extend the period when making a determination under section 91C (by virtue of section 91B(4)). Therefore, we are satisfied that the right of appeal under section 91E is conferred on an offender in relation to any decision about the further review period because this appeal right applies to any determination made by the police under section 91C.

- Section 91E - powers of the court on determining an appeal.

It is intended that the court will have the power to order that the period of time for any extended further review period be reduced in accordance with the appeal brought by the offender. The appeal is made to the magistrates' court by way of complaint (under section 91E(2)).

Under section 53(2) of the Magistrates' Courts Act 1980 (which sets out the powers of the magistrates' court in relation to complaints), the court, after hearing the evidence and the parties, shall make the order for which the complaint is made or dismiss the complaint. Therefore, it is open to the court to substitute the period determined by the police with the period which the offender argued before the court should apply. It should be noted that the period determined by the court may not be less than the minimum fixed period of 8 years (in accordance with section 91B(3)).

Duty to notify victims

- Section 91D(2)(i) – submission or evidence from a victim as a factor to be taken into account in a determination.

We have given extensive consideration to the position and role of victims, and victim engagement, throughout the development of this policy. We believe that victims should be permitted to provide any submission or evidence in relation to an offender's application for review of their indefinite notification requirements (reflected in the provision made in the draft remedial order). We recognise that victims choose to rebuild their lives in a number of ways and consideration should be given to a variety of factors before determining whether it is appropriate to actively engage with a victim. We believe that the police are best placed to make this determination. Moreover, information about an offender's application for review is personal data and its handling by the police must be subject to safeguards under the common law and data protection legislation.

We will continue to engage with agency partners to ensure that the statutory guidance provides police, practitioners and other agency partners with a clear understanding of the application of the legislation. This will include consideration of the circumstances in which it is appropriate to notify victims of developments in a particular case.

Police discretion or duty to notify responsible authorities

- Section 91B(8)(b) - clarification of the effect of the term 'may' in relation to which bodies the police notify of an application having been made.

We believe that the police are best placed to decide which responsible body should be notified of the application for review.

The responsible body, as defined in section 91B(11), comprises no less than 12 bodies which are or may be involved in assisting the police with managing the risk posed by a sex offender under MAPPA, and includes the ten bodies listed in section 325(6) of the Criminal Justice Act 2003 (which include, but are not limited to, youth offending teams, Department for Work and Pensions, local housing authorities, Primary Care Trusts and NHS Trusts). A number of these bodies will be involved in cases managed by the police under MAPPA and the police will be best placed to assess which of them have active involvement in any particular case and from which an assessment of risk should be sought. We think that it is highly unlikely that there will be any case in which every such body is involved, and therefore a duty on the police to notify all of them in all cases would be unnecessary and onerous

Meaning of “risk of sexual harm”

- Section 91B(11) - clarification of the effect of this term which includes reference to “psychological harm to the public”.

The reference to “psychological harm” already appears in the Sexual Offences Act 2003 and is applied by practitioners and the courts in relation to applications for a sexual offences prevention order. As such, the reference to psychological harm is not novel, its meaning is well known and its application and effect have been the subject of a number of court decisions (see, for example, Ferguson (Court of Appeal) [2008] EWCA Crim 2940, Basterfield (Sheriff Court) 2007 SLT (Sh Ct) 129).

Practical and effective access to an independent and impartial tribunal

- Section 91E – clarification as to whether, and on what basis, legal aid will be available, and cost recoverable from central funds if an appeal is successful.

Neither civil nor criminal legal aid will be routinely available for the appeal to the magistrates' court against the decision of the police.

Civil legal aid could be made available in an individual case under section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 where it is required to ensure the protection of an individual's rights to legal aid under the European Convention on Human Rights as well as those rights to legal aid that are directly enforceable under European Union law.

As this is not a criminal proceeding, costs will not be recoverable from central funds.

Guidance to police on how to determine applications for review

- Section 91F(1) - statutory guidance.

The Secretary of State must publish statutory guidance and will do so to provide police, practitioners and other agency partners with a clear understanding of the application of the legislation. The statutory guidance will be available to all police areas and we intend to issue it on the date that the

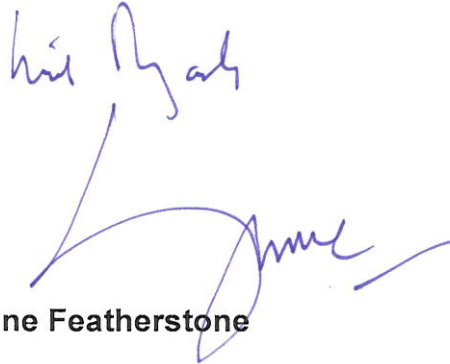
remedial order comes into force. We continue to engage with ACPO to ensure that the changes to legislation are communicated to all forces.

- Clarification on the process for issuing statutory guidance.

We are undertaking a period of consultation with agency partners on the content and development of the statutory guidance, and we will continue to review its content – in tandem with agency partners - once it has been introduced.

We do not believe that it is necessary or appropriate that the statutory guidance be laid before Parliament. We have been guided, by way of a parallel, by the approach taken in relation to the statutory MAPPA guidance issued under section 325(8) of the Criminal Justice Act 2003. This provision is also that the statutory guidance must be issued by the Secretary of State, but there is no requirement to lay it before Parliament.

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