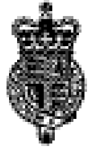

CONSULTATION PAPER ON THE REVIEW OF PART 1 OF THE SEX OFFENDERS ACT 1997

July 2001

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Foreword by the Home Secretary

Sexual crimes cause profound and long-lasting harm to victims and rightly arouse deep concern amongst the general public. When children are the victims, the sense of outrage is particularly strong. We are determined to take every opportunity of building on and strengthening the steps already taken to protect the public from these offenders.

The Sex Offenders Act has proved a valuable tool in helping protect the public and has been the focus of much discussion since its introduction. Experience in implementing it has suggested that some aspects could be strengthened. We announced the review of Part 1 of the Act in June 2000 with this in mind.

This consultation paper has been written following discussion with organisations and individuals with experience of the matters covered by the Act. It makes important proposals for changes to it. We are keen to hear your views on whether these proposals will be effective in increasing public protection. I hope you will take this opportunity to make your views known to us.

David Blunkett

Acknowlegements

We are grateful to all those individuals who participated in the Review of Part 1 of the Sex Offenders Act. Representatives from a wide variety of bodies, both statutory and non-statutory, with experience relevant to the content of the review took part in consultation groups dealing with different aspects of the legislation. Particular thanks are due to those who made time in busy working lives to contribute both to the Steering Group and the consultation groups.

The Steering and consultation groups attracted a high level of attendance despite taking place during the disruptions to rail services and the storms and floods that occurred in the autumn and winter of 2000. We are grateful for the perseverance, application to the task in hand and active participation of all those who attended.

On some matters, there was a consensus whereas on others views differed and could not be reconciled. Occasionally, there were issues on which those attending the meeting had no particular view. The text of this report seeks to identify where consensus was reached and where it was not. However, the content of this report remains the responsibility of the Home Office alone.

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A copy of the report is available on the Northern Ireland Office website, www.nio.gov.uk.

Sex Offender Orders were intended to address the issue of those offenders convicted before 1997 whose current behaviour caused serious concern. Research into the use of these orders began early in 2001 and should inform consideration of their use and effectiveness. No changes are currently proposed to the Crime and Disorder Act 1998 with respect to Sex Offender Orders.

Police powers

As a result of amendments to the SOA contained in the CJ & CS Act, the police will be given the power of arrest for offenders failing to comply with the requirements of the SOA. No further changes are proposed to police powers with respect to the Sex Offenders Act.

Penalties given by courts for failure to comply with the SOA

Guidance should be issued to the courts about the role that the SOA plays in enabling sex offenders to be monitored and about dealing with breach of the requirements of the SOA.

4. The police and other relevant agencies see the SOA as a very useful tool in their task of protecting the public. There is a consensus that the Act has significantly moved forward the monitoring of sex offenders. Over 97% of those required to register have done so, a rate that has been steadily improving. This is testimony to the efforts made by the police and probation services in particular to ensure the legislation is implemented. Registration of offenders is followed by an assessment of the risk they present and by identification of a plan to manage serious risks. For those offenders judged to present a serious risk of harm, this assessment is normally conducted on a multi-agency basis.

Other measures to protect the public

5. It has been clear during media and public debate about sex offenders that more needs to be done to give the public information about the measures that are already in place to protect them. Too often, the impression is given that the provisions of the SOA provide the ability to restrict offenders' actions and movements, whereas they are principally about notification of an address. Moreover, commentary erroneously suggests that the SOA is the principal or even the sole means of protecting the public.

6. In reality, however, over recent years an interlinked raft of provisions has been established to develop the tools available to protect the public from dangerous offenders. These include:

