House of Lords
House of Commons

Joint Committee on Human Rights

Proposal for the Sexual Offences Act 2003 (Remedial) Order 2011

Nineteenth Report of Session 2010–12

Report, together with formal minutes and written evidence

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The Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Footnotes

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. References to evidence as EXT refers to written evidence as listed on pages 69 and 70. Both the oral and written evidence is published online at http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/publications/. Written evidence is also available for inspection in the Parliamentary Archives (020 7219 5315).

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Report

Summary

A proposal for a draft Sexual Offences Act (2003) (Remedial) Order and the required information was laid before both Houses on 14 June 2011. Our terms of reference require us to report to each House our recommendation as to whether a draft order in the same terms as the proposal should be laid before Parliament, and we may also report on any matter arising from our consideration of the proposal.

The purpose of this proposal is to remove the incompatibility in Section 82(1) of the Sexual Offences Act 2003 identified by the domestic courts in *F & Thompson v Secretary of State for the Home Department*. Section 82(1) provides for the notification arrangements created by the Sexual Offences Act 2003 (and commonly known as "Sex Offenders Registration") to apply indefinitely to offenders sentenced to a term of imprisonment lasting 30 months or more. The Supreme Court concluded that, in so far as these provisions allow for indefinite notification without review, they present a disproportionate interference with the right to respect for private life and are incompatible with Article 8(1) ECHR.

We agree with the Government's assessment that there are compelling reasons for using the remedial order process to introduce a form of review into the registration of sex offenders. We also agree that an urgent remedial order would not be justified.

However, we recommend that the draft Order should not be tabled in the terms proposed. It is our view that, without significant amendment, the proposals in the draft Order will lead to repeat litigation and further violations of Article 8 ECHR.

The proposals in the Order will not remove the incompatibility identified by the Supreme Court in Thompson. We consider that the draft Order should be amended to introduce a review by application to an independent and impartial tribunal, with a requirement that the Chief Police Officer (and other MAPPA institutions) should be notified of the application and should submit reports on their assessment of the risk posed by the applicant; or that the Order is amended to introduce a full statutory right of appeal from the decision of the Chief Officer to an independent and impartial tribunal. In our view, either of these options would introduce a sufficiently independent element to the review process. The Committee expresses its view that this type of review should be concluded by a court of sufficient seniority, such as the High Court or the Crown Court.

We recommend amendment of the draft Order to (a) include a test to be applied on review, incorporating a proportionality exercise and (b) to introduce the impact on the individual offender as a relevant factor to be considered on review.

We welcome the Government's confirmation that guidance will be necessary to accompany the new review mechanism. We consider that additional guidance will be essential to ensuring procedural fairness and the effective involvement of victims and offenders in the decision making process. We are concerned that the proposed guidance will not be statutory guidance required by the terms of the draft Order.

We also consider the particular impact of indefinite notification on child offenders. We recommend that the Government consider amendment of the draft Order to introduce either (i) a discretionary opportunity for review of the proportionality of notification

requirements imposed on child offenders or (ii) a shorter period for rolling reviews in the case of child offenders (perhaps providing for applications to be possible at two year intervals, rather than eight year periods).

We note the need for particular care in cases where different measures to address a violation identified by the Court are proposed in England, Northern Ireland and Scotland.

While we acknowledge the political interest in Government's seeking to maintain their policy objectives when responding to adverse human rights judgments, the first objective of any remedial order or legislation designed for this purpose should be to remove the relevant violation. We stress that remedial orders are designed to be used when the Government intends to remove a violation and provide a fast-track parliamentary procedure for remedying breaches of the Convention quickly. Introducing measures which create a significant risk of further litigation using this special parliamentary procedure appears to us to undermine the purpose for which it was intended. We express concern about the Government's approach in this case.

1 Recommendation

1. Remedial orders are secondary legislation made under the Human Rights Act 1998 (HRA) to remove an incompatibility with Convention rights in primary legislation identified by either our domestic courts or the European Court of Human Rights.[1] After the domestic courts have made a declaration of incompatibility which is no longer subject to appeal, or a European Court of Human Rights judgment finding a violation becomes final, it is open to the Government to remove the relevant breach of the ECHR through the fast-track remedial order process. The Minister must consider that there are "compelling reasons" to use the remedial order process and "may by order make such amendments to the legislation as he considers necessary to remove the incompatibility."[2] The Minister can choose to use either an "urgent" or a "non-urgent" remedial order. A draft remedial order may not be laid before Parliament unless the person proposing to make the order has previously laid before Parliament a document which contains a draft of the proposed order and "the required information".[3]

2. A proposal for a draft Sexual Offences Act (2003) (Remedial) Order and the required information was laid before both Houses on 14 June 2011. Our terms of reference require us to report to each House our recommendation as to whether a draft order in the same terms as the proposal should be laid before Parliament, and we may also report on any matter arising from our consideration of the proposal.[4] We issued a call for evidence on the Government's proposal on 21 June 2011.

3. The Committee has received responses to its call for evidence from the following organisations:

- Howard League
- Liberty
- NSPCC
- Prison Reform Trust
- South Essex Rape and Incest Crisis Centre
- Law Society of Scotland

4. We are grateful to all those who responded to our call for evidence. Each of these submissions is available on our website.[5] We also wrote to the Minister and to the Association of Chief Police Officers (ACPO) and the National Offender Management

1 Section 10 and Schedule 2, HRA 1998

2 Section 10(2) HRA 1998.

3 Para 3(1)(a) of Schedule 2, HRA 1998.The required information means (a) an explanation of the incompatibility which the order (or proposed order) seeks to remove, including particulars of the relevant declaration, finding or order; and (b) a statement of the reasons for proceeding under section 10 and for making an order in those terms (para 5, Schedule 2).

4 House of Commons Standing Order 152(B) and House of Lords Standing Orders, 2010, 72(c)

5 http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/remedial-orders/sexual-offences-act-2003-remedial-order-2011/

Service (NOMS) to ask for further information on the proposals. The Minister responded on 19 July 2011. NOMS wrote to explain their involvement in the development of these proposals and to indicate that they had no objection to them. ACPO also wrote to us to indicate that it did not intend to provide any substantive response to the Committee's call for evidence. We publish this correspondence with this Report.[6]

5. **While we welcome the Government's decision to use the remedial order process in this case, we raise a number of significant concerns about the Government's approach, below. We recommend that the proposals are amended to provide for a review by an independent tribunal before any draft order is tabled. Without such amendment, we will be unable to recommend the approval of any proposed draft order.**

2 Background to our recommendation

The purpose and effect of the proposal for a draft order

6. The purpose of this draft proposal for a remedial order is to remove the incompatibility in Section 82(1) of the Sexual Offences Act 2003 identified by the domestic courts in *F &Thompson v Secretary of State for the Home Department*.[7]

7. Section 82(1) provides for the notification arrangements created by the Sexual Offences Act 2003 (and commonly known as "Sex Offenders Registration") to apply indefinitely to offenders sentenced to a term of imprisonment lasting 30 months or more. Other offenders who commit relevant offences may be made subject to a restriction order and these offenders are also required to notify indefinitely. The Supreme Court concluded that, in so far as these provisions allow for indefinite notification without review, they present a disproportionate interference with the right to respect for private life and are incompatible with Article 8(1) ECHR.[8]

8. The Supreme Court concluded that the terms of the notification scheme engaged the right to respect for private life enjoyed by offenders. The impact on offenders was not insignificant. However, the requirement for notification served a legitimate aim of protecting the rights of others from the risk posed by offenders. The Court accepted that significant weight was to be placed on measures designed to protect individuals against sexual offences. Ultimately however, the Court concluded that:

> There must be some circumstances in which an appropriate tribunal could reliably conclude that the risk of an individual carrying out a further sexual offence can be discounted to the extent that continuance of notification requirements is unjustified. As the courts below have observed, it is open to the legislature to impose a high threshold for review. Registration systems are not uncommon in other jurisdictions.[9]

9. In the course of making its decision, the Supreme Court considered the operation of review requirements in other jurisdictions. In the Impact Assessment accompanying this Order, the Government notes that in other jurisdictions, review is generally conducted by a Court on application by the relevant offender. In France, the review is conducted by the prosecutor, but subject to subsequent appeal to a judge.[10]

10. The Supreme Court considered the only Strasbourg authority on this issue was not decisive, but was relevant to their assessment. In this case, the European Court of Human Rights considered the reporting requirements applicable in France were compatible with the right to respect for private life guaranteed by Article 8 ECHR.[11] However, as the Supreme Court noted, the possibility for review was "highly material" to the determination that the French reporting mechanism operates in a proportionate manner. It is important

7 [2010] UKSC 17 (Herein "*F & Thompson"*)

8 *F & Thompson,* para 57.

9 *F & Thompson,* para 57.

10 Impact Assessment, page 7.

11 *Bouchacourt v France,* App No 5335/06, 17 December 2009.

to note that the Court in the French case refers to the entirety of the review mechanism, including the opportunity for an appeal to the "freedoms and detention judge" (*juge des libertés et detentions*) and then on to the President of the investigating chamber.[12]

11. The draft Order would introduce a mechanism for review on application to the relevant Chief Police Officer. The review would be triggered on application by an offender and would only be available either 15 years after release from custody for adult offenders or eight years after release for offenders who were under-18 when they committed the relevant offence.[13] The relevant Chief Police Officer will consider written representations from the offender before making his final decision. The Chief Police Officer may confirm the notification requirements or remove them.[14] If the notification requirements are confirmed, there will be a further opportunity for review after eight years unless the Chief Officer orders that review shall be at a later date for reasons of public protection.[15] A further review must be made available within 15 years at the latest.[16] The Impact Assessment indicates that the decision of the Chief Police Officer will not be subject to a right of appeal.[17]

Parliamentary scrutiny of remedial orders

12. The Committee has adopted the practice of reporting on the technical compliance of any remedial order with the HRA 1998, of recommending, in accordance with the requirements of the Standing Orders, whether or not the order should be approved, and of noting whether the order raises any concerns which would ordinarily be within the remit of the Joint Select Committee on Statutory Instruments.[18] Broadly, the Committee asks whether the draft order:

- should be approved in the form in which it was originally laid before Parliament;
- should be replaced by a new order modifying its provisions; or
- should not be approved.[19]

13. In order to answer these questions, the Committee generally asks:

- Have the conditions for using the remedial order process (Section 10, HRA 1998) been met?
- Are the reasons for proceeding by remedial order rather than by primary legislation, "compelling"?
- Has the Government produced the information required by the HRA 1998?

12 *F & Thompson*, para 33.

13 Section 3, New Section 91B(2)

14 Section 3, New Section 91(C)

15 Section 3, New Section 91B(4)–(5)

16 Section 3, New Section 91B(4)–(5)

17 Impact Assessment, page 11.

18 Fifteenth Report of 2009–10, *Enhancing Parliament's Role in relation to Human Rights Judgments*, HL 85/HC 455, Annex, paras 22–23.

19 S.O. No. 152B(4) of the House of Commons.

- Has the Government effectively responded to other requests for information from the Committee?
- Does the proposal remove the incompatibility with Convention rights which it is designed to meet, and is it appropriate?
- Is the procedure used—urgent or non-urgent—appropriate?

14. The relevant grounds on which the JCSI can draw a statutory instrument to the special attention of each House are:[20]

- that it imposes a charge on the public revenues or requires payments to be made to a public authority;
- that there appears to have been unjustifiable delay in the publication or laying of the order before Parliament;
- that there appears to have been unjustifiable delay in notifying the Speaker or Lord Speaker where the order has come into effect before being laid;
- that there appears to be a doubt whether it is *intra vires* or that it appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made;
- that for any special reason its form or purport calls for elucidation;
- that its drafting appears to be defective;
- or on any other ground which does not impinge on its merits or the policy behind it.

15. The Committee can draw the attention of each House to the order on any of these grounds and may also report to each House on "any matter arising" from its consideration of the order.[21]

20 S.O. No. 151(B) of the House of Commons.

21 S.O. No. 152B(4) of the House of Commons.

3 Is it proper to proceed by way of non-urgent remedial order?

16. The Government has produced each of the documents required by the HRA 1998. It has also responded swiftly to the Committee's request for further information. There are no technical issues which the Committee would be required to draw to the attention of both Houses.

