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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Sexual Offences Act 2003 (“the 2003 Act”) to remedy an incompatibility with a Convention right in relation to the indefinite notification requirements contained in section 82(1) of the 2003 Act. This Order extends to England and Wales only.

In the case of *R (on the application of F (by his litigation friend F)) and Thompson (FC) v Secretary of State for the Home Department* [2010] UKSC 17 the Supreme Court of the United Kingdom on 21st April 2010 made a declaration under section 4 of the Human Rights Act 1998 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.”

Article 3 of this Order inserts sections 91A to 91G into Part 2 of the 2003 Act. These provisions provide a mechanism for a relevant offender to apply to the police for a review of the requirement that the relevant offender remain subject to the indefinite notification requirements which apply by virtue of section 82(1) of the 2003 Act.

Section 91A makes provision for a qualifying relevant offender to apply to the relevant chief officer of police for a determination that the qualifying relevant offender ceases to remain subject to the indefinite notification requirements. This section defines a “qualifying relevant offender” and the “relevant chief officer of police”. A qualifying relevant offender (“the offender”) is a relevant offender (defined in section 80(1) of the 2003 Act as a person who is subject to the notification requirements under Part 2 of the 2003 Act) who is subject to the indefinite notification requirements, and who is not subject to a sexual offences prevention order (under section 104(1) of the 2003 Act) or an interim sexual offences prevention order (under section 109(3) of the 2003 Act). The relevant chief officer of police is the chief officer for the police area in which the qualifying relevant offender is recorded as residing or staying in the most recent notification given by him (under sections 84(1) or 85(1) of the 2003 Act). If the offender resides or stays at more than one address, the relevant chief officer of police is the chief officer for the area in which the offender has, during the preceding 12 months, resided or stayed for longer than in any other area.

Section 91B enables an offender to apply for a review on or after the qualifying date or further qualifying date, and prescribes the initial steps which the police must take on receipt of the application for review. This section defines the “qualifying date” as a date after the end of the 15 year period beginning with the day on which the offender gives the relevant notification, where the offender is aged 18 or over on the relevant date. The period is 8 years if the offender was under 18 on the relevant date.

“Relevant notification” is defined in subsection (10) and means the first notification given by the offender (whether under section 83, 84 or 85 of the 2003 Act) following the first occasion on which the offender is released from detention (the forms of detention are set out in subsection (10)(a) to (c)) to which the offender is subject as a result of the conviction for the offence giving rise to the indefinite notification requirements.

“Relevant date” is defined in section 82(6) of the 2003 Act. If the offender has been made the subject of a notification continuation order under sections 88A to 88I of the 2003 Act (these sections contain provision for the review of indefinite notification requirements in relation to an offender in Scotland), the qualifying date cannot be earlier than the date of expiry of a notification continuation order made in Scotland.

The relevant chief officer of police (“the police”), on receipt of an application for review, must within 14 days give the offender an acknowledgment of receipt and may notify a responsible body that the application has been made. A “responsible body” is defined, in relation to the police area concerned, as the local probation board (or relevant provider of probation services), the Minister of the Crown exercising prison functions and the bodies mentioned in section 325(6) of the Criminal Justice Act 2003. A responsible body, if it holds relevant information, must give such information to the police within 28 days of being notified of the application.

Section 91B also defines the “further qualifying date” as the day after the end of the 8 year period beginning with the day on which the police determine an application for review under section 91C, but reserves to the police a power to require the offender to remain subject to the indefinite notifications for a period which may be no longer than the 15 year period beginning with the day on which the police determine an application for review under section 91C. The police can only exercise this power if the police consider that the risk of sexual harm posed by the offender is sufficient to justify a continuation of the indefinite notification requirements after the end of the 8 year period described above. “Risk of sexual harm” is defined in subsection (10) as meaning a risk of physical or psychological harm to the public or a part of the public in the United Kingdom caused by the offender committing an offence under Schedule 3 to the 2003 Act.

Section 91C prescribes the steps which the police must take following receipt of an application and the basis on which the application is determined. The police must determine the application within 6 weeks of the latest date on which any responsible authority may provide information under section 91B(9), and give notice of the determination to the offender. Unless the offender satisfies the police that it is not necessary for the purpose of protecting the public for him to remain subject to the indefinite notification requirements, the police will determine that those requirements will continue to apply. If so, the police must include with the notice of determination a statement of reasons and inform the offender of his right of appeal.

An offender ceases to be subject to the indefinite notification requirements on the date of receipt of a notice of determination under this section.

Section 91C(5) enables the Secretary of State to make an order amending the period specified in section 91C(1), which governs the time by which the police must determine an application for review.

Section 91D prescribes the facts and matters which the police must consider in determining an application for review under section 91C. The police must have regard to any information received from a responsible body, consider the risk of sexual harm posed by the offender and the effect on him of a continuation of the notification requirements, and take into account the factors prescribed in subsection (2). These factors relate (amongst other things) to the circumstances of the offence which gave rise to the indefinite notification requirement to which the offender is subject, any assessment of the risk posed by the offender prepared by any responsible authority, evidence from a victim of the offence which gave rise to the indefinite notification requirements, a conviction or other finding made by a court in England and Wales in relation to the subsequent commission of an offence under Schedule 3 to the 2003 Act by the offender or a conviction or finding by a court in another country in relation to an equivalent offence.

Section 91E sets out a right of appeal in respect of the determination by the police that an offender must remain subject to the indefinite notification requirements or that the offender may not make a further application for review for a period specified in section 91B(5). The appeal may be made to the magistrates’ court by complaint within 21 days of the receipt of the notice of determination.

Section 91F requires the Secretary of State to issue guidance to the police in relation to their determination of applications for review. The Secretary of State may issue revised guidance from time to time, and any guidance must be published in a manner which the Secretary of State considers to be appropriate.