EXPLANATORY MEMORANDUM TO

THE DATA PROTECTION (PROCESSING OF SENSITIVE PERSONAL DATA) ORDER 2009

2009 No.

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the instrument is to enable the Ministry of Justice to provide Members of Parliament with information about certain high risk of harm offenders at the point of their release from custody. The information will include the offenders' names and licence conditions. On the basis of the information provided, Members will be able to assure themselves, through further consultation with the local Chief Constable or Chief Officer of Probation, where necessary, that there are robust risk management plans in place to manage the risk of harm presented by the offenders concerned.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This Order is being made under section 67(2) of, and paragraph 10 of Schedule 3 to, the Data Protection Act 1998 to allow information about the release of certain offenders to be given to Members of Parliament.

5. Territorial Extent and Application

5.1 The instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 Maria Eagle M.P. , Minister of State at the Ministry of Justice, has made the following statement regarding Human Rights:

"In my view, the provisions of the Data Protection (Processing of Sensitive Personal Data) Order 2009 are compatible with the Convention rights."

7. Policy background

- ***What is being done and why***

7.1 The National Offender Management Service (NOMS) in the Ministry of Justice operates a scheme known as the Critical Public Protection Case (CPPC) Scheme. Under the CPPC Scheme, Probation Areas should register with the Public Protection Unit in NOMS any case of an offender who is being released from custody and who meets certain criteria. The criteria are that the offender:

- is assessed as presenting a very high risk of serious harm on release from custody and needs to be managed at the highest level of the Multi-Agency Public Protection Arrangements (MAPPA); or
- has been convicted of an offence under the Terrorism Act 2006; or
- has known links to extremist organisations and causes; or
- has a very high profile because of the nature of his offences and which requires him to be managed at the highest level of MAPPA.

7.2 MAPPA are established by virtue of section 325 of the Criminal Justice Act 2003 (the 2003 Act). Under that provision, the responsible authorities for each of the 42 Probation Areas of England and Wales is defined as the chief officer of police, the local probation board or trust for that area and the Minister of the Crown exercising functions in relation to prisons, acting jointly. The responsible authorities is required to establish arrangements to assess and manage the risk presented by offenders convicted of a specified sexual or violent offence, as defined by section 327 of the 2003 Act, and by offenders, who by reason of the offences which they have committed are considered by the responsible authority as persons who may cause serious harm to the public.

7.3 The purpose of the CPPC Scheme is essentially threefold: to assure Ministers that robust risk management plans are in place to manage such offenders on their release from custody; to allow Probation Areas to bid for additional funding to strengthen local risk management plans; and to enable Ministers to notify Members of the arrangements which have been put in place to manage the risk which those offenders present, in order to protect the public. Probation Circular 06/2007, which is available at the link gives more information http://npsintranet.probation.gsi.gov.uk/document_library/Probation_Circulars/pc06-2007.pdf

7.4 In accordance with the Probation Circular, and its predecessor Circulars, Ministers have been notifying Members of the release of CPPC offenders into their constituencies. The information which has been provided in the notification letters has included: details of the offences committed by the offender; where applicable, the standard and additional licence conditions to which the offender will be subject on release; whether information about the offender's release has been provided to the victim(s) of his offences, where the victim(s) has (have) elected to receive such information; and the name and contact details of the chief officer of police and probation for the Area into which the offender has been released.

7.5 This instrument will allow Ministers to provide Members with additional information about the offenders: namely, their names; and the addresses to which they are being released.

7.6 Members will receive this information only where they elect to do so and only where they have signed the following undertaking and returned it to the NOMS Public Protection Unit:

"I confirm that I wish to receive, in confidence, information relating to the release of dangerous offenders into my constituency under the Critical Public Protection Cases Scheme.

"I am aware that information released under this Scheme is made available to me to allow me to monitor that there are appropriate arrangements for supervision of such offenders released to addresses in my constituency. To enable monitoring, I can discuss the information with the relevant Chief Officer of Probation or Chief Constable or with any officer to whom they delegate the task of providing me with more information.

"I agree to securely store any information provided to me under the Scheme and to destroy the information once I have no further use for it.

"I agree not to disclose the specific information released to me under the Scheme save:

- in discussions with the local Chief Officer of Probation or Chief Constable, as the case may be, or
- where the information has become publicly available, or
- with the written consent of the offender or
- to a government department, or
- in accordance with an obligation to provide information under or by virtue of any enactment, or
- in accordance with an order of a court."