17. In its required information note, the Government explains that it considers that there are compelling reasons to use Section 10 HRA because:

> The Government takes this issue very seriously and considers that steps should be taken to address this incompatibility expeditiously, in line with the recommendations of the Joint Committee on Human Rights (JCHR). In the absence of any suitable First Session bills to rectify the incompatibility, and mindful of the need to avoid undue delay, it is the view of the Government that it is appropriate to seek to remedy the incompatibility in the 2003 Act by means of the available process for making remedial orders under section 10 of the Human Rights Act 1998.[22]

18. In its Impact Assessment, the Government explains that a further reason for speedy action is the need to avoid further costly litigation in repeat cases, and the risk that the domestic courts may decide to award compensation to offenders who challenge their indefinite notification requirements.[23] In her latest letter to the Committee, the Minister reiterates the need for speedy action and cites a likely congestion in the legislative timetable as justification for the use of the remedial order process.[24] The Minister added that the Government intends to introduce its proposals before September 2012, because under the timescales they envisage for an initial review (15 years for adult offenders, 8 years for child offenders), the first people required to notify would be eligible for review by that date.

19. **In light of the time which has passed since the decision in *Thompson*, the continuing impact on those required to notify indefinitely, and ongoing uncertainty about the lawfulness of the notification requirements, there are sufficiently compelling reasons to justify the use of the remedial order process.**[25] In addition, the Government is currently consulting on new requirements for notification, including more rigorous requirements for the notification of travel overseas and notification of residence with under–18s.[26] If the impact on individuals who are required to register increases, an opportunity for review for those indefinitely registered may become more urgent.

20. The JCHR guidance on whether a remedial order should follow the urgent or non-urgent procedure looks at:

22 Required Information Note, p 2

23 Impact Assessment, p 8

24 Ev 40–51

25 See for example, Fifth Report of Session 2010–11, *Proposal for the Asylum and Immigration (Treatment of Claimants, etc)* Act 2004 (Remedial) Order 2010, HL 54/HC 599, paras 16–18.

26 Home Office, *Reforming the Notification Requirements of Registered Sex Offenders (Part 2 of the Sexual Offences Act 2003): A Targeted Consultation*, June 2011

- The significance of the rights which are, or might be affected by the incompatibility;
- The seriousness of the consequences for identifiable individuals or groups allowing the continuance of an incompatibility with any right;
- The adequacy of compensation arrangements as a way of mitigating the effects of the incompatibility;
- The number of people affected;
- Alternative ways of mitigating the effect of the incompatibility pending amendment to primary legislation.[27]

21. In its required information note, the Government explains that it has decided to use the non-urgent process in order to ensure adequate parliamentary scrutiny of this issue:

> The Government has concluded that [an urgent Order] would not be suitable, given the time that has elapsed since the decision of the Supreme Court was handed down and the need for robust Parliamentary consideration of the balance to be struck between individual rights and public safety.[28]

22. **We agree with the Government's assessment that there are compelling reasons for using the remedial order process to introduce a form of review into the registration of sex offenders. We also agree that an urgent remedial order would not be justified. There is nothing in this case which would justify the use of the urgent remedial order process. An increasing number of people are subject to indefinite notification requirements. However, the significance of the impact of these requirements does not justify the removal of the opportunity for parliamentary scrutiny before the relevant reforms come into force. This is particularly significant in light of the political sensitivity of these measures.**

27 Seventh Report of 2001–02, *The Making of Remedial Orders*, HL 58/HC 473, paras 36–37.

28 Required Information Note, p 2

4 Does the draft Order remedy the incompatibility?

Introduction

23. In the Minister's letter, the Government outlines the terms of the declaration of incompatibility made by the Supreme Court:

> The indefinite notification 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.[29]

24. This declaration implements the judgment of the Court that a lack of appropriate review in cases of indefinite notification was incompatible with Article 8 ECHR:

> There must be some circumstances in which an appropriate tribunal could reliably conclude that the risk of an individual carrying out a further sexual offence can be discounted to the extent that continuance of the notification requirements is unjustified.[30]

25. We are concerned that a number of potentially misleading statements have been made in the press about the scope of this judgment.[31] We would like to use this opportunity to stress its limited scope:

- The Supreme Court stressed that the public interest served by the registration of sex offenders was not disputed in this case.[32] In their submission to the Committee, Liberty expressly outline the human rights requirements on the Government to protect the public from sexual offences, grounded in Articles 3 and 8 ECHR, the rights to be free from inhuman and degrading treatment and the right to respect for private life. We reiterate the weight afforded to public protection from sexual offences by the European Convention on Human Rights in its case-law and by the Supreme Court in *Thompson*. In their submission, the EHRC refer to the case of *Stubbings* where the European Court of Human Rights said:

> Sexual abuse is unquestionably an abhorrent type of wrongdoing, with debilitating effects on its victims. Children and other vulnerable individuals are entitled to state protection, in the form of effective deterrence, from such grave types of interference with their private lives.[33]

- The Supreme Court does not rule out the operation of the sex offenders register, nor does it rule out a sex offender being registered for life. It does require the

29 Ev 40–51.

30 *F & Thompson,* para 57.

31 See for example, http://www.telegraph.co.uk/news/uknews/law-and-order/7406462/Human-rights-laws-stopped-Home-Office-tracking-sex-offenders-emails.html

32 *F & Thompson, para 41.*

33 (1996) 23 ECHR 213

introduction of a review by an appropriate tribunal in those cases where ex-offenders are required to register indefinitely. The purpose of this review is to consider whether continued notification requirements continue to be justified and necessary and proportionate to the aim of the prevention of sexual offending and the protection of the right of others to be free from sexual harm.[34] Although the Court's analysis was firmly based on the proportionality of the measures and the potential for disproportionate interference with individual offenders' private lives, we and our predecessors have repeatedly called for access to judicial scrutiny of administrative or civil decision making where decisions are taken by public authorities which impact significantly on the rights and liberties of individuals in the UK. The same need for review applies in cases where restrictions on individual liberty are imposed automatically, indefinitely or without opportunity for challenge. The fundamental principles of procedural fairness and access to justice which are protected by both Article 6 ECHR and the procedural elements of Article 8 ECHR (as exhibited in this case) are grounded in common law tradition.[35]

- In assessing whether continued registration is necessary and proportionate, the Court was clear that significant weight should be afforded to the interest in protecting the public from sexual offences.[36]

26. **It is our view that the proposals in the Bill do not remove the incompatibility identified by the Supreme Court. We recommend that the draft Order should not be tabled in the terms proposed. It is our view that, without significant amendment, the proposals in the draft Order will lead to repeat litigation and further violations of Article 8 ECHR.**

(a) Do the proposals provide for a review by an appropriate tribunal?

27. The most significant issue arising in connection with the draft proposals is the extent to which the review proposed in the mechanism meets the requirements of the judgment. We wrote to the Government to ask for further information on their view that a review of the risk posed by an ex-offender by a Chief Police Officer is adequate to render the Sexual Offences Act 2003 regime compatible with Article 8 ECHR. The Government confirmed that this review would be subject to judicial review and that, in its view, this was sufficient to remove the violation identified by the Supreme Court. By way of summary, the Minister explained the Government's view as follows:

- The Government considers that the Court is unclear whether review must be judicial or administrative. It considers that either is adequate for the purposes of Article 8 ECHR;

- The Chief Police Officer, working with MAPPA agencies,[37] will be best placed to assess risk; and

34 *F & Thompson,* para 57.

35 See for example *R (Witham) v The Lord Chancellor* (1998) QB 575

36 *F & Thompson,* para 57. See also para 18.

37 Multi-Agency Public Protection Arrangements, which were introduced in Criminal Justice and Court Services Act 2000, are the authorities and agencies tasked with providing public protection against violent and sexual offences,

- In any event, judicial review, following European Court of Human Rights case law will be adequate to ensure independent oversight of the decisions of the Chief Police Officer.[38]

28. We consider the Government's approach is flawed for a number of reasons:

- Review by an independent and impartial body is the only approach which is consistent with the existing case-law of the European Court on Human Rights. The Supreme Court refers to the case of *Bouchacourt*.[39] In this case, the European Court of Human Rights reviewed the operation of sex offenders' notification requirements in France. Under the French law, individuals were required annually to report their address for recording on a central database. The information would be stored for up to 30 years, not indefinitely. The Court reviewed this provision and considered that it was proportionate in light of accompanying safeguards, including access to a judicial assessment of whether information should be deleted.

  The Minister tries to distinguish this case (and earlier case-law on the need for review when indefinite measures interfere with private life) in her response to the Committee's request for further information. The Minister's response to our request for further information argues that since this case dealt with retention of information on the French equivalent of the database, rather than the entirety of the notification requirements, it is distinguishable.[40] In our view, this argument is unsustainable, particularly in light of the reference to this line of authority by the Supreme Court as relevant to its analysis, if not necessarily decisive. In effect, the Minister argues that since the interference posed in that case was less significant, the relevance of the need for an independent review to the operation of the register in the UK is reduced. If anything, it is arguable that the need for a review is more significant by comparison.

- The Supreme Court judgment refers to the review mechanisms in other countries, including France, Ireland, Australia, Canada, South Africa and the United States. In our view, evidence illustrates that across Europe and the Commonwealth, where a review is available, it generally involves a judicial element. For example:

  - In France, the review is overseen by a judge, with a full right to appeal through the ordinary judicial process (see above).[41]

  - In the Republic of Ireland, review is by way of an application to the Court to discharge the requirement to notify.[42]

  - In Canada, review is also by way of application to the ordinary criminal Courts.[43]

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including through the management of offenders who may pose a risk of harm to the public.They include individual police forces, NOMS and the Prison Service.

38 Ev 40, paras 9–16

39 App No 5335/06, Judgment dated 17 December 2009.

40 Letter dated 19 July 2011, para 16.

41 Article 706–53–4 of the French Criminal Code

42 Section 11, Sexual Offenders Act 2001

43 Para 490.16 of the Canadian Criminal Code

In South Africa, oversight of registration, including decisions on applications for removal from the register, is provided by an appointed Registrar, who must be a "fit and proper" person to manage the sex offenders register.[44]

This consistency of approach reduces the likelihood that in any subsequent challenge the European Court of Human Rights could consider that the Government's proposals were within any margin of appreciation afforded under the ECHR. The comparative disparities in approach are more stark when the response of the administrations in Scotland and Northern Ireland to this judgment are taken into consideration.

- In Scotland, notification requirements will lapse after either 15 or 8 years, unless a Chief Officer takes a decision that they must continue. The decision of the Chief Officer is subject to appeal to the Sherriff (and further appeal through the ordinary criminal courts).

- The Northern Ireland Executive are currently consulting on their proposed response to the decision in *Thompson*.[45] Broadly, the Northern Ireland executive proposes that a first review will be conducted by the Chief Officer. Thereafter, if a review is unsuccessful, the offender may make an application to the Crown Court for the discharge of his requirement to notify. The Northern Ireland Executive give two reasons for rejecting the approach proposed in England and Wales: (a) legal advice that this approach was incompatible with the ECHR and (b) representations by the Northern Ireland Police Service.[46]

- The Supreme Court judgment makes clear that it envisages review by "an appropriate tribunal".[47] The reference to the involvement of a tribunal, in our view, makes it clear that the Court did not envisage a referral back to an administrative decision-maker. If the Court considered review, particularly in a criminal justice context, by the police, adequate for the purposes of Article 8 ECHR, it would have expressly included this as a possibility in its judgment.[48] The Minister argues that the administrative decision taken by the Chief Police Officer, taken cumulatively with the possibility for judicial review is adequate to meet the need for independent oversight. However, in our view, her analysis of the Strasbourg case-law on Article 6 ECHR is flawed. In the case of *Kingsley*,[49] the Court makes clear that where an original decision maker is not independent and impartial as required by Article 6 ECHR, the possibility of judicial review can remedy the flaws in the decision making process, provided that overall, the original decision-making process has been fair. Here, the combination of an assessment by a Chief Police Officer, subject to judicial review, is not, in our view, comparable. In many cases where judicial review was adequate to render a decision compatible with

44 Section 51, Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007.

45 http://www.dojni.gov.uk/index/public-consultations/current-consultations/consultation-on-sex-offender-notification-and-violent-offender-orders.htm

46 Ibid, paras 3.23–3.24. See also Evidence to the Northern Ireland Assembly Committee on Justice, 16 June 2011, Gareth Johnston, Head ofJustice Strategy, Northern Ireland Executive.

47 *F & Thompson,* para 57.

48 This approach has recently been reinforced by the High Court in Northern Ireland, which considered the lack of an independent review mechanism significant to its finding that the indefinite storage of information for the purposes of public protection could violate Article 8 ECHR. See NJ's Application [2011] NICA 50, paras 40– 43,45.

