

*These notes refer to the Criminal Justice Act (Northern Ireland)
2013 (c.7) which received Royal Assent on 25 April 2013*

Criminal Justice Act (Northern Ireland) 2013

EXPLANATORY NOTES

BACKGROUND AND POLICY OBJECTIVES

Sex offender notification

3. The Sex Offenders Act 1997 introduced notification requirements for sex offenders, which became widely known as ‘signing the sex offender register’. The legislation allowed the police to hold information on the whereabouts of convicted sex offenders in the interests of the prevention and detection of sexual offences. These provisions were further developed in the Criminal Justice and Court Services Act 2000, which reduced the initial time allowed to give the required information to the police from 14 to 3 days.
4. Part 2 of the Sexual Offences Act 2003 (“the 2003 Act”) replaced the previous legislation and consolidated and expanded the requirements further. The 2003 Act prescribes the periods of notification which attach to an offender based on the length and type of disposal. The period begins on the date of conviction or caution. The shortest period of 2 years is in respect of a caution. All other non-custodial disposals attract 5 years. Custodial sentences of up to 6 months attract 7 years, up to 30 months 10 years and over 30 months an indefinite period.
5. The notification requirements are not part of the court order on conviction but are a statutory obligation placed on the offender as a consequence of conviction. It is an offence to fail without reasonable excuse to comply with the notification requirements. The offence is punishable on indictment by imprisonment for up to 5 years and on summary conviction by imprisonment for up to 6 months or a fine.
6. In 2008, the Divisional Court in England granted claims for judicial review made by two sex offenders, one a juvenile when convicted, that the absence of a right of review of the indefinite nature of their notification requirements breached their right to privacy protected by Article 8 of the European Convention on Human Rights.
7. The Divisional Court made a declaration that section 82(1) of the 2003 Act was incompatible with Article 8. The Court of Appeal dismissed an appeal by the Home Secretary, who then appealed to the Supreme Court. That appeal was turned down in April 2010 and the court held unanimously that the absence of a review mechanism under the 2003 Act does render the indefinite notification

*These notes refer to the Criminal Justice Act (Northern Ireland)
2013 (c.7) which received Royal Assent on 25 April 2013*

requirements incompatible with Article 8 of the ECHR. In the absence of any evidence to demonstrate that it was not possible to identify at least some convicted sex offenders who pose no significant risk of re-offending, the lack of a review mechanism was disproportionate. The court also noted that almost all similar registration systems in other jurisdictions contain a review mechanism; however, it is open to the legislature to impose an appropriately high threshold for review.

8. Following the judgment, all UK jurisdictions looked at options to address the ruling. Scotland introduced remedial legislation in January 2011 and England and Wales followed in July 2012. All jurisdictions consulted with each other to ensure that the broad principles of their respective review mechanisms were consistent.
9. Proposals for Northern Ireland were also put before the Assembly at Consideration Stage of a previous Justice Bill in February 2011 and again at Further Consideration Stage in March of the same year but failed to attract cross-community support and were withdrawn by the Justice Minister. The Minister, at that stage, said that similar proposals would have to be brought back to the Assembly after the May 2011 elections. The provisions in the Act represent that undertaking.
10. The Act is also being used to make several other changes to the law on sex offender notification. One is a minor consequential change to allow for removal of notification requirements in respect of some offences which no longer exist in law. Others strengthen the law by introducing provisions to make notification requirements more effective and to adjust the scope of sexual offences prevention orders.