8. Consultation outcome

8.1 As required by section 67(3) of the Data Protection Act 1998, the Secretary of State has consulted the Information Commissioner. The ICO advised that the instrument should include the specific details of the information which Ministers will provide to Members. We have considered the ICO's advice carefully and have decided to set out the information to be provided in general terms in the instrument and to provide further detail in this explanatory memorandum (see paragraphs 7.4 and 7.5 above).

9. Guidance

9.1 As noted above, Probation Circular 06/2007 gives further detail about the CPPC scheme.

10. Impact

10.1 An equality impact assessment is attached to this Explanatory Memorandum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 The NOMS Public Protection Unit will conduct a review of the CPPC Scheme during 2009/10, in order to determine its usefulness.

13. Contact

13.1 Gordon Davison at the Ministry of Justice, tel: 020 217 0754, email: Gordon.Davison2@justice.gsi.gov.uk can answer any queries in relation to this instrument.

Equality Impact Assessment Initial Screening – Relevance to Equality Duties

Before you complete an EIA you must read the guidance notes and unless you have a comprehensive knowledge of the equality legislation and duties, it is strongly recommended that you attend an EIA training course

The EIA should be used to identify likely impacts on:

- Disability
- Gender (including gender identity)
- Race
- Age
- Caring responsibilities (usually only for HR policies and change management processes such as back offices)
- Religion and belief
- Sexual orientation

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed

The Data Protection (Processing of Sensitive Personal Data) Order 2009.

The notification to MPs Members of Parliament of the release of those offenders who meet the criteria for Critical public protection cases (CPPC). This criteria is that the offender :

- is assessed as presenting a very high risk of serious harm on release from custody and needs to be managed at the highest level of the Multi-Agency Public Protection Arrangements (MAPPA); or
- has been convicted of an offence under the Terrorism Act 2006; or
- has known links to extremist organisations and causes; or
- has a very high profile because of the nature of his offences and which requires him to be managed at the highest level of MAPPA.

2. Individual officer(s) & Unit responsible for completing the Equality Impact Assessment:

Duncan Smith, Senior Manager D, Public Protection Unit.

3. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

Aims/objectives	Outcomes
To improve the information provided to Members of Parliament, who have signed the confidentiality agreement under this legislation. This will enable the Ministry of Justice to provide Members of Parliament with information about certain high risk of harm offenders at the point of their release from custody	On the basis of the information provided, Members will be able to assure themselves, through further consultation with the local Chief Constable or Chief Officer of Probation, where necessary, that there are robust risk management plans in place to manage the risk of harm presented by the offenders concerned.

4. What existing sources of information will you use to help you identify the likely equality on different groups of people?

(For example statistics, survey results, complaints analysis, consultation documents, customer feedback, existing briefings submissions or business reports, comparative policies from external sources and other Government Departments)

NOMS hold centrally data on offenders who are registered under the CPPC arrangements and those who have committed offences under the Terrorist Acts or related offences or acts considered to extremism related offences.

5. Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people. If so what are the gaps in the information and how and when do you plan to collect additional information?

Note this information will help you to identify potential equality stakeholders and specific issues that affect them - essential information if you are planning to consult as you can raise specific issues with particular groups as part of the consultation process. EIAs often pause at this stage while additional information is obtained.

In relation to the information to be provided, there are no gaps that would impact upon the ability to assess how this proposal might affect certain groups of people. The data held on these offenders is on the basis of the nature of their offence and the risk they may present to the public.

6. Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a **positive impact** on any of these different groups of people and/or promote equality of opportunity?

Please provide details of who benefits from the positive impacts and the evidence and analysis used to identify them.

Given the nature of the information to be shared and the extremely limited recipient list, it was not considered that consultation was appropriate or required. The information does not impact upon the treatment or risk management of these offenders but seeks to inform on those Members of Parliament that have signed the confidentiality agreement as to the fact of release (in most cases, to an address in the Member's constituency) and allow Members to be satisfied on the management of risk and protection of the public. The release of such information in confidence should have no impact upon the offender. There is therefore no evidence of any impact on any groups in terms of equality.

7. Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

If the answer is yes, please provide details of whether or not you plan to undertake this work. If not, please say why.

There is no evidence that this specific refinement to the existing policy of information sharing with Members of Parliament that there will be any impact with regard to equality of opportunity.

8. Is there any evidence that proposed changes will have **an adverse equality impact** on any of these different groups of people?

Please provide details of who the proposals affect, what the adverse impacts are and the evidence and analysis used to identify them.

