



House of Lords
House of Commons
Joint Committee on Human
Rights

Draft Sexual Offences Act 2003 (Remedial) Order 2012: second Report

First Report of Session 2012–13



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*Report, together with formal minutes and
written evidence*

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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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The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

Publications

The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at <http://www.parliament.uk/jchr>

Current Staff

The current staff of the Committee is: Mike Hennessy (Commons Clerk), John Turner (Lords Clerk), Murray Hunt (Legal Adviser), Lisa Wrobel (Senior Committee Assistant), Michelle Owens (Committee Assistant), Greta Piacquadio (Committee Support Assistant), and Keith Pryke (Office Support Assistant).

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Summary

Background

The purpose of this draft Order is to remove the incompatibility with the ECHR in Section 82(1) of the Sexual Offences Act 2003 identified by the UK Supreme Court in the case of *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 (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 constitute a disproportionate interference with the right to respect for private life and are incompatible with Article 8(1) ECHR.

On 14 June 2011, a proposal for a draft Sexual Offences Act 2003 (Remedial) Order and the required information was laid before both Houses. Our terms of reference require us in such cases 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. We did so on 13 October 2011 in our first Report on the subject. This second Report deals with the resulting draft Order, which was laid before both Houses on 6 March 2012. Our terms of reference require us to report on the draft Order by 28 May 2012.

In our first Report, we agreed with the Government that there were compelling reasons for using the remedial order process to introduce a review mechanism into the system for registration of sex offenders. However, we concluded that the draft order would not remove the incompatibility identified by the Supreme Court and we therefore recommended that the proposed draft order should not be introduced in the terms then proposed. We were particularly concerned by the lack of provision for review by an independent and impartial tribunal, and by the failure of the draft order to make clear the test to be applied by the police when reviewing whether the notification requirements continue to be justified. We therefore recommended that the Government make a number of amendments to the draft order.

The revised draft Order, as laid on 6 March 2012

The revised draft Order as laid on 6 March provides for a right of appeal to the magistrates’ court from the determination by the police. Although this is not the same as a right of appeal to a higher court, as we preferred in our first Report, we accept that it is sufficient to remove the incompatibility identified by the Supreme Court in *F and Thompson*. We therefore accept that the draft Order is now sufficient to remedy the incompatibility with Article 8 ECHR that currently exists.

However, although the Government has accepted our recommendation on this point, it expressly disagrees with the reasoning in our first Report as to why such a right of appeal to an independent court is required in order to remove the incompatibility, arguing that a system of purely administrative review would be sufficient to remove the incompatibility. We remain firmly of the view expressed in our first Report, that, in order to be compatible with the requirements of the ECHR, review by an “appropriate tribunal” requires there to be

an opportunity for an independent court or tribunal to assess whether the continuation of notification requirements is justified. In our view, the need for review by an independent and impartial court or tribunal is stronger now than at the time of our first Report, in light of the fact that the notification requirements placed on registered sex offenders have been extended, and made more onerous, by the Sexual Offences Act 2003 (Notification Requirements) England and Wales Regulations 2012.

Other matters arising

We also note a number of areas where the drafting of the draft Order is unclear, and recommend that the Minister clarify the intention behind the draft Order. These concerns relate to the right of appeal against postponements of further reviews; the requirement of chief officers of police to notify victims and other responsible bodies that an application for review has been made; the breadth of the definition of “psychological harm to the public”; the availability of legal aid for appeals and recovery of costs relating to successful appeals; and opportunities for parliamentary consideration of the Secretary of State’s guidance to police on how to determine applications for review.