- Sex Offender Orders which enable the police to apply to the courts for an order in respect of sex offenders whose current behaviour causes concern that they present a serious risk of harm. The order both includes prohibitions on the offender from undertaking certain actions, such as loitering near schools, which may be a precursor to offending and entails registration under the SOA
- since the introduction of the Crime (Sentences) Act 1997, judges are obliged to impose a life sentence following a second or subsequent conviction for a serious sexual or violent offence, unless the judge considers there are exceptional reasons for not doing so.
- the Criminal Justice and Court Services Act 2000 bans offenders who have committed crimes against children from working with them. This measure develops an integrated system for protecting children, building on provisions already in place such as the Protection of Children Act 1999. The system will be backed up with a new criminal offence of applying for or accepting work with children while banned.
- the same Act provides a statutory basis for electronic monitoring of dangerous offenders, which will enhance their supervision.
- under the Crime and Disorder Act 1998, sex or violent offenders may have their post-release supervision by the probation service extended for up to 10 years in addition to their current periods of detention and supervision.
- an Early Warning System was introduced in April 1999 to alert the Home Office and other agencies to potentially violent or sexual offenders being released from prison or discharged from hospital. It enables risk assessments to be carried out prior to release of offenders into the community including those convicted of indecency with children. The Early Warning System has proved invaluable in promoting the safe management of high-risk offenders in the community
- joint work by the police and probation services to assess and manage the risk these offenders present. With the introduction of the Criminal Justice and Court Services Act 2000, this has become a statutory duty, underpinned by guidance from the Home Secretary, with the aim of introducing the best possible arrangements which are consistent from place to place. All offenders liable to registration under the SOA will fall within the statutory duty
- a great deal of work is being undertaken to identify effective programmes of supervision for sexual offenders, both undertaken in prison and by the probation service following release. These are based on proven evidence of effectiveness in terms of reducing re-offending rates.
- the Mental Health Act is being reviewed to make sure it reflects and underpins modern patterns of treatment and care and puts greater emphasis on managing the risks to others arising from a mental disorder. This includes proposals to ensure that those considered dangerous as a result of a severe personality disorder can be detained until they are safe to be released.

of a child, recruiting a person into prostitution, managing or controlling the activities of men or women who are prostitutes for money or reward, exploiting others by receiving money or reward from men or women who are prostitutes should only trigger registration if a court determines that they were committed with a sexually abusive motive. Identical arrangements would apply as to those described above for sexually motivated offences of violence.

(If the definitions of any of the above offences alter, it will be necessary to re-consider the above list.)

Chapter 7: **APPLICATION OF THE ACT TO SEX OFFENDERS WHO TRAVEL BETWEEN COUNTRIES**

Current position

1. The Act does not currently apply to offenders when they are outside the United Kingdom. This has meant that some offenders found to be missing from their registered address have maintained that they were abroad at the time and were thus not in breach of the Act's requirements. A second result has been that the police do not know when an offender is intending to travel and thus cannot warn law enforcement agencies overseas that an offender is travelling to their country. Whilst they would not take this action in the case of every registered offender, they may decide to do so in the case of high risk offenders where it could help prevent an offence from being committed.

2. One of the amendments to the SOA introduced in the CJ & CS Act gave the Home Secretary the power to make regulations requiring a registered offender to notify the police of their intention to travel abroad, certain information about their trip and plans to return. These Regulations have completed Parliamentary scrutiny and were implemented on June 1st , 2001. Registered sex offenders are, therefore, now subject to them.

3. No provision was made in the SOA amendments in the CJ & CS Act to deal either with UK citizens convicted abroad of sexual offences but returning to this country or with foreign nationals in similar circumstances. This was because it was recognised that there were complex issues involved, which needed more detailed examination than was possible in the timescale for passing the CJ & CS Act. It was, therefore, decided that the current review should address these matters and they are, therefore, subject to the process of public consultation.

Contextual matters concerning UK and foreign nationals convicted of sex offences overseas travelling to the UK

4. There have been a small number of high profile cases of UK offenders convicted abroad returning to the UK and subsequently committing serious sex offences here. It has not always been known that they were intending to come or what the nature of their conviction was when they entered the UK.

5. There are a number of complex factors affecting our ability to know with confidence the convictions of those coming to the UK:

- sex offences can be committed by UK and foreign nationals anywhere in the world, dealt with by any criminal justice system and the offenders released at any time from any prison anywhere. Attempting to find a uniform system for monitoring the arrival in the UK of all those dealt with in this variety of ways is extremely difficult.

- the free movement of citizens within the EU adds a further layer of complexity. Passport controls on EU citizens entering the UK are now minimal.