No evidence. The information provided is on an individual basis and only shared with a select number of recipients that is governed by the location of the release of the offender. No reference is made in this information, or assessment made with regard to race, gender, sexuality, religion, beliefs or disabilities.

9. Is there any evidence that the proposed changes have **no equality impacts**?

Please provide details of the evidence and analysis used to reach the conclusion that the proposed changes have no impact on any of these different groups of people.

It is not intended that the provision of information to Members of Parliament of offenders under the CPPC arrangements should have any impact on any issues of equality.

10. Is a full Equality Impact Assessment Required? No
(If no, please explain why not)

NOTE - You will need to complete a full EIA if:

- the proposals are likely to have equality impacts and you will need to provide details about how the impacts will be mitigated or justified
- there are likely to be equality impacts plus negative public opinion or media coverage about the proposed changes
- you have missed an opportunity to promote equality of opportunity and need to provide further details of action that can be taken to remedy this

The impact of this policy is to provide information to those Members of Parliament, who have signed a confidentiality agreement, about the release arrangements of an offender who falls under the criteria for critical public protection cases. The information provided is on the basis of the offence committed and the risk to the public that they represent. It does not relate to the offenders race, religion, beliefs, gender, disability or age. The intention is to better inform members of parliament on these often high profile cases and be able to provide assurances on the management of these cases and the protection of the public.

11. If a full EIA is not required, you are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts. Please provide details of how you will monitor evaluate or review your proposals and when the review will take place.

Copies of all notifications will be retained and held centrally. Feedback/comments received by NOMS that arise from these notifications will be monitored and any adverse effects will be considered in terms of the impact on individuals, confidentiality and security. Where appropriate, policy will be reviewed.

12. Name of Senior Manager and date approved

(*Note - sign off at this point should **only** be obtained if:*

- there are no equality impacts
- the changes have promoted equality of opportunity

You should now complete a brief summary (if possible, in less than 50 words) **setting out which policy, legislation or service the EIA relates to, how you assessed it, a summary of the results of consultation a summary of the impacts (positive and negative) and, any decisions made, actions taken or improvements implemented as a result of the EIA**, including the review mechanism. The summary will be published on the external MoJ website. The Data Protection (Processing of Sensitive Personal Data) Order 2009 will enable the Ministry of Justice to provide Members of Parliament with information about certain high risk of harm offenders at the point of their release from custody. On the basis of the information provided, Members will be able to assure themselves, through further consultation with the local Chief Constable or Chief Officer of Probation, where necessary, that there are robust risk management plans in place to manage the risk of harm presented by the offenders concerned. The information provided is not on the basis of age, gender, race, religion, beliefs or disability. Copies of notifications will be held centrally by NOMS and any concerns raised by these notifications will be monitored by NOMS and where appropriate the policy will be reviewed.
Name (must be grade 5 or above): Gordon Davison
Department: Ministry of Justice, National Offender Management Service
Date: 3 June 2009
Note: If a full EIA is required hold on to the initial screening and when the full EIA is completed send the initial and full screening together. **If a full EIA is not required send the initial screening by email to the Equality, Diversity and Human Rights Division for publication**

Full Equality Impact Assessment

13. Which group(s) of people have been identified as being disadvantaged by your proposals. What are the equality impacts?

14. What changes are you planning to make to your original proposals to minimise or eliminate the adverse equality impacts? Please provide details of the proposed actions, timetable for making the changes and the person(s) responsible for making the changes.

15. Please provide details of whether or not you will consult on the proposed changes, particularly with disabled people and if you do not plan to consult, please provide the rationale behind that decision.

16. Can the adverse impacts you identified during the initial screening be justified and the original proposals implemented without making any adjustments to them? Please set out the basis on which you justify implementing the proposals without adjustments.

17. Do your proposals miss an opportunity to promote equality of opportunity? If so, do you plan to take action to remedy this and if so, when? Please provide details.

18. You are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts.

Please provide details of how you will monitor/evaluate or review your proposals and when the review will take place.

19. Name of Senior Manager and date approved

You should now complete a brief summary (if possible, in less than 50 words) **setting out which policy, legislation or service the EIA relates to, how you assessed it, a summary of the results of consultation, a summary of the impacts (positive and negative) and, any decisions made, actions taken or improvements implemented as a result of the EIA** , including the review mechanism. The summary will be published on the external MoJ website.
Name (must be grade 5 or above):
Department:
Date:
Note: **As you have completed a full EIA, please send both the initial screening and full EIA by e-mail to the Equality, Diversity and Human Rights Division**