49 This case and others are cited by the Minister in her correspondence, Ev 40, para 14.

Article 6 ECHR, the original decision was reviewed by a secondary decision-maker (who may not be entirely independent) before being subject to judicial review. In *Tsfayo,* the Court makes clear that where the original decision maker is responsible for taking an assessment largely based on factual determinations, the flaws in the decision making process cannot be remedied on judicial review, which is incapable of reassessing the facts of any case. The Government has indicated that decisions on risk assessment will not involve the determination of any facts, which will be settled, but instead the assessment of risk based on a determined factual matrix. This is far from clear in our view, in light of the fact that the assessment will take place some years after the initial offence, and risk may be assessed on the basis of events or developments during the intervening period, some of which may be subject to factual dispute. In any event, the proposed decision-making process is subject to a number of potential procedural flaws which we return to, below.

- The Government view that the Chief Police Officer will be best placed to assess risk, ignores the various circumstances in which courts and other tribunals assess the risk to the public, for example in sentencing decisions, in decisions on Sexual Offences Prevention Orders or other civil-based orders and in the decisions taken by the Parole Board in their analysis of the appropriateness of an individual's release on licence and the continued need for license arrangements to prevail. In any event, it is clear that any Court or Tribunal would hear from the Police and other MAPPA agencies in determining any assessment of risk and that this evidence would have a significantly high value in any assessment of proportionality conducted on review. For example, in Scotland, the relevant legislation makes clear that the relevant Chief Constable may appear or be represented during any hearing of an appeal.[50]

29. **The proposals in the Bill will not remove the incompatibility identified by the Supreme Court in *Thompson*. We consider that the draft Order should be amended to introduce a review by application to an independent and impartial tribunal, with a requirement that the Chief Police Officer (and other MAPPA institutions) should be notified of the application and should submit reports on their assessment of the risk posed by the applicant; or that the Order is amended to introduce a full statutory right of appeal from the decision of the Chief Officer to an independent and impartial tribunal. In our view, either of these options would introduce a sufficiently independent element to the review process.**

30. **However, together with the changes set out at paragraphs 37–38 below, amendment of the draft Order to provide for a full statutory appeal to an independent and impartial court or tribunal would be the minimum required to ensure that the Government's proposals will remove the violation identified by the Supreme Court. We consider that an appropriate tribunal in these circumstances should be a court of sufficient seniority, such as the High Court or the Crown Court (following the model proposed in Northern Ireland).**

50 See Section 88G(7), Sexual Offences Act 2003.In the Republic of Ireland, the relevant legislation also makes clear that the police have the right to appear and be heard at any application for removal from the register: Section 11, Sex Offenders Act 2001.

(b) Do the proposals provide for consideration of the proportionality of continuing notification requirements?

31. In *Thompson,* the key paragraphs of the judgment make clear that the purpose of the review is to allow ex-offenders to challenge the necessity and proportionality for their continuing requirement to notify.[51] This exercise involves an assessment of the proportionality of the interference which the requirements associated with notification pose to the individual's private life and the risk which he or she poses of sexual harm to the public. While the Supreme Court was clear that risk could weigh heavily in favour of continued notification, this assessment would require the reviewer to consider both the impact on the individual of continued notification and the benefits to the public which accrue from the inclusion of his or her details on the sex offenders register.[52]

32. In the Government's proposal, the decision-making exercise for Chief Officers is set out at new Section 91C and Section 91D. Although the draft Order specifies a number of factors to be taken into account, it does not set out a test to be applied by the Chief Officer in determining an application for review. By way of contrast, in the Scottish Remedial Order, the test to be applied is specified thus:

> The relevant chief constable may make a notification continuation order only if satisfied, on the balance of probabilities that the relevant sex offender poses a risk of sexual harm to the public, or any particular members of the public, in the United Kingdom.

33. The factors to be taken into account in the Government's draft Order include a number of relevant factors, but do not include the impact of the relevant notification requirements on the ex-offender. This will be relevant to the assessment envisaged by the Supreme Court, since different requirements may pose different degrees of interference with the private lives of different offenders and this will affect the assessment of proportionality in each individual case. In her reply, the Minister addresses the test to be applied. She explains:

> We do not expect the police to apply a particular test by reference to which they would make a determination although this would essentially be an assessment of the risk posed by an offender. This is envisaged by the terms in which the proposal to make the order has been drafted.[53]

34. Unfortunately, this approach does not necessarily meet the approach envisaged by the Supreme Court. The difference is brought into stark relief when read together with the Minister's assessment of the available academic research on reoffending by sex offenders, which she notes cannot demonstrate that there is a point where an ex-offender poses no risk of further sexual offending.[54] The Supreme Court expressly discounted a similar analysis of the statistical and other research in their judgment:

51 *F & Thompson,* para 57.

52 *F & Thompson,* para 57.

53 Ev 40–51

54 Ev 40–51

> Caution must, of course, be taken in relying on reconviction statistics because these will necessarily be lower than the actual incidence of re-offending. Nonetheless, these statistics show that 75% of the sexual offenders who were monitored were not reconvicted. No light is thrown on the question of whether it was possible to identify by considering these whether there were some reliable indications of offenders who did not pose a significant risk of re-offending. No evidence has been placed before this court or the courts below that demonstrate that it is not possible to identify from among those convicted of serious offences, at any stage in their lives, some at least who pose no significant risk of re-offending. It is equally true that no evidence has been adduced that demonstrates that this is possible.[55]

35. In their final assessment, the Court confirms that a high threshold for review will be acceptable, but suggests that the review would look at whether "the risk of an individual carrying out a further sexual offence can be discounted to the extent that continuance of notification requirements is unjustified".[56] Thus, although the standard for review may be high, review must always involve some assessment of whether notification continues to be justified. In our view, the starting point cannot be a requirement that evidence must be adduced that the individual concerned poses no risk.

36. Although any substantive evidence of risk of sexual harm to the public will weigh heavily in the balance for continued notification, this is only one side of the balance to be considered. NSPCC have submitted that the priority must always be the protection of the public, and in particular, children, from the risk of sexual abuse. While this must always be the purpose of the register, the exercise of the review must be to identify whether the degree of harm which an individual poses continues to justify the interference with his or her private life which the notification requirements impose. Although in a significant number of cases, evidence of a risk of harm will justify continued notification, in other cases, an abstract assessment of risk based principally on historical factors may have to be balanced against a significant impact on for example, an ex-offender whose physical capacity to offend is reduced by injuries or impairments sustained after his or her original offending. If proposed new changes to the notification regime are introduced which would require six months notification of all overseas travel, this requirement could significantly impact on the ability of certain ex-offenders to travel for work. If balanced against an assessment by a Chief Officer or another MAPPA institution that the ex-offender posed an extremely low risk of reoffending, the assessment of proportionality may indicate that continued notification was not necessary or justified, although some low-level risk continued.

37. **In our view, without amendment to make clear that the review of notification requirements involves an assessment of whether the impact on the individual applicant for review of continuing notification continues to be justified and necessary in light of the risk they pose to the public, there is a risk that the Government's proposals will not remove the violation identified by the Supreme Court.**

55 *F & Thompson,* paras 55–56.

56 *F & Thompson,* para 57.

38. **We recommend amendment of the draft Order to (a) include a test to be applied on review, incorporating a proportionality exercise and (b) to introduce the impact on the individual offender as a relevant factor to be considered on review.**

(c) Are the procedures provided sufficiently accessible, fair and transparent?

39. We also wrote to the Minister to ask for further information on the justification for requiring individuals to apply for a review and prohibiting any review until 15 years after release (for adult offenders) and 8 years after release (for child offenders). We return to the treatment of child offenders, below. In Scotland, the requirement to notify lapses after 15 or 8 years respectively unless a Chief Officer makes a determination that notification should continue. The Minister explained the Government's reasons for its approach as follows:

- This timescale accords with the existing scheme in the 2003 Act for the notification requirements fixed for prescribed periods of time. Other than indefinite detention, the longest fixed period for notification is 10 years. The Government considers that in light of this period, the Government considers that 15 years' compulsory notification before an opportunity to review is appropriate.[57]

- The Government relies on limited academic evidence on the likelihood of reoffending by sex offenders up to 25 years following conviction. That evidence, illustrates that around 25% of ex-offenders will reoffend during this period. They consider that risk of reoffending within that group is highest in the period following release from custody and decreases over time.[58]

- The initial time-scale for review and the period for subsequent reviews were determined after discussion with a working group including ACPO and NOMS. This group reached a collective decision about the appropriate review periods to set, based on the available expertise from practitioners' experience of managing offenders in the community.[59]

40. We also asked the Minister for further information on comparative experience. He included information which makes clear that the timescale for review differs in different countries. The Minister told us that in France, no minimum timescale is set. In Ireland, a review may be sought 10 years after release. In Australia, 15 years and, in Canada, 20 years.[60]

41. There is nothing in the case-law of the European Court which would suggest a time-scale within which a review must be undertaken before the relevant measures will be rendered disproportionate. However, it is notable that in *Bouchacourt*, the only case where a mechanism for review was considered relevant to that assessment, the French scheme for review was not time-limited. It is possible to envisage some cases where the imposition of a

57 Ev 40–51

58 Ev 40–51

59 Ev 40–51

60 Ev 40–51

minimum period of mandatory notification without review could lead to the continued imposition of unjustified retention requirements. For example, if a relevant development occurs or set of circumstances arise at the time of the original offence, or shortly thereafter, which render the risk of reoffending negligible, in this case, continued notification for a further 15 years may be disproportionate. In their evidence, Liberty use the example of a teacher convicted of offences in connection with a sexual relationship with a 15-year-old pupil. If the teacher has no prior convictions and has subsequently married the relevant pupil, it is arguable that the circumstances of the case might significantly reduce the risk of re-offending. In their submission, the Howard League argues that this approach lacks "sufficient flexibility". They explain:

> The system does not appear to b sufficiently flexible to allow for [...] discretion to be exercised where appropriate in certain circumstances outside the rigid structure of the proposals.[61]

42. They give an example of a child offender who is assessed as low risk by a therapist early in a period of compulsory notification. The offender may have a pressing need to be free of notification requirements in order to open up employment or education opportunities essential to their rehabilitation, yet they will need to wait a significant period of time before a review will be available. The therapists' assessment may become dated during that time, to the detriment of the evidential basis for the assessment of the risk posed by the ex-offender.[62]

43. This argument, however, also applies to notification for fixed periods (for example, in *Bouchacourt* the Court was considering the proportionality of registration for up to 30 years, albeit with access to review). The proportionality of the imposition of notification requirements for fixed periods without opportunity for any interim review was not considered in *Thompson.*

44. There is no definitive guidance in the case-law of the European Court of Human Rights. However, by setting a blanket minimum period for notification without opportunity for review, the Government enhances the possibility that there will be further challenges to the review mechanism in the future. It is possible that, in some individual cases, compulsory registration for a lengthy fixed period, without opportunity to challenge the continued justification for notification will lead to a significant risk of violation of the right to respect for private life (Article 8 ECHR). **Without extraordinary provision for review of the proportionality and necessity in connection with any requirement to notify for a fixed period of time, there remains a risk of further challenges to the operation of the register. In individual cases where the circumstances of the relevant offence or offender are such that the risk of further reoffending are reduced significantly very early in the period of compulsory notification, continued registration may be unjustifiable. We draw this to the attention of both Houses. Members may wish to ask the Government to provide further justification for the proposed 15 and 8 year timescales for initial review.**

61 Op. cit. fn 5

62 Op. cit. fn 5

45. In their submission to the Committee, Liberty criticises the procedural measures in the draft Remedial Order, which they argue are not sufficiently transparent, nor do they make adequate provision for the disclosure of evidence to applicant ex-offenders or for them to be permitted to make representations before an initial decision on continued notification is taken. The questions forwarded to the Committee by South Essex Rape Crisis and Incest Centre, include a number of specific queries about the involvement of victims in the review process and the assessment of risk.[63]

46. The draft Remedial Order provides for the applicant ex-offender to provide information and make representations only after the initial decision has been taken on whether or not to continue notification. The decision-maker must review his position after hearing these representations, but it is unclear whether the ex-offender will ever see the evidence relied upon by the decision-maker to support his assessment of risk.[64] The draft Remedial Order makes clear that victims' views will be a relevant factor for decision-makers to consider when determining an application for review.[65]

47. In her response to the Committee's letter, the Minister makes clear that the Government intends that procedural guidance will accompany the draft Remedial Order to ensure consistency in the exercise of discretion across police forces.[66] The Impact Assessment states that the guidance will "detail all necessary considerations in completing a review, details of the process and what is required at each stage and further details on the factors which form the basis for the review decision".[67] It is clear that this guidance will address procedural and substantive issues which may be essential to the fairness of any review and the assessment of the proportionality of any continued notification. There is no provision in the draft Remedial Order for statutory guidance on procedure or decision-making, although it is clearly within the power of the Minister under Section 10, HRA 1998 to include this type of supplementary measure. Although non-statutory guidance may be relevant to a decision on judicial review, it is not binding in the sense that failure to comply with statutory guidance may render a decision *ultra-vires* and unlawful.

