

# Sex Offender Notification and Violent Offenders Orders

## Proposals for legislation

NSPCC Northern Ireland Response to a DoJ consultation

October 2011

# Consultation response

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**The NSPCC is the lead Child Protection voluntary organisation working across each of the countries in the UK, providing a range of services to children who have been abused and to adults who pose a risk. In Northern Ireland we provide a harmful sexual behaviour service, are developing a new service to unadjudicated offenders and are represented on the Public Protection Arrangements NI (PPANI).**

## **Review mechanism for indefinite notification.**

The Supreme Court ruling<sup>1</sup> that indefinite notification requirements for sex offenders is incompatible with Section 4 of the Human Rights Act 1998 and Article 8 of the European Convention has led to changes being made to Scottish Law and proposals for changes to be made to the Sexual Offences Act 2003 in England and Wales.

We understand the Department of Justice proposals and are supportive of the intention to amend notification periods in line with other parts of the UK via NI legislation. We welcome the intention from the Department that police will not discharge the requirement to notify if the individual poses a risk of sexual harm in NI or any part of the UK.

Section 3.17 of the consultation document sets out a range of considerations for the police and we would suggest these are set out in formal guidance under any enactment. We agree with the inclusion of the catch all provision 'any matter which the chief constable considers appropriate' as this should provide the police with sufficient flexibility to include non-conviction data. Linking the police decision to the provision of Part 3 of the Criminal Justice (NI) Order 2008 and role played by agencies within Public Protection Arrangements NI is very sensible. Guidance could also be used to explicitly set establish the importance of ensuring multi-agency risk assessments are built into police processes and decision making.

## **Notification of foreign travel**

The NSPCC strongly welcomes the proposal from the UK government that any individual who is subject to notification requirements under Part 2 of the Sexual Offences Act 2003, should be required to notify the police of all travel outside of the UK, regardless of the duration of the trip. We have long called for the so-called 'three day loophole' to be closed and it is our view that this legislative amendment is an appropriate and proportionate way to achieve this. This proposal will provide police with the information they need to more effectively manage the risk posed by travelling sex offenders.

We appreciate that Northern Ireland is in a unique position in the UK having a land border with the Republic of Ireland as this is recognised in the Department's proposal to compromise on the 2 day notification period for foreign travel and combining this with advising of any recurring commitment to travel outside the jurisdiction in relation to work or family. We understand the complexity of this proposal is linked to the requirements of

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<sup>1</sup> In the case of R v Secretary of State for Home Department [2010] UKSC 17

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European law but we have concerns that this creates a difference in notification requirements with other parts of the UK. The NSPCC would prefer parity to be retained with the Home Office proposal for England and Wales and specific exemptions created relating to travel to the Republic of Ireland.

## Notification of place of residence

The NSPCC in Northern Ireland welcomes the proposal that any individual who is subject to notification requirements under Part 2 of the Sexual Offences Act 2003 should be required 'to notify weekly where their most recent notification is of a premises at which they regularly reside or stay and not the address of their sole or main residence'. However, it is our view that the requirement to notify of 'a premises' should be changed to 'any premises', to take account of the fact that a sex offender may regularly reside in or stay at two or even three separate premises during the course of a single week. All such locations should be recorded on the notification form.

It is our view that this proposal will help the PSNI to establish a more comprehensive picture of the whereabouts of such offenders which will in turn enable them to manage more effectively the risk posed by such individuals. This may in part come about because the inconvenience of having to register on a weekly basis may encourage some sex offenders with notification requirements who have no fixed, permanent address to settle down in one location on a more stable basis. To increase the possibility of this happening, such offenders should be offered assistance to find a suitable place to live.

However, it should be borne in mind that sex offenders who have abused children can behave in manipulative and devious ways; for this reason it should not be assumed that they will always give the police accurate information on their whereabouts. We would seek assurances that the proposed amendment to the notification form to ensure a more streamlined process from the police is not at the expense of ensuring careful examination of whether the offenders who are notifying on a weekly basis are giving the police accurate information.

## Notification of residence with a minor

The NSPCC in Northern Ireland strongly welcomes the proposal that any individual who is subject to notification requirements under Part 2 of the Sexual Offences Act 2003, and who resides in a household with a child under the age of 18, should be required to notify the police of this information as part of their periodic notification or whenever their details/circumstances change. This proposal will be a major step forward in ensuring that vulnerable children are not put at risk as it will help the police identify situations where intervention may be appropriate and necessary to protect children from abuse. It also fits with DHSSPS Departmental guidance in HSC Circular 3/96. It is vital that the police then relay this information to all the relevant local agencies, so that a child protection plan can be put into place if necessary.

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We would seek assurance that accompanying guidance for practitioners and information for offenders will be developed and this should make it clear that the phrase ‘whenever their details/circumstance change’ means that the offender is required to notify the police at the earliest possible point after their situation has changed. The guidance for practitioners and information for offenders should also make it clear that this notification requirement includes those situations when the offender:

- becomes a parent to a newborn baby, with whom they live; or
- begins to reside in a household with a 16 or 17 year old as a result of forming a sexual relationship with them.

We would consider that this is a proportionate means by which the police can gather information to enable them to intervene in cases where children may be at risk.