- the UK, the USA and, recently, the Republic of Ireland are the only jurisdictions which have a national system of sex offender registration. Even in the US the arrangements vary from state to state. There are, therefore, very few parallel systems that would identify a cadre of offenders about whom information should be routinely exchanged.

- adding to the difficulties in identifying such a cadre is the fact that sexual offences are defined very differently from country to country. Not all states have yet put in place the interlinked raft of child and public protection legislation that has been developed in the UK.

16. The ORSO could apply on the same basis as does the SOA in the UK, i.e. to those convicted on or after September 1 1997. Those serving prison sentences or subject to supervision by the probation service in the community or still being dealt with by a court for the offence on that date would be included. Periods of registration would be the same as those applicable in the UK. The conviction would need to be for a sexual offence in the country in which it was committed and which was equivalent to one which would trigger registration had it been committed in the UK. The court would need to determine the length of the registration period but this should not be for a period exceeding that linked to the domestic offence and should give credit for any period in the community since the offence was committed.

17. It is acknowledged that this proposal does not provide a total solution to the problem but we do not believe such a solution to be possible. It does represent an improvement on the current position and further improvements may generally be achieved in due course because of the international developments described in paragraph 6.

It is, therefore, proposed that:

The police should be able to apply to a magistrates' court for an Order to Register as a Sex Offender which would make the same requirements on an individual and have the same penalties as apply under the SOA. The application could be made in respect of UK or foreign nationals currently in the UK who, whilst overseas on or after September 1 1997 were convicted, found not guilty by reason of insanity or found to be under a disability or to have done the Act charged in respect of an offence equivalent to one under Schedule 1 of the SOA which also constituted an offence in the country in which it was committed.

Chapter 8: **OTHER MATTERS**

Cautions/reprimands, conditional and absolute discharges

1. In 1999, about 1470 individuals were cautioned for sexual offences, of whom about forty per cent were under the age of 18. Some of these could be for cases of indecent assault on adult females, which would not trigger registration. In the same year, a little over 200 offenders were conditionally discharged by courts for sex offences, of whom about twenty per cent were under 18. Cautions for those aged under 18 in place when the SOA was implemented have now been replaced with a system of reprimands and final warnings.

2. Subsection 12(1) of the Powers of Criminal Courts (Sentencing) Act 2000 provides that:

> *"Where a court ... is of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment, the court may make an order either (a) discharging him absolutely; or (b) ... subject to the condition that he commits no offence"*

Discharges are given in circumstances in which the court had available to it a wide variety of alternative disposals but, having heard all the evidence, decided not to impose a specific punishment.

3. The Lord Chancellors Department and Home Office legal advisors had taken the view that that since section 14 of the 2000 Act, which specifies the purposes for which a discharge counts as a conviction, does not include the Sex Offenders Act as one of those purposes, those discharged by the courts are not liable to register.

4. However, some courts had taken a contrary view. The Justices' Clerks' Society has issued advice to its members that since registration is a consequence of a finding of guilt as opposed to being a part of the sentence, the requirement to register could be deemed to be one of "the purposes of the proceedings in which the order is made".

5. It is for courts to interpret the law in respect of any particular case. However, this level of uncertainty could lead to inconsistency in the application of the law, which was undesirable. The consultation groups for this review considered this matter but reached no consensus about whether the current status quo should continue with respect to whether cautions and discharges should trigger registration.

6. In Scotland, there is no system of cautioning but where conditional and absolute discharges are given, the offender is liable for registration. Currently, in England, Northern Ireland and Wales, offenders cautioned for offences on schedule 1 of the Act are liable for registration whereas those convicted but given a conditional discharge, (or an absolute discharge), are not. Some have suggested that this position is anomalous. Cautions, given in matters which do not proceed to court cases, trigger the requirement to register for a minimum of five years in the case of adults, the same as if an offender had been to court and had been sentenced to a fine or a community sentence. Conditional discharges which follow a finding of guilt in the courts do not.

7. We have concluded that there are anomalies in the current situation, which prompts the question of whether in the future cautions should no longer trigger registration or whether discharges should.