48. **We welcome the Government's confirmation that guidance will be necessary to accompany the new review mechanism. We consider that this guidance will be essential to ensure procedural fairness and the effective involvement of victims and offenders in the decision making process. It will also enhance the likelihood of consistency in approach to the review process. However, we are concerned that the requirement for guidance (and its need to provide clarity on key procedural aspects of the review process) is not provided for in the draft Order.**

49. **We recommend that the draft Order is amended to include a requirement for statutory guidance to be issued on the making of determinations of any application for review, including on relevant procedural issues, for example, the requirement for the applicant to understand the evidential basis for the assessment that notification is considered necessary and the right to make representations. This statutory guidance**

63 Op. cit. fn 5

64 Section 3, New Section 91 C (5)

65 Section 3, New Section 91 D (2)(i)

66 Ev 40–51.

67 Impact Assessment, p 22

should also deal with the involvement and relevance of any input by victims of previous offences, in connection with the assessment of the risk posed by the applicant.

(d) Treatment of child offenders

50. Several of the submissions we have received have raised the need for different treatment for child offenders. In our letter to the Minister, the Committee asked for further justification from the Government that the proposal to require child offenders to notify for a minimum of 8 years without review was compatible with the UN Convention on the Rights of the Child (UNCRC). The correspondence raised a particular concern that the adult timescale could run for child offenders who were aged 18 on release (as indicated in the Impact Assessment accompanying the Remedial Order. [68]

51. The Minister wrote to confirm that 8 years will apply to all persons under 18 at conviction, regardless of age on release. The information provided in the Impact Assessment is inaccurate.[69] The Minister does not however provide any fuller analysis on the compatibility of these measures with the UNCRC. Although the Minister cross-refers to earlier Government statements on compliance with the UNCRC more generally, he does not add to the earlier Government statement that distinguishing between the adult and child offenders when setting the minimum period for notification without review is adequate to ensure proportionality and to comply with the UNCRC.

52. In their submission, the NSPCC states:

> A minimum eight year period for those who committed a sexual offence when they were a child is too long. When combined with the right therapeutic support, there is clear evidence, both from the research literature and from the NSPCC's own practical experience that the risk of recidivism can be substantially reduced [...]The involvement of criminal justice agencies leads to them being stigmatised and labelled as criminals at a young age, the impact of which is potentially huge, blighting their chances of rehabilitation.[70]

53. The Howard League and the Prison Reform Trust take a similar view. South Essex Rape and Incest Crisis Centre ask whether a distinction will be drawn between different age categories of child offender (for example between those aged under 13 and those over 13) when assessing risk of future offending.[71]

54. As we explained above, while there is no concrete case-law to indicate that a minimum period of notification for child offenders will automatically be disproportionate. However, the proposed blanket approach to the registration of children on the sex offenders' register significantly increases the risk of disproportionate application in some cases and further future violations of Article 8 ECHR. In *Thompson,* Lord Rodger noted that the need for review was particularly acute in the case of children subject to indefinite notification requirements.[72] In the treatment of child offenders, the need to focus on the best interests

68 Ev 33

69 Ev 40–51

70 Op. cit. fn 5

71 Op. cit. Fn 5

72 *F & Thompson,* para 66.

of the child and the special need for rehabilitation and reintegration into society of child offenders, recognised in the UNCRC,[73] enhances the need for individual attention. The European Court of Human Rights routinely recognises the relevance of the provisions in the UNCRC, which require special protection for children in the criminal justice system to the assessment of the proportionality of measures which interfere with children's right to respect for private life (see *S & Marper*, on the indefinite retention of DNA and fingerprints, for example).[74] **We recommend that the Government consider amendment of the draft Order to introduce either (i) a discretionary opportunity for review of the proportionality of notification requirements imposed on child offenders or (ii) a shorter period for rolling reviews in the case of child offenders (perhaps providing for applications to be possible at two year intervals, rather than 8 year periods). We consider that the Government is under a particular obligation to justify the review periods which it proposes to apply to offenders who were children at the time when they committed the relevant offence which led to the imposition of notification requirements.**

73 See Article 40, UN Convention on the Rights of the Child (1989)

74 *S & Marper v United Kingdom,* App No 30562/04, para 124.

5 Other matters arising

Other matters: Ministerial approaches to remedial orders

55. The Home Secretary and the Prime Minister have both publicly expressed their disagreement with the Supreme Court's judgment in this case.[75] The Home Secretary indicated that the Government would take the "minimum possible approach" to this ruling.[76] There is a clear risk in taking this minimal approach to addressing violations of human rights standards: it creates a risk of unnecessary further violations and costly litigation. This risk was expressly recognised by our predecessor JCHR in its previous report on the implementation of human rights judgments, and its accompanying guidance to departments. The then Committee said:

> One of the recurring criticisms we have made in this and previous reports on the implementation of human rights judgments has been that the Government generally adopts an approach of minimal compliance with court judgments. This is currently evidence, for example, in the Government's response to the decision of the Court concerning the retention of DNA samples [...] The Government's approach of minimal compliance exacerbates the problem of repetitive cases because it leads to future litigation which can culminate in predictable findings of violation.[77]

56. **While we acknowledge the political interest in Government's seeking to maintain their policy objectives when responding to adverse human rights judgments, we share our predecessor's concerns that the first objective of any remedial order or legislation designed for this purpose should be to remove the relevant violation. While States have discretion in how they respond to individual judgments, bringing forward proposals which clearly do not meet the concerns of the relevant court involves asking Parliament to acquiesce in an approach which will encourage repetitive litigation and could lead to future violations of individual rights. Remedial orders are designed to be used when the Government intends to remove a violation and provide a fast-track parliamentary procedure for remedying breaches of the Convention quickly. We consider that it is our role to advise both Houses about both the substance of any measures proposes and to highlight any unusual and inappropriate use of this power. Introducing measures which create a significant risk of further litigation using this special parliamentary procedure appears to us to undermine the purpose for which it was intended.**

Other matters: consistency across the UK?

57. It is clear at present that there are likely to be three distinct approaches in Scotland, Northern Ireland and England and Wales to the scope of any review. It is only in England and Wales that it is proposed that review should not incorporate an element of judicial consideration by an independent and impartial tribunal. The Northern Ireland Executive has indicated that they have had advice that a review by the police, accompanied by judicial review, would be inadequate to remove the violation identified in *Thompson*. In the

75 HC Deb, 16 Feb 2011, Cols 955,959

76 HC Deb, 16 Feb 2011, Col 959

77 Fifteenth Report of 2009–10 *Enhancing parliament's role on human rights judgments*, HL 88, HC 455, paras 168–170.

Committee's correspondence with the Minister, it asked for further information on coordination with the devolved Governments on the response to the judgment in this case. The Minister addresses the issue of the possibility for cross-border displacement of offenders across the different parts of the UK and the need for mutual recognition of reviews in her response. **While it is clearly open to each of the constituent parts of the UK to adopt a different approach to the Supreme Court's judgment, we are concerned that if the Government proceeds with its minimalist response to the violation identified that further litigation in England and Wales is inevitable. In principle however, we note that different approaches, each of which removed the violation, could be entirely appropriate for each of the administrations responding to adverse human rights judgments. Care must however be taken, when this discordant approach arises to ensure that the ECHR is respected across the UK and that mechanisms are in place to ensure that geography does not lead to significant disparities in the protection offered to individuals' rights.**

58. There are a number of matters arising from the approach in the draft Order which differ from the approach in Scotland. For example, if an offender in Scotland is subject to a Sexual Offences Prevention Order, and his notification requirements are no longer justified, the SOPO will fall away without the need for a separate application to be made to the magistrates' court which made the SOPO. This perhaps is logical, since the threshold of risk required for a SOPO is greater than that required to justify the imposition of notification requirements. The Government proposes that in England and Wales, before any review can be conducted, any SOPO must be discharged. This will require an ex-offender to make two separate applications, with associated costs, one to the court to discharge the SOPO and a subsequent application to the Chief Officer to remove the requirement to notify. This may be a necessary distinction as a result of the lack of judicial involvement in the review process envisaged in the Remedial Order. The Committee asked for information on the likely costs of this approach and minimal information was provided. **We draw the proposed relationship between Sexual Offences Prevention Orders and the review mechanism proposed by the Government to the attention of both Houses. Members may wish to ask the Government to provide fuller information on how this relationship will work in practice, clarify the distinct assessment of risk which will be applied by the Court discharging the SOPO and the Chief Officer considering review of notification requirements, and to explain any likely associated costs of requiring a second, separate risk assessment exercise.**

Other matters: costs, convenience and remedial orders

59. The impact assessment makes a number of references to the relative cost savings and administrative convenience associated with a system of police-led review. For example:

> It is envisaged that the preferred policy outlined here will enable costs to be kept to a minimum.[78]

60. In this case, it is clear that cost saving is not the sole motivator for the Government's choice of approach.[79] However, wider issues arise in connection with the relevance of

78 Impact Assessment, p 16

79 Impact Assessment, pps 9–11

administrative convenience or costs savings in connection with the making of remedial orders. These factors may be relevant to the Committee's assessment of an Order when multiple options are available which each remove the violation identified by the Court. **Unfortunately, in cases such as this, where the proposal made by the Government does not meet the violation identified, it is clear that costs and administrative convenience cannot outweigh the risks associated with further future litigation costs and continued violations of the ECHR.**

Conclusions and recommendations

1 Recommendation

1. While we welcome the Government's decision to use the remedial order process in this case, we raise a number of significant concerns about the Government's approach, below. We recommend that the proposals are amended to provide for a review by an independent tribunal before any draft order is tabled. Without such amendment, we will be unable to recommend the approval of any proposed draft order. (Paragraph 5)

3 Is it proper to proceed by way of non-urgent remedial order?

2. In light of the time which has passed since the decision in Thompson, the continuing impact on those required to notify indefinitely, and ongoing uncertainty about the lawfulness of the notification requirements, there are sufficiently compelling reasons to justify the use of the remedial order process. (Paragraph 19)

3. We agree with the Government's assessment that there are compelling reasons for using the remedial order process to introduce a form of review into the registration of sex offenders. We also agree that an urgent remedial order would not be justified. There is nothing in this case which would justify the use of the urgent remedial order process. An increasing number of people are subject to indefinite notification requirements. However, the significance of the impact of these requirements does not justify the removal of the opportunity for parliamentary scrutiny before the relevant reforms come into force. This is particularly significant in light of the political sensitivity of these measures. (Paragraph 22)

4 Does the draft Order remedy the incompatibility?

4. It is our view that the proposals in the Bill do not remove the incompatibility identified by the Supreme Court. We recommend that the draft Order should not be tabled in the terms proposed. It is our view that, without significant amendment, the proposals in the draft Order will lead to repeat litigation and further violations of Article 8 ECHR. (Paragraph 26)

5. The proposals in the Bill will not remove the incompatibility identified by the Supreme Court in Thompson. We consider that the draft Order should be amended to introduce a review by application to an independent and impartial tribunal, with a requirement that the Chief Police Officer (and other MAPPA institutions) should be notified of the application and should submit reports on their assessment of the risk posed by the applicant; or that the Order is amended to introduce a full statutory right of appeal from the decision of the Chief Officer to an independent and impartial tribunal. In our view, either of these options would introduce a sufficiently independent element to the review process. (Paragraph 29)

6. However, together with the changes set out at paragraphs 37–38 below, amendment of the draft Order to provide for a full statutory appeal to an independent and

impartial court or tribunal would be the minimum required to ensure that the Government's proposals will remove the violation identified by the Supreme Court. We consider that an appropriate tribunal in these circumstances should be a court of sufficient seniority, such as the High Court or the Crown Court (following the model proposed in Northern Ireland). (Paragraph 30)

7. In our view, without amendment to make clear that the review of notification requirements involves an assessment of whether the impact on the individual applicant for review of continuing notification continues to be justified and necessary in light of the risk they pose to the public, there is a risk that the Government's proposals will not remove the violation identified by the Supreme Court. (Paragraph 37)