### Notification of personal/identification details

The NSPCC in Northern Ireland strongly welcomes the proposal that any individual who is subject to notification requirements under Part 2 of the Sexual Offences Act 2003 should be required to notify the police of passport details, bank account details and credit card details, and provide a specified form of identification upon each notification. This requirement will strengthen the ability of the police to detect sex offenders who fail to comply with the requirement to notify any change of name or alias in an attempt to evade the system. The NSPCC has long called for this legal loophole to be closed. Given that those offenders who use existing avenues such as the deed poll process to evade police detection are often the most serious offenders, it would be proportionate for the legislation to specify that:

- All passports held by the offender must be declared. This should include those individuals who hold dual nationality or citizenship. For example, all those born in Northern Ireland are entitled to hold passports from both the United Kingdom and the Republic of Ireland simultaneously.<sup>2</sup> The accompanying guidance should provide advice to police about how to gather accurate information about the possibility that the offender holds more than one passport.
- All credit cards and bank accounts held by the offender must be declared. The accompanying guidance should include advice about the measures police in Northern Ireland must take to ensure that offenders are declaring all the credit cards and bank accounts they hold, for example by proportionate cross-referencing with at least one of the UK’s credit referencing agencies - Experian, Equifax and CallCredit.<sup>3</sup> The regularity of such cross-referencing will depend on the frequency of the notification requirements to which the offender is subject.

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<sup>2</sup> See

[http://www.citizensinformation.ie/en/moving\\_country/irish\\_citizenship/irish\\_citizenship\\_through\\_birth\\_or\\_descent.html](http://www.citizensinformation.ie/en/moving_country/irish_citizenship/irish_citizenship_through_birth_or_descent.html) and <http://www.ind.homeoffice.gov.uk/britishcitizenship/dualnationality/>

<sup>3</sup> See [http://www.ico.gov.uk/for\\_the\\_public/topic\\_specific\\_guides/credit.aspx](http://www.ico.gov.uk/for_the_public/topic_specific_guides/credit.aspx)

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## Extension of SOPO provisions

The NSPCC is strongly supportive of the Department's proposals to amend the Sexual Offences Act 2003 to provide for an offender to comply with positive actions in a SOPO which may support a risk management plan. We agree that it would provide a higher level of public protection requiring an individual to live at a particular location.

## The notification of sex offenders from other jurisdictions

We are entirely supportive of this proposal to require a qualifying offender from outside the UK to notify the police on arrival in Northern Ireland and believe it should be extended to other jurisdictions in the UK, not just NI. This will bring NI into line with notification requirements from outside the State in the Republic of Ireland under the Irish Sex Offenders Act 2001 and will avoid offenders being able to exploit loopholes on a north south basis. It will also place the onus on the individual to notify as opposed to the police having to locate an individual and obtain a notification order.

## Violent Offenders Orders

We totally support the introduction of Violent Offender Orders as described in the consultation document and see them as an important provision to manage those who pose a public risk of violence. As it is, where an individual is outside of probation/licence requirements agencies are hampered in multiagency assessment and risk management.

This fills an important gap.

## Other issues

We would wish to highlight a number of issues not contained in the consultation document.

## Children displaying harmful sexual behaviour

Under the Sexual Offences Act 2003, children who have committed a sexual offence are subject to the same notification requirements as adults. Although the length of their notification period is automatically halved<sup>4</sup>, and they have the possibility of varying a notification direction<sup>5</sup>, this does not go far enough in recognising and attempting to meet the rights, needs and vulnerabilities which are specific to children. No consideration is given to how such requirements may affect the lives of young people; how regular contact with criminal justice agencies may lead to them being stigmatised at a young age; or to how the notification requirements could be tailored to better fit in with the reality of children's everyday

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<sup>4</sup> Sexual Offences Act, section 82 (2).

<sup>5</sup> Sexual Offences Act, section 90 (1).

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lives, for example in relation to their attendance at school and their widespread use of social networking sites. As such, the current requirements do not constitute a child-centred and welfare-based approach to their management.

For these reasons, a review should be conducted into the effectiveness, proportionality and impact of the current and proposed notification requirements on young people who have sexually offended. Consideration should be given to adapting the current notification requirements so that they contain provisions which are specifically designed for children and young people which are appropriate for their age and stage of development, take into account any past experiences of abuse, their offending behaviour and which support them to change their behaviour and minimise the potential for them to reoffending. For example, specially tailored notification requirements could contain provisions to monitor their use of social networking sites, or to require the lead risk manager to pay home visits to the young person in order to support them to change and to engage their family.

To oversee this process consideration could also be given to the formation of local multi-agency juvenile risk assessment panels, comprising key agencies including the police, youth justice, children's social care and education providers working alongside child protection panels. This would formalise and develop current practice as set in Co-operating to Safeguard Children and ACPCs Regional Policies and Procedures.

### Review of notification requirements

One of our key concerns is that measures should not be introduced which would have the adverse effect of driving offenders 'underground'. We can see nothing in these proposals which indicate that this would be a likely outcome. However, we recommend that a review by the Department of Justice and Home Office into the impact of the new notification requirements on the behaviour, compliance and recidivism rate of those who sexually offend is conducted two years after the notification requirements come into force.

### For further information, please contact:

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## About the NSPCC

The National Society for the Prevention of Cruelty to Children (NSPCC) aims to end cruelty to children in the UK by fighting for their rights, listening to them, helping them and making them safe.

We share our experience with governments and organisations working with children so together we improve the protection of children and we challenge those who will not learn and change.

We campaign for better laws and we educate and inform the public to improve understanding about child abuse.

Our services include the NSPCC Helpline, for adults worried about a child, and ChildLine, the UK's free, confidential helpline for children and young people.