8. With respect to cautions, there are factors to consider on both sides of the argument. On the one hand, it appears inconsistent to require someone to notify their name and address to the police and be subject on failure to do so to a maximum penalty of five years imprisonment when the relevant authorities have decided against pursuing a prosecution. On the other hand, however, it can be argued that a variety of reasons

concluded that such an amendment to the Crime and Disorder Act would not add to the measures already available.

20. The police and other agencies involved in child protection have reported that, in certain cases, there has been a reluctance to apply for sex offender orders because of the need for the application to be heard by the court in open session. They feared that such hearings might lead to public disorder and attacks on sex offenders, which would result in their going to ground and risk disrupting public protection arrangements. As a general rule, the English system of administering justice demands that it be done in public. This principle was supported by the ECHR in respect both of delivering a fair trial and of free speech. Concern is sometimes voiced about the few instances in which individuals involved in the court process are granted anonymity, such as those making an allegation of rape. Nevertheless, it is possible for a court, in the interests of justice, to exclude the public if there is a compelling reason for an application to be heard in camera. There was sometimes no need for information relating directly to offenders, such as their address, or the address of their victims, to be referred to directly in open court. Such matters could be confined to written information exchanged by hand in court. They were, however, required to make their judgement in public. It is possible that guidance to courts and the police might reduce this problem.

21. We have concluded that more needs to be known about a range of factors concerned with the operation of SOOs. Research is currently being undertaken by the Home Office into these matters, leading to a published report, expected early in 2002. The research will include examination of reasons for the varying number of SOOs from place to place and experience of the court process of dealing with applications and of local adverse publicity. Until this research is complete and as much as possible is learnt from experience hitherto, we have formed the view that no change should be made to SOOs.

There is no viable way of extending the SOA to offenders convicted before the legislation came into force, beyond the existing limited retrospection with respect to those serving sentences of imprisonment or subject to community supervision by the probation service on September 1 1997.

Sex Offender Orders were intended to address the issue of those offenders convicted before 1997 whose current behaviour caused serious concern. Research into the use of these orders began early in 2001 and should inform consideration of their use and effectiveness.

No changes are currently proposed to the Crime and Disorder Act 1998 with respect to Sex Offender Orders.

Police powers

22. Until the amendments to the SOA in the CJ & CS Act, the police had no power of arrest for failure to comply with the Act. This matter has now been rectified. Nor do they have a power to enter an offender’s home to verify that they are actually living at the address given. They do, however, have their general power to apply for a search warrant when they are investigating whether a crime has been committed. It has been argued that this power of entry is necessary. There was no consensus in the consultation groups about this matter.

23. The evaluation of the Act reflected the widespread perception that, despite what one might assume to be the case, nearly all registered offenders co-operated with the police when they made home visits, although they were not required to do so.

24. We have concluded that a power of entry cannot be justified. Observing an offender and their belongings at an address one day does not mean that they will be there the next. Moreover, there are other means of confirming that an individual is living at their stated address.

As a result of amendments to the SOA contained in the CJ & CS Act, the police have been given the power of arrest for offenders failing to comply with the requirements of the SOA.

No further changes are proposed to police powers with respect to the Sex Offenders Act.

Appendix 1

Government departments and organisations represented on the Steering Group

Home Office

Association of Chief Officers of Probation

Association of Chief Police Officers

Association of Directors of Social Services

Department of Health

National Assembly for Wales

Northern Ireland Office

Scottish Executive

Government departments and other organisations represented on one or more Consultation Groups

All members of the Steering Group

Childline

ECPAT (UK)

Foreign and Commonwealth Office

HM Customs and Excise

Immigration and Nationality Department

Interpol

Justices' Clerks Society

Lord Chancellor's Department

The Magistrates' Association

Ministry of Defence

National Criminal Intelligence Service

National Society for the Prevention of Cruelty to Children

The Office of the Data Protection Commissioner

Royal College of Psychiatrists

National Children's Homes

NHS Confederation

Various Home Office Units

Victim Support

Organisations consulted in writing

Crown Prosecution Service

Youth Justice Board

HM Inspectorate of Constabulary

Local Government Association

Prison Service

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