8. We recommend amendment of the draft Order to (a) include a test to be applied on review, incorporating a proportionality exercise and (b) to introduce the impact on the individual offender as a relevant factor to be considered on review. (Paragraph 38)

9. Without extraordinary provision for review of the proportionality and necessity in connection with any requirement to notify for a fixed period of time, there remains a risk of further challenges to the operation of the register. In individual cases where the circumstances of the relevant offence or offender are such that the risk of further reoffending are reduced significantly very early in the period of compulsory notification, continued registration may be unjustifiable. We draw this to the attention of both Houses. Members may wish to ask the Government to provide further justification for the proposed 15 and 8 year timescales for initial review. (Paragraph 44)

10. We welcome the Government's confirmation that guidance will be necessary to accompany the new review mechanism. We consider that this guidance will be essential to ensure procedural fairness and the effective involvement of victims and offenders in the decision making process. It will also enhance the likelihood of consistency in approach to the review process. However, we are concerned that the requirement for guidance (and its need to provide clarity on key procedural aspects of the review process) is not provided for in the draft Order. (Paragraph 48)

11. We recommend that the draft Order is amended to include a requirement for statutory guidance to be issued on the making of determinations of any application for review, including on relevant procedural issues, for example, the requirement for the applicant to understand the evidential basis for the assessment that notification is considered necessary and the right to make representations. This statutory guidance should also deal with the involvement and relevance of any input by victims of previous offences, in connection with the assessment of the risk posed by the applicant. (Paragraph 49)

12. We recommend that the Government consider amendment of the draft Order to introduce either (i) a discretionary opportunity for review of the proportionality of notification requirements imposed on child offenders or (ii) a shorter period for

rolling reviews in the case of child offenders (perhaps providing for applications to be possible at two year intervals, rather than 8 year periods). (Paragraph 54)

13. We consider that the Government is under a particular obligation to justify the review periods which it proposes to apply to offenders who were children at the time when they committed the relevant offence which led to the imposition of notification requirements. (Paragraph 54)

5 Other matters arising

14. While we acknowledge the political interest in Government's seeking to maintain their policy objectives when responding to adverse human rights judgments, we share our predecessor's concerns that the first objective of any remedial order or legislation designed for this purpose should be to remove the relevant violation. While States have discretion in how they respond to individual judgments, bringing forward proposals which clearly do not meet the concerns of the relevant court involves asking Parliament to acquiesce in an approach which will encourage repetitive litigation and could lead to future violations of individual rights. Remedial orders are designed to be used when the Government intends to remove a violation and provide a fast-track parliamentary procedure for remedying breaches of the Convention quickly. We consider that it is our role to advise both Houses about both the substance of any measures proposes and to highlight any unusual and inappropriate use of this power. Introducing measures which create a significant risk of further litigation using this special parliamentary procedure appears to us to undermine the purpose for which it was intended. (Paragraph 56)

15. While it is clearly open to each of the constituent parts of the UK to adopt a different approach to the Supreme Court's judgment, we are concerned that if the Government proceeds with its minimalist response to the violation identified that further litigation in England and Wales is inevitable. In principle however, we note that different approaches, each of which removed the violation, could be entirely appropriate for each of the administrations responding to adverse human rights judgments. Care must however be taken, when this discordant approach arises to ensure that the ECHR is respected across the UK and that mechanisms are in place to ensure that geography does not lead to significant disparities in the protection offered to individuals' rights. (Paragraph 57)

16. We draw the proposed relationship between Sexual Offences Prevention Orders and the review mechanism proposed by the Government to the attention of both Houses. Members may wish to ask the Government to provide fuller information on how this relationship will work in practice, clarify the distinct assessment of risk which will be applied by the Court discharging the SOPO and the Chief Officer considering review of notification requirements, and to explain any likely associated costs of requiring a second, separate risk assessment exercise. (Paragraph 58)

17. Unfortunately, in cases such as this, where the proposal made by the Government does not meet the violation identified, it is clear that costs and administrative convenience cannot outweigh the risks associated with further future litigation costs and continued violations of the ECHR. (Paragraph 60)

Formal Minutes

Tuesday 11 October 2011

Members present:

Dr Hywel Francis MP, in the Chair

Lord Bowness
Baroness Campbell of Surbiton
Lord Lester of Herne Hill
Lord Morris of Handsworth
Mike Crockart
Mr Dominic Raab

****

Draft Report, *Proposal for the Sexual Offences Act 2003 (Remedial) Order 2011*, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 60 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Nineteenth Report of the Committee to each House.

Ordered, That the Chair make the Report to the House of Commons and that Lord Lester of Herne Hill make the Report to the House of Lords.

Ordered, That embargoed copies of the Report be made available in accordance with the provisions of Standing Order No. 134.

Written evidence reported and ordered to be published on 30 June, 1 September and 11 October was ordered to be reported to the House.

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[Adjourned till Tuesday 18 October at 2.00 pm

Declaration of Lords Interests

No members present declared interests relevant to this Report.

A full list of members' interests can be found in the Register of Lords' Interests:
http://www.publications.parliament.uk/pa/ld/ldreg/reg01.htm

List of written evidence

Written evidence

1. Letter from the Chair, to Rt Hon Theresa May MP, Home Secretary, 28 June 2011

The Joint Committee on Human Rights is scrutinising this proposal for a draft Remedial Order which would introduce an opportunity for review of the application of life-long notification requirements under the Sexual Offences Act 2003. This proposal is the Government's response to the judgment of the Supreme Court in *F & Thompson v Secretary of State for the Home Department* [2010] UKSC 17, that indefinite notification requirements imposed by Section 82(1) Sexual Offences Act 2003 are incompatible with the right to respect for private life, in so far as the Act fails to provide any opportunity for review of the necessity for continuing notification. Lord Philips explained in his judgment that significant weight was to be placed on measures designed to protect individuals against sexual offences. However:

> There must be some circumstances in which an appropriate tribunal could reliably conclude that the risk of an individual carrying out a further sexual offence can be discounted to the extent that continuance of notification requirements is unjustified. As the courts below have observed, it is open to the legislature to impose a high threshold for review. Registration systems are not uncommon in other jurisdictions.[1]

I am writing to draw your attention to the Committee's call for evidence in relation to the Remedial Order (attached). We would welcome any evidence you may wish to submit in relation to any of the issues identified in our call for evidence. **In addition to the general questions posed in the Call for Evidence, we would be grateful if you could provide us with some further information on particular aspects of the proposal.**

Independent review by an appropriate tribunal

The review mechanism in Scotland earlier this year provides for an initial review by the Chief Police Officer, followed by a full merits appeal to the Sheriff Court. In Northern Ireland, Gareth Johnston, Head of the Justice Strategy Directive at the Northern Ireland Executive gave evidence to the Northern Ireland Assembly Justice Committee on future justice legislation, including legislation to remedy the violation of Convention rights identified in this case. He explained that the system in Northern Ireland would involve an initial review by the police, but would provide for the final determination to be made by the courts. Questioned on the differences between this approach and the Government's proposals for England and Wales, he explained that the difference of approach is based on legal advice on human rights compatibility and a preference expressed by the police:

> Our proposal is that, after the police stage, there would still be a right of application to the courts rather than an appeal. That is for two reasons, the first of which is based on legal advice on human rights. The position is that Parliament can do whatever it wants and consider any human rights-based challenge later. The Assembly requires certification from the Minister that something is human rights-compliant before a

1 *F & Thompson, para 57.*

> Bill is laid [...] Therefore, we are partly basing our position on legal advice. However, we are also basing it on what the police are saying they would prefer, [...] We want to say that an application can be made to the court as the second stage but that there is the list of things that a court must take account of in reaching its decisions. Those will be exactly the same things that the police would have had to take account of at their stage. Therefore, the court would be required to take a structured approach, rather than the approach that would be taken in a judicial review, where any arguments could be made.[2]

1. **Please confirm whether the proposed decision of the Chief Police Officer on any review (in particular, under Section 91C) will be subject to judicial review.**

2. **We would be grateful if you could provide a fuller analysis of the Government's view that its approach removes the underlying violation of Article 8 of the Convention, including that it provides for an independent review by an appropriate tribunal? (Please include any Government analysis of relevant case-law of the European Court of Human Rights).**

3. **Please provide an estimate of costs associated with likely challenges by way of judicial review to decisions by Chief Police Officers under this proposed scheme.** (*We note that the comparable costs in the Regulatory Impact Assessment for review by the Magistrates, include costs of appeals through to the Crown Court*).[3]

Time-scales for review

The evidence base for the timescales in the proposal

The Impact Assessment accompanying the proposal provides a limited assessment of the appropriateness of the timescales adopted for a first review. It explains that the Government's position is based on a number of academic studies on the risk of reoffending by sexual offenders. The Impact Assessment explains:

> The three studies considered suggest that the risk of reconviction persists throughout the follow-up period. The risk of reconviction after ten years decreases to approximately 3% for any sexual offence and 5% for any violent sexual offence.

4. **We are grateful to the Home Office for providing us with copies of the supporting academic material which inform the Government's evidence base for this proposal. However, we would be grateful for a fuller explanation of the Government's view that the timetable proposed in the draft Order (with first review after either 15 or 8 years from release) is appropriate. In particular, we would be grateful for an explanation of:**

- **the Government's decision to set fixed trigger dates for review;**
- **why these dates are supported by the evidence produced on risk of re-offending;**

2 Evidence to the Committee on Justice, Northern Ireland Assembly, 16 June 2011 http://www.niassembly.gov.uk/record/committees2011/Justice/110616_PlannedJusticeLegilsation.htm

3 The Impact Assessment explains that the costs to the Ministry of Justice associated with judicial review of Chief Police Officers' decisions or with the discharge of SOPOs connected with applications for review have not been quantified. We have copied this correspondence to the Secretary of State for Justice for information.

- **why the Government considers that it is appropriate for any second review to be on a similarly long time-scale; and**
- **the Government's reasons for proposing that the Chief Police Officer should have discretion as to whether any second review takes place after 8 or up to 15 years.**

Sexual Offences Prevention Orders and Notification Requirements

The Impact Assessment accompanying the proposal for a draft Order explains that any offender requesting a review, if subject to a Sexual Offences Prevention Order (SOPO), would need to apply to discharge the relevant SOPO before seeking a review. This is in contrast with the model in Scotland where any SOPO falls away if the review of risk leads to the conclusion that any relevant risk is sufficiently diminished to remove any relevant reporting requirements (See Article 4, SSI 45/2011). The effect of this is that in England and Wales, under this proposal, offenders will have to apply once to the Magistrates Court, which will assess risk in connection with the SOPO and again to the Chief Police Officer, who will assess risk connected with the notification requirements (registration). The Government has explained that it considers that this two stage process is proportionate because the discharge of SOPO would be covered by criminal legal aid (See Impact Assessment, page 13).

5. **Please provide a fuller explanation of the Government's decision that offenders who are subject to SOPO must make an independent application to discharge any relevant SOPO before applying to the Chief Police Officer for a review of whether it is proportionate to continue to require registration?**

6. **If you have any statistics about the likely number of offenders who will be required to undergo this two stage assessment, including the current number of offenders subject to indefinite notification who are also subject to a SOPO, please provide full details to us.**

7. **We note that the costs of the discharge of any relevant SOPO have not been included in the Impact Assessment. We would be grateful if you could provide an estimate of the additional cost incurred by not following the Scottish model, where a SOPO would fall away after any relevant discharge of the notification.** (We note that these costs and the costs associated with judicial review would fall on the Ministry of Justice and copy this letter to the Secretary of State for Justice).

Child Offenders and the Convention on the Rights of the Child

The Impact Assessment explains that the Government has set a difference timescale for child offenders and that the proposed 8 year period is set by analogy with the existing provisions in the Sexual Offences Act 2003. In the Act, where fixed-term notification requirements are imposed, the time-scale is halved for offenders aged 18 years or under at the time of conviction or the relevant finding. This analogy is not exact however, as the reduction in timescale for review is applied from the date of release, which could mean that some offenders who were under 18 years at the time of conviction will be treated as adults for the purposes of review.

8. **Please provide a fuller explanation of the Government's decision that some offenders aged under 18 years at the time of conviction should be treated as adults for the purposes of review.**

9. **In particular, please expand on the analysis provided in the required information and the Impact Assessment by explaining why the Government considers that the proposal to treat some child offenders in the same way as adult offenders is compatible with the obligations of the UK under the UN Convention on the Rights of the Child (Article 40).**

Comparative experience

In the Impact Assessment accompanying the proposal, the Government refers to comparative experience mentioned by Lord Philips in the judgment in this case. The Government notes that "mechanisms differ across the various jurisdictions. A number of the systems include a review undertaken by the Court, while in France, the review is undertaken by a prosecutor". We note that in France, as the Supreme Court recognised in its judgment, review by the prosecutor is accompanied by the right to appeal to an independent and impartial tribunal.

10. **Please provide us with fuller information on the mechanisms for review operating in each of the countries referenced in the Impact Assessment (Ireland, France, Australia, Canada, South Africa and the US).**

11. **Please provide a fuller explanation of the role comparative experience played in shaping the Government's proposal, if any. Please include further information about the Government's consideration of the model adopted in Scotland and any discussions with the Northern Ireland Executive about their proposed approach.**

We note that the Home Office has worked with ACPO and NOMS in the preparation of this proposal. We will be contacting both organisations separately to encourage them to respond to our Call for Evidence.

28 June 2011

2. Letter from the Chair, to Assistant Chief Constable Michelle Skeer, Association of Chief Police Officers (ACPO), 5 July 2011

I am writing to you on behalf of the Joint Committee on Human Rights to request that ACPO consider submitting a memorandum to our inquiry on the Government's proposal for a draft Sexual Offences Act 2003 (Remedial) Order. The Committee decided to issue a call for evidence in relation to this proposal last week, and, in case you were not aware of it, instructed me to contact you directly. The deadline for submission is unfortunately very tight (19 July), as the formal deadline for preliminary consideration of the proposal by my Committee is also very constrained. However I do hope that you might consider submitting something on behalf of NOMS, however brief, so that members have the opportunity to consider your views at its first meeting in September.

I attach a copy of the call for evidence. I also enclose a copy of a letter which I have sent to the Home Secretary raising some more detailed points. The Committee would be grateful to hear any comments that ACPO might also wish to make on these more detailed issues.

5 July 2011

3. Letter from the Chair, to Mr Gordon Davidson, Head of the Public Protection and Mental Health Casework Group, National Offender Service (NOMS), Ministry of Justice, 5 July 2011

I am writing to you on behalf of the Joint Committee on Human Rights to request that NOMS consider submitting a memorandum to our inquiry on the Government's proposal for a draft Sexual Offences Act 2003 (Remedial) Order. The Committee decided to issue a call for evidence in relation to this proposal last week, and, in case you were not aware of it, instructed me to contact you directly. The deadline for submission is unfortunately very tight (19 July), as the formal deadline for preliminary consideration of the proposal by my Committee is also very constrained. However I do hope that you might consider submitting something on behalf of NOMS, however brief, so that members have the opportunity to consider your views at its first meeting in September.

I attach a copy of the call for evidence. I also enclose a copy of a letter which I have sent to the Home Secretary raising some more detailed points. The Committee would be grateful to hear any comments that NOMS might also wish to make on these more detailed issues.

5 July 2011

4. Letter to the Chair, from Assistant Chief Constable Michelle Skeer, ACPO lead for the Management of Sexual Offenders and Violent Offenders, 11 July 2011

I write in response to your letter dated 5th July regarding the above matter.

In my role as national lead for the Management of Sexual Offenders and Violent Offenders this letter is sent to you on behalf of the Association of Chief Police Officers (ACPO).

I am unable to comment on behalf of the National Offender Management Service (NOMS) which as an executive agency of the Ministry of Justice, brings together HM Prison Service and the Probation Service only. I understand NOMS are submitting a response themselves to you.

Following the Supreme Court judgement in the case of *F & Thompson v Secretary of State for the Home Department* (2010) a Working Group was formed to develop a review mechanism. Membership of this group consisted of representatives from ACPO, NOMS and the Home Office.

A number of the points raised in your call for evidence document were considered and fully debated by the Working Group. This allowed us, as a collective, to reach a proposal

based on advice and guidance given which all agencies agreed with and felt they could make work.

I have not gone into detail about each specific point or the guidance provided as I understand that this will be covered by the Home Office response.

I submit this letter to you for consideration,

11 July 2011

5. Written Evidence submitted by the National Offender Management Service (NOMS), Ministry of Justice, 12 July 2011

1. Issue

The Joint Committee on Human Rights requested views from the National Offender Management Service (NOMS) on the draft Sexual Offences Act 2003 (Remedial Order) which would introduce a review mechanism for registered sexual offenders who are currently subject to the notification requirements for life. The proposed amendment is the Home Office response to the Supreme Court judgement in the case of *F & Thompson v Secretary of State for the Home Department* (2010).

2. Summary

As a member of the Home Office-led Working Group, the Public Protection and Mental Health Group in NOMS has been involved in the design and development of policy options to support the implementation of the Supreme Court judgment. NOMS does not have any objections to the proposal, although there are implications for NOMS, which are set out in 3.1–3.5 below.

3. Implications for NOMS

The introduction of a process which enables the notification requirements for life to be reviewed and, potentially removed, has the following specific implications for NOMS:

3.1 *Providing information when an application for a review is received*

In practice, offender managers in probation trusts are unlikely to have had any recent contact with an offender at the time a review is requested. However, probation trusts will have historical information relevant to the assessment of risk. Probation trusts can provide information about static factors (age, offence type, criminal history) and can identify at least some of the dynamic factors (victim access, behaviours, substance misuse, offence and offence triggers) which should be considered as part of the review process.

3.2 *Impact on the Multi Agency Public Protection Arrangements (MAPPA)*

Under section 325 of the Criminal Justice Act 2003, the Probation and Prison Services (with Police) make up the Multi Agency Public Protection Arrangements (MAPPA) Responsible Authority for each of the 42 MAPPA areas in England and Wales. The

Responsible Authority is required to establish and maintain arrangements to manage dangerous offenders in the community. The proposed process builds on existing arrangements in which relevant agencies can lawfully share information to assess and manage the risks presented by dangerous offenders. These arrangements have now been in place for 10 years and are working well. Embedding the review mechanism in MAPPA is likely to deliver a defensible assessment of risk, without burdening probation trusts or other parts of NOMS (or indeed staff in other agencies) with entirely new procedures and processes.

3.3 *Development of a Dynamic Risk Assessment Tool*

NOMS is currently developing a risk assessment tool which can be used by Police, Prison and Probation to assess changes in risk of sexual re-offending over time. This tool was designed to improve the quality and relevance of the supervision of sex offenders but it is also likely to provide a helpful framework to inform the assessment of risks by offenders who seek to have their notification requirements removed.

3.4 *Resources*

NOMS has been consulted on the resource impact assessment and there will be some additional work for NOMS (including the probation trusts) from the above process. Home Office figures suggest the number of applicants will be relatively small and will amount to only 1 or 2 cases per probation Trust per year. This will be managed from within existing resources as part of NOMS' wider responsibilities to work with other agencies to reduce re-offending.

3.5 *Consistency with work to target resources on high risk offenders*

Some sexual offenders, including some who are currently subject to the notification requirements for life, will have a very low risk of reconviction, although this risk can never be entirely eliminated. Removing the notification requirement from lower risk offenders means they will exit the MAPPA process. This is consistent with work undertaken by NOMS to encourage MAPPA to target multi-agency resources on those that represent the highest risk of serious harm to the public.

4. Conclusion

NOMS has worked closely with Home Office officials in developing the proposal for the draft Sexual Offence Act 2003 (Remedial) Order. It is contributing theoretical expertise regarding risk assessment of sexual offenders and practical implementation guidance to ensure proposals build on MAPPA. We are confident we will continue to work closely in this area of work and have no objections to the proposed Order.

12 July 2011

6. Letter to the Chair, from Rt Hon Theresa May MP, Home Secretary 19 July 2011

Thank you for your letter of 28th June. You have invited me to submit a response to the Committee's Call for Evidence on 23rd June and also requested further information on particular aspects of the proposal to make the *Sexual Offences Act 2003 (Remedial) Order*. This letter seeks to address the points raised in your letter and the Call for Evidence, as well as some additional points raised in subsequent communications between our officials. The terms of this response have been discussed and agreed with the Ministry of Justice.

As your letter recognises, the proposal to make the remedial order represents the Government's response to the decision of the Supreme Court in *F & Thompson*, in which it made a declaration of incompatibility under section 4 of the Human Rights Act 1998 in relation to the indefinite notification requirements under Part 2 of the Sexual Offences Act 2003 ("the 2003 Act"). The Supreme Court specifically found that the failure of the 2003 Act to provide any opportunity for review of the necessity for continuing notification to be incompatible with Article 8 of the European Convention on Human Rights ("the Convention").

The Home Office laid the proposal to make the remedial order before Parliament on 14th June 2011.

Are there "compelling reasons" for the Government to introduce this change by Remedial Order?

1. At the outset, we refer to the matters that were set out in the Required Information which was laid as a part of the proposal to make the remedial order.[1]

2. In reaching this decision we took full account of the Seventh Report of the Joint Committee on Human Rights in the 2001–02 Session.[2] We believe that there are compelling reasons for proceeding by way of a remedial order. The need to remedy an incompatibility with a Convention right must be given priority and it is important to bring the proposed amendments to the 2003 Act into force on or before 1st September 2012. This is the first date on which an offender subject to notification requirements, who was an adult on conviction, would be able to make an application for review under the scheme being introduced by the remedial order.[3]

3. Our assessment is that proceeding by way of the remedial order is likely to cause less delay than waiting for a suitable opportunity to introduce this measure in primary legislation. Parliament is overseeing a very busy legislative programme. Notwithstanding the fact that currently the Home Office has two Bills being considered by Parliament, we

1 http://www.legislation.gov. uklukdsi/2011 /9780111512357/contents

2 http://www.publications.parliamentuklpa/jt200102/jtselectljtrights/58/5802.htm

3 See section 81(3) of the 2003 Act

took the view that it would have been difficult to use those legislative vehicles as a means of taking this measure forward.

Is it appropriate for the Order to be a non-urgent Order?

4. In giving consideration to whether the 'urgent' or 'non-urgent' procedure is appropriate in this case, we again refer to the matters that were set out in the Required Information. We took into account the factors set out within the Joint Committee's Seventh Report of the 2001–02 Session, including "the current and foreseeable impact of the incompatibility on anyone who might be affected by it",[4] and were not persuaded that the circumstances justified pursuing the 'urgent' procedure.

5. Although the Convention right affected by the incompatibility is significant, the Secretary of State does not consider that it must necessarily be remedied as a matter of urgency. For example, it is not an unqualified right or a right having a bearing on a person's liberty, or a right which affects a person's ability to engage in employment or enter into marriage. Moreover, as indicated above, an offender cannot apply for a review under the proposed new arrangements until 1st September 2012. Therefore, the need for expedition in remedying the incompatibility is outweighed by the fact that the non-urgent process ensures that the proposal is subject to robust scrutiny (by Parliament and others) so as to ensure that it strikes the right balance between protecting individual rights and public safety.

Does the Government proposal remove the incompatibility with the right to respect for private life in Article 8 ECHR identified by the Supreme Court?

6. It is the Government's view that by establishing a review regime this proposal fully remedies the incompatibility identified by the Supreme Court. It declared that:

> The indefinite notification 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.

7. We will comment below and provide further evidence in response to the specific questions raised by the Committee.

Independent review by an appropriate tribunal

Please confirm whether the proposed decision of the Chief Police Officer on any review (in particular, under section 91C) will be subject to judicial review?

8. Yes.

We would be grateful if you could provide a fuller analysis of the Government's view that its approach removes the underlying violation of article 8 of the Convention, including that it provides for an independent review by an appropriate tribunal? (Please

4 Seventh Report of 2001–02

include any Government analysis of relevant case-law of the European Court of Human Rights).

9. While expressing its disappointment, the Government reluctantly accepts the finding of the Supreme Court that the current notification requirements constitute an interference with a person's Convention right under Article 8 because the absence of any mechanism for review of indefinite notification requirements is disproportionate.

10. The scheme which the Government proposes to introduce comprises a police-led review of the circumstances of an offender subject to indefinite notification requirements and an individual assessment of whether those requirements should cease. The review process is thorough and enables the police to obtain information from the bodies which form part of the Multi-Agency Public Protection Arrangements[5] to ensure as full a consideration of the application as possible. Moreover, the process requires the police to set out their reasons for determining that notification requirements should continue, and requires the police to reconsider the application if the applicant makes representations in relation to the initial determination.

11. We are satisfied that requiring the applicant to initiate the review is not unfair. It is not disproportionate to the legitimate aim of protecting the public to require an offender to initiate the process. This avoids resource intensive reviews in every case. even in cases when it is clear (including to the offender) that continuing notification is appropriate. The courts at each level in *F & Thompson* accepted that a review would not necessarily be automatic.

12. The courts in *F & Thompson* did not specifically address the question of whether any review should be conducted administratively or by the courts. We do not think that the proportionality of the notification regime depends on whether reviews are carried out administratively or by a court or tribunal. but turns more on the time which must elapse before an application for review can be made and the criteria which the police apply when making a determination.

13. The decision of the police is subject to the supervisory jurisdiction of the courts by virtue of the availability of an application for judicial review.

14. We do not think that the police in determining the review will generally be primarily concerned with resolving disputed issues of fact. but instead their focus will be the assessment or evaluation of the level of risk posed by the offender against a factual background which is likely to be uncontested. Therefore we believe, given the nature of the assessment or evaluation that they must carry out, that judicial review would be sufficient to satisfy the article 6 requirements (see *Begum v Tower Hamlets LBC* [2003] 2 AC 430 at paragraph 56 and *Kingsley v United Kingdom* (2002) 33 EHRR 288 at paragraph 53. and *Tsfayo—v—United Kingdom* [2007] ECHR 656 at paragraph 45, citing *Alconbury and Begum*).

15. We have considered whether there is some parallel between the need for a right to seek a review of the retention of DNA samples (and other personal information) and the need

5 These arrangements were established under section 325 of the Criminal Justice Act 2003 and include the National Offender Management Service, the providers of probation services and other bodies with which offenders have contact.

for a right to seek a review of the sex offender notification requirements. Both needs stem from the proportionality requirement of Article 8. The finding of incompatibility in respect of the DNA regime (in *S and Marper—v—United Kingdom* (2009) 48 EHRR 50,) and the continued retention of data in relation to a registered sex offender (*Bouchacourt—v—France* (2009) unreported), were relevant to the decision in *F & Thompson* that the indefinite notification regime was disproportionate.

16. The decision in *S & Marper* was underpinned by a number of factors of which the absence of any mechanism for independent review of the indefinite retention of DNA was only one; other factors included the blanket and indefinite nature of the power to retain the DNA and the fact that the court was considering the position of people who had not been convicted of an offence. In *Bouchacourt,* the court was concerned with the retention of data following its notification by a convicted sex offender after that offender had ceased to be subject to the notification requirements. Insofar as *S & Marper* and *Bouchacourt* are relevant to the question of the continued retention of personal information about a person who is or has been subject to the indefinite notification requirements under the 2003 Act, we do not consider that these are issues which must be addressed to remedy the incompatibility identified by the Supreme Court. (This had as its focus the indefinite notification requirements and not related matters about the retention of information obtained as a result of those requirements).

Please provide an estimate of costs associated with likely challenges by way of judicial review to decisions by Chief Police Officers under this proposed scheme.

17. lt is not possible to quantify the risk of possible challenge by way of judicial review. Although, as set out within the Impact Assessment, we are able to quantify the maximum number of offenders who will be eligible to seek a review of their notification requirements each year, it is currently not possible to predict the outcome of these reviews as this will depend on individual risk level assessment. Therefore, we cannot estimate reliably the volumes of offenders who will remain subject to notification requirements following a review and what proportion of this group may seek to challenge the lawfulness of the decision or action of the public body (the police) by way of judicial review.

18. Furthermore, it is not possible to identify on which basis any potential judicial review application may be made and whether this will satisfy the threshold for permission to proceed to a full hearing. (We acknowledge that there would be costs attached to any application which sought permission for judicial review). We also note that should a judicial review application be successful, this is likely to lead to a change in procedures, which would have a bearing on the likely success of future applications seeking leave to apply for judicial review. Therefore we consider that it would be misleading to make assumptions for the purpose of quantifying benefits in the Impact Assessment.

19. To respond to the point you have raised regarding the cost of appeals in question 3 of your letter, the comparable costs in the Impact Assessment for review by the magistrates' court do not include costs of appeals through to the Crown Court. As stated on pages 4 and 15 of the Impact Assessment, it has not been possible to predict what proportion of offenders who seek a review will be successful and what proportion will wish to have their

review decision appealed. It has, therefore, not been possible to quantify the cost of appeals to the Crown Court or the related legal aid costs.

20. ln order to give an idea of relative costs, relative unit cost estimates for appeals in a Crown Court and judicial reviews in a high court might be helpful. It is estimated that the economic cost of a hearing in a Crown Court is approximately £900 per hour.[6] The average legal aid cost for an appeal in a Crown Court is approximately £500 per case. Under the assumption that 75% of offenders are eligible for legal aid at the Crown Court, and an appeal hearing taking between one and five hours in a Crown Court, the average cost of an appeal in a Crown Court is between £1,300 and £4,800. As stated above, it has not been possible to predict the volume of offenders likely to appeal the review decision.

21. ln the case of judicial review, it is estimated that the unit cost of a hearing in a High Court is approximately £2,000 per hour. Under the assumption that 30 % of offenders satisfy the civil legal aid means test, legal aid for the average Judicial Review is estimated at £1 ,900.[7]

22. lt should be noted that these figures are supplementary to the cost analysis included within the Impact Assessment against options 3 and 4 and there are substantial cost differences between the decision making stage of the police-led review mechanism (option 3) and the court administered review process (option 4). Although it is not possible to quantify the comparative volumes of challenges by way of an appeal against challenges by way of a judicial review in the police-led review mechanism, in view of the remit of judicial review, it is reasonable to expect that volumes of appeals would be higher than applications for permission to seek a judicial review. Also it is noted that there is a risk of challenge by way of judicial review in all of the policy options considered, including the court administered review process.

Timescales for review

We would be grateful for a fuller explanation of the Government's view that the timetable proposed in the draft Order (with first review after either 15 or 8 years from release) is appropriate. In particular, we would be grateful for an explanation of:

The Government's decision to set fixed trigger dates for review;

23. The scheme prescribes the minimum periods of time which must elapse (usually following an offender's initial release from custody after serving a sentence of imprisonment for the offence giving rise to the notification requirements) before an offender can apply for a review, or apply for a further review if the initial or subsequent application for review was not successful.

6 It is assumed that 25% of those appearing before the Crown Court would have income at levels requiring them to pay a *contribution* now that means testing in the Crown Court has been introduced. We cannot quantify what this contribution will be. Therefore, it is assumed that 75% will be eligible for full legal aid in order to provide a lower bound estimate.

7 legal aid is estimated at £6,200 per case: LSC statistical information 2009–10, CLS8: cost of a public law case where a legal aid certificate has been issued.

24. This approach accords with the scheme of notification requirements in the 2003 Act[8] in which there are prescribed periods of time for which an offender is subject to notification requirements depending on the sentence imposed and the age of the offender on conviction. The maximum prescribed finite period (for offenders sentenced to a term of imprisonment greater than 6 months but less than 30 months) is 10 years. Therefore we think that for those offenders sentenced to a term of imprisonment greater than 30 months (who were at least 18 years of age on conviction)—and therefore subject to indefinite notification requirements—a minimum period of 15 years is proportionate (the period is 8 years for those who were under 18 on that date).

25. This approach accords with the scheme of notification requirements in the 2003 Act in which there are prescribed periods of time for which an offender is subject to notification requirements depending on the sentence imposed and the age of the offender on conviction. The maximum prescribed finite period (for offenders sentenced to a term of imprisonment greater than 6 months but less than 30 months) is 10 years. Therefore we think that a minimum period of 15 years for those who were at least 18 years of age on conviction and subject to indefinite notification requirements is proportionate (the period is 8 years for those who were under 18 on that date).

Why these dates are supported by the evidence produced on risk of reoffending;

25. The decision as to when an offender will be eligible for a review of lifetime notification requirements is based on existing evidence on changes in the risk of re-offending among convicted sex offenders. Studies are restricted by data availability and most commonly use data on reconviction for sexual offences as an approximation for relapse to sex offending.[9]

26. Three studies[10] have been considered, all of which analyse reconviction rates of convicted sex offenders over a follow-up period of 20–25 years. Approximately a quarter of the previously convicted offenders were reconvicted for a sexual offence within this time period. The available evidence suggests that re-offending rates are highest in the early follow up period following release from custody and that this rate decreases over time.

27. There is no evidence that a point can be reached at which a sex offender presents no risk. All three studies suggest that the risk of reconviction for a sexual offence persists throughout the follow-up period.

28. The evidence identified a number of issues relevant to determining appropriate review periods:

- The risk of re-offending decreases over time but never falls to zero so any limited registration period will involve a balance of risk against registration and individual privacy considerations;

8 See section 82(1) and (2)

9 It is estimated that only 20% of sexual offences are reported to the police and only a proportion of those attract a conviction for that offence. Therefore, analysing reconviction to approximate reoffending will always under-estimate true levels.

10 Cann et al. (2004), Ackerley et al. (1998), and Prentky et al. (1997).

- A constant or slowly falling risk does not in itself indicate an appropriate retention period, which is a function of additional factors already mentioned;

- The expected degree of residual risk is a function of the size of the risk and the harms associated with associated offending. The benefits of a limited registration period are the savings in terms of registration costs (including offender management activities) and improved individual privacy;

29. A Working Group, which included representation from the Association of Chief Police Officers (ACPO) and the National Offender Management Service (NOMS), was established to take forward the development of the review mechanism and reached a collective decision on the appropriate review periods to set, based on the available evidence and expertise from practitioners' experience of managing offenders in the community. Also, we have engaged closely with colleagues in Scotland and Northern Ireland in this matter. Whilst we recognise that the risk of sexual re-offending persists for a period of time, it is our view that the review periods adopted in these proposals strike an appropriate balance between this evidence and human rights considerations.

Why the Government considers that it is appropriate for any second review to be on a similarly long time-scale;

30. The period of time which must elapse before an offender can apply for a second or subsequent review is ordinarily 8 years, or a little over half the period which must elapse before an offender who was an adult on conviction can apply. Therefore, the second review is not ordinarily on a similarly long time-scale.

31. We believe that, if a person is assessed still to be a risk 15 years after the commencement of the notification period, it would be proportionate to ordinarily make the offender continue to be subject to the notification requirements for a further 8 years before a further review is possible (representing just over 50% of the period that has already been subject to notification requirements and which has not succeeded in eliminating the risk). We also believe that a period of less than 8 years will be of little value to offenders in relation to whom a realistic period of time should elapse following a decision to continue their notification requirements to ensure that they have a prospect of demonstrating that the level of risk they pose has diminished.

The Government's reasons for proposing that the Chief Police Officer should have discretion as to whether any second review takes place after 8 or up to 15 years.

32. We also believe that, for exceptional cases, it is proportionate to confer on the police a power to extend the period for a further period of between 8 and 15 years before another review is possible (representing a period of up to the same length of time that has already passed without successfully eliminating the risk).

33. lt is our view that there are clear and exceptional circumstances in which it would be justifiable to set a longer further review period; for example, in the event of a conviction for a serious further offence which has resulted in a significant part of the review period being spent in custody. This will be set out fully within practitioner guidance which we will issue prior to the coming into force of the remedial order.

Sexual Offences Prevention Orders (SOPOs)

Please provide a fuller explanation of the Government's decision that offenders who are subject to a SOPO must make an independent application to discharge any relevant SOPO before applying to the Chief Police Officer for a review of whether it is proportionate to continue to require registration?

34. A sexual offences prevention order (SOPO) is a bespoke civil preventative order available on specified grounds and which has the effect of prohibiting the person in relation to whom it is made from doing anything described in it, as well as making that person subject to the notification requirements until the SOPO ceases (in the case of a person not otherwise subject to the notification requirements).

35. A SOPO can be made by a court on the conviction of a person for a sexual or violent offence or on application by the police, but only if it is satisfied that the SOPO is necessary to protect the public or any particular members of the public from *serious sexual harm* from the person in relation to whom the application is made. As such, the basis on which a SOPO is obtained and its effect makes its markedly different from the basis on which notification requirements continue to apply to an offender. A SOPO is available for a wider spectrum of offending or behaviour than that which forms the basis of notification requirements[11] but the threshold which must be met for making a SOPO is higher than the risk of sexual harm[12] about which the police must be satisfied before determining that a person must remain subject to notification requirements.

36. Section 108 of the Sexual Offences Act 2003 makes it clear that a person must apply to the court to vary or discharge a SOPO; therefore, we do not believe that this should alternatively be a function conferred on the police.

Statistics about the likely number of offenders who will be required to undergo this two stage assessment, including the current number of offenders subject to indefinite notification who are also subject to a SOPO/Estimate of the additional cost incurred by not following the Scottish model, where a SOPO would fall away after any relevant discharge of notification.

37. We have considered again the information we have set out within the Impact Assessment for this policy and do not consider that the proposed policy for reviewing lifetime notification requirements will have an impact on the volume of SOPOs being discharged. The proposals have no impact on the threshold for seeking to discharge a SOPO or the likely outcome. Therefore, there is no additional cost to be considered in the first three policy options set out within the Impact Assessment; do nothing, automatic removal, or a police or Multi Agency Public Protection Arrangements led review mechanism.

38. ln policy option 4, a court administered review mechanism, there may be an argument to adjust the estimated volume of reviews heard in the magistrate's courts to account for

11 For example, a SOPO can be obtained on the basis of a person's conviction for an offence listed in Schedule 3 (sexual) or Schedule 5 (violent) to the 2003 Act, whereas the notification requirements imposed under section 82 are triggered by a conviction for only an offence listed in Schedule 3.

12 The concept of "risk of sexual harm" is defined in the proposed new section 91 B(11)(b) of the 2003 Act.

the fact that a subset of these could be carried out at the same time as a SOPO discharge. However, the risk assessment and process may be different. Indefinite notification requirements may not automatically be discontinued because a SOPO is discharged since this may still be considered a useful and proportionate form of offender management given the level of risk assessed and the differing thresholds described above. A hearing regarding an appeal or discharge of a SOPO may require a greater amount of court time and require additional resource. This would need to be accounted for and, therefore, the volume of reviews could not simply be reduced by the relevant volume of SOPO appeal or discharge hearings that could incorporate a review of indefinite notification requirements.

39. The number of offenders required to undergo a 'two stage assessment' in this sense is a small subset of the current number of offenders subject to indefinite notification who are also subject to a SOPO. The relevant volume is, in fact, a subset of the volume of offenders currently seeking to appeal or discharge SOPOs. The subset consists of those seeking to discharge a SOPO who have also been subject to indefinite notification requirements for 15 years at this point and are, therefore, eligible for a review.

40. We are currently seeking further information relating to volumes of appeals and discharges of SOPOs from colleagues in the Ministry of Justice. It has not been possible to obtain this data to meet your deadline of 19 July but we will forward this to you separately.

41. As set out within the Impact Assessment, the Ministry of Justice have been included in the development of this policy and are satisfied that the impact on the Criminal Justice System is minimal. Funding the legal costs of discharging a SOPO is within the scope of criminal legal aid and would be subject to the standard interests of justice test and means test. Each legal aid application would be considered on its own merit. We are satisfied therefore, that this policy approach would not be an unreasonable fetter on an individual's ability to seek a review of their notification requirements. Child Offenders and the Convention on the Rights of the Child Please provide a fuller explanation of the Government's decision that some offenders aged under 18 years at the time of conviction should be treated as adults for the purposes of review.

In particular, please expand on the analysis provided in the Required Information and the Impact Assessment by explaining why the Government considers that the proposal to treat some child offenders in the same way as adult offenders is compatible with the obligations of the UK under the UN Convention on the Rights of the Child (Article 40).

42. We believe this question is premised on a slight misunderstanding of the effect of the proposed new section 91 B(2) of the 2003 Act in the draft remedial order. The scheme will distinguish between offenders on the basis of their age on the date of conviction. This corresponds with the approach in the 2003 Act[13] whereby the age of an offender on the date of conviction determines the length of any finite notification requirements to which that offender becomes subject. In broad terms, an offender aged under 18 on conviction and who is subject to indefinite notification requirements will be entitled to apply for review of those requirements after a period of 8 years following release from custody has elapsed (in contrast to the period of 15 years which applies to offenders who are 18 or over

13 See section 82(2) and 82(6).

at conviction). Therefore, we do not accept that offenders aged under 18 on conviction are to this extent treated as adults for the purpose of review.

43. There is an error in the wording of page 10 of the Impact Assessment and we regret if this has caused any confusion. Please note that, for the purpose of modelling volumes eligible for a review, the Impact Assessment did correctly identify the proportion of offenders subject to lifetime notification requirements who were juveniles at the point of sentencing, not initial notification (see page 12 of the Impact Assessment).

44. ln view of our comments above, we believe that it is not necessary to address the specific point about the compatibility of the proposal to make the order with Article 40 of the United Nations Convention on the Rights of the Child. However, we think it would assist the Committee to refer it to the overview prepared by the Government in March 2010 (*The United Nations Convention on the Rights of the Child: How legislation underpins implementation in England*) which sets out in detail how key legislative provisions, case law and policy demonstrate how the rights and obligations contained in the UNCRC are protected in England. The Committee's attention is specifically drawn to the discussion about Article 40 of the UNCRC.[14]

Comparative experience

Please provide us with fuller information on the mechanism for review operating in each of the countries referenced in the Impact Assessment (Ireland, France, Australia, Canada, South Africa and the US).

Please provide a fuller explanation of the role comparative experience played in shaping the Government's proposal, if any. Please include further information about the Government's consideration of the model adopted in Scotland and any discussions with the Northern Ireland Executive about their proposed approach.

45. Whilst we have not based the scheme we propose introducing in England and Wales on schemes operated in other jurisdictions, we can confirm that we did take account of aspects of other such review mechanisms in developing our policy proposals, with respect to certain intrinsic elements of the schemes, such as the appropriate review periods, the application process, the further review periods and the possibility of further appeal. Of note, schemes in Ireland, Canada and Australia all require that an individual make an application to initiate a review. In line with this approach and as set out earlier in this response, it is our view that it is reasonable to expect an individual to take the basic step of initiating a review and that it cannot be said to be disproportionate to require offenders to initiate the process as opposed to an automatic review process.

46. Broadly, other countries considered during our policy development have adopted a broad range of review periods, which differ quite significantly from each other. For example, in the Republic of Ireland[15] a review may be sought a minimum of 10 years following the date of release from custody, in Australia[16] an application may only be made

14 At pages 163 et seq. The full document is available at: http://www.education.gov.uklb0074766/uncrc/.

15 Section 11 of the Sex Offenders Act 2001

16 Sections 89(1), 96, 97 and 100 of the Australian Capital Territories Crimes (Child Sex Offenders) Act 2005

after 15 years have elapsed since the offender was last sentenced or released from custody for a relevant offence (whichever is later), and in Canada[17] an offender may apply to terminate indefinite notification 20 years after the order was made.

47. Whilst mindful of review mechanisms in operation in other jurisdictions, ultimately, it is for this Government to develop a process that works for England and Wales, based on the current available evidence, as set out above, which will operate effectively within the existing framework for managing sex offenders in the community in operation across England and Wales, the Multi-Agency Public Protection Arrangements (MAPPA).

48. The Working Group which was established for the purposed of this policy development gave full consideration to many of the points you have raised within your correspondence and collectively agreed on all of the key elements of the proposals.

49. Criminal law is a devolved issue and as such it is open to Scotland and Northern Ireland to make separate provision in the 2003 Act to respond to the declaration of incompatibility in *F & Thompson*. The Scottish Government amended the 2003 Act to introduce the scheme applicable in Scotland by making the *Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011*, which came into force on 28th January 2011. We are aware that proposals have now been published for consultation in Northern Ireland. This consultation will end in October and legislative proposals will then be prepared for scrutiny by the NI Assembly.

50. We have worked closely with colleagues in Scotland and Northern Ireland to ensure that there is alignment in the systems, where possible. It is our view that the fundamental policy aim of public protection requires that sex offender notification be considered in the context of the United Kingdom as a whole. That is why we have ensured that the review periods set and the various checks and balances we have introduced are consistent.

51. We do not consider that the differences in our proposals would offer any incentive for displacement of offenders across borders between the devolved administrations. There is (or will be) consistency across each of the UK jurisdictions in relation to both the broad test to which the risk posed by offenders subject to indefinite notification requirements is assessed, and the factors to be considered in making this decision. Multi-Agency Public Protection Arrangements (MAPPA) operate across England and Wales, with equivalent systems operating in Scotland and Northern Ireland. We are satisfied that the assessment of risk will be consistent across our borders and we will continue to work with the devolved jurisdictions in the implementation and operation of this policy to ensure that this is the case.

52. Whilst we acknowledge that the Scottish Government has made provision to the effect that the discharge of an offender from indefinite notification requirements in England and Wales or Northern Ireland will apply in Scotland, we do not believe that equivalent provision is necessary in the proposal to make the order. The effect of a determination that an offender cease to be subject to the indefinite notification requirements in England and Wales would apply in Scotland and Northern Ireland in any event.

17 Paragraphs 490.015(1)(c) and 490.016(1) of the Canadian Criminal Code

53. We understand that the Scottish Government is giving consideration to amending its scheme so as to introduce in Scotland equivalent provision to that contained in the proposal to make the order, which precludes an offender in England and Wales from applying for review if that offender remains subject to a notification continuation order made in Scotland.

54. We do not believe that the absence of a prescribed right to judicial determination in the proposal to make the order raises issues about mutual recognition. The respective schemes in England and Wales, and Scotland, allow the determination by the police to be subject to the supervisory jurisdiction of the courts; in the case of Scotland, this is prescribed as part of the process whereas in England and Wales this is inherent.

55. The Scottish scheme will be amended to formally recognise proposals introduced in England and Wales, and the provisions being made in Northern Ireland. Consideration is currently being given as to how this will be achieved. Similarly, the proposals which have recently been published for consultation in Northern Ireland have taken account of arrangements both here and in Scotland to ensure that the fundamental parts of the process are in keeping with other UK jurisdictions.

56. We continue to engage fully with Scotland and Northern Ireland to ensure that any differences are managed appropriately. Public safety is our priority and there is a shared will to ensure that the review mechanisms operate alongside each other effectively and that there is no opportunity for offenders to exploit differences across borders, whilst ensuring that we introduce the most appropriate process possible for England and Wales.

Scope of the Order

57. We have addressed above why the Government has opted for an applicant led review process. We do not expect the police to apply a particular test by reference to which they would make a determination although this would essentially be an assessment of the risk posed by an offender. This is envisaged by the terms in which the proposal to make the order has been drafted. Moreover, this assessment is likely to be based on the risk of sexual harm posed by an offender. This concept is described above and forms the basis both for the power conferred on the police to extend the further review period from 8 years to a maximum of 15 years, and evidence of it is one of the prescribed factors which the police must take into account in making a determination.[18]

58. We would, however, invite further views on this point if it is considered that it warrants further attention.

I hope that this additional information is helpful to the Committee's consideration of the proposals. Should you require any further information my officials would be happy to provide this.

19 July 2011

18 See the proposed new section 91 D(2)(m} of the 2003 Act.

List of Reports from the Committee during the current Parliament

Session 2010–12

First Report	Work of the Committee in 2009–10	HL Paper 32/HC 459
Second Report	Legislative Scrutiny: Identity Documents Bill	HL Paper 36/HC 515
Third Report	Legislative Scrutiny: Terrorist Asset-Freezing etc. Bill (Preliminary Report)	HL Paper 41/HC 535
Fourth Report	Terrorist Asset-Freezing etc Bill (Second Report); and other Bills	HL Paper 53/HC 598
Fifth Report	Proposal for the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010	HL Paper 54/HC 599
Sixth Report	Legislative Scrutiny: (1) Superannuation Bill; (2) Parliamentary Voting System and Constituencies Bill	HL Paper 64/HC 640
Seventh Report	Legislative Scrutiny: Public Bodies Bill; other Bills	HL Paper 86/HC 725
Eighth Report	Renewal of Control Orders Legislation	HL Paper 106/HC 838
Ninth Report	Draft Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010—second Report	HL Paper 111/HC 859
Tenth Report	Facilitating Peaceful Protest	HL Paper 123/HC 684
Eleventh Report	Legislative Scrutiny: Police Reform and Social Responsibility Bill	HL Paper 138/HC 1020
Twelfth Report	Legislative Scrutiny: Armed Forces Bill	HL Paper 145/HC 1037
Thirteenth Report	Legislative Scrutiny: Education Bill	HL Paper 154/HC 1140
Fourteenth Report	Terrorism Act 2000 (Remedial) Order 2011	HL Paper 155/HC 1141
Fifteenth Report	The Human Rights Implications of UK Extradition Policy	HL Paper 156/HC 767
Sixteenth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill	HL Paper 180/HC 1432
Seventeenth Report	The Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion (second Report)	HL Paper 192/HC 1483
Eighteenth Report	Legislative Scrutiny: Protection of Freedoms Bill	HL Paper 195/HC 1490
Nineteenth Report	Proposal for the Sexual Offences Act 2003 (Remedial) Order 2011	HL Paper 200/HC 1549