EXECUTIVE NOTE

THE SEXUAL OFFENCES ACT 2003 (NOTIFICATION REQUIREMENTS) (SCOTLAND) REGULATIONS 2007 (SSI 2007/DRAFT)

1. The Sexual Offences Act 2003 (Notification Requirements) (Scotland) Regulations 2007 (the Regulations") are made in exercise of the power conferred by sections 83(5)(i) and 84(1)(g) of the Sexual Offences Act 2003 ("the 2003 Act"). The Regulations are subject to affirmative resolution procedure (section 138(2) of the 2003 Act).

Policy Objectives

2. Part 2 of the 2003 Act requires relevant sex offenders to notify their personal details, and changes of those details, to the police. Once a relevant offender has notified information to the police, that offender must attend a police station once a year to notify their personal information, unless there is a change in the information which they have notified, whereupon a relevant offender must notify such a change to the police within three days of that change having taken place (sections 84 and 85 of the 2003 Act).

3. Part 2 of the 2003 Act was amended by section 78 of the Police, Public Order and Criminal Justice (Scotland) Act 2006. These changes included giving the Scottish Ministers the power to prescribe in regulations what further information a relevant offender is required to notify to the police about themselves or their personal affairs and in what circumstances offenders must notify changes in that information to the police. Section 87 of the 2003 Act provides that a relevant offender notifies information to the police under section 83(1), 84(1) and 85(1) of the 2003 Act by attending a police station which has been prescribed in regulations for that purpose.

4. These Regulations require relevant offenders to notify to the police whether or not they hold any bank and credit card accounts, debit cards and credit cards. This requirement includes notifying the police of any joint accounts which that offender holds and if the offender is self-employed, notifying the police whether or not any accounts, debit cards or credit cards in relation to a unincorporated business (such as a sole trader business or a partnership) are held. If no such accounts or cards are held by a relevant offender, that offender must declare this fact to the police.

5. If a relevant holds a bank or credit card account, the Regulations also provide that the sex offender has to furnish details of the name and address of the relevant bank, credit card company, or building society, the relevant account number(s), sort code(s) and the name of the unincorporated business in which an account may be held (if applicable). If a relevant offender holds a bank or credit card, the number stated on the face of a credit card or debit card, the validation and expiry dates of these cards and the name of the unincorporated business in which such cards may be held (if applicable) must be notified. A person who becomes a relevant offender after the Regulations will come into force will be required to notify the information required in these Regulations within three days of their release from prison or detention. A relevant offender who is subject to the notification requirements on the date on which the Regulations may come into force, will be required to notify the information contained in regulation 3 on the next occasion that offender attends a police station for notification purposes.

6. The Regulations also set out the circumstances where a relevant offender must notify the police of any changes to their financial information which they have notified to the police, including ceasing to hold an account, a credit card or debit card which has been notified to the police. A relevant offender must also notify the police if any of the details in relation to an account, debit card or credit card, which has been notified change, or that offender realises that the information which has been notified is inaccurate. Once an offender has notified any financial information to the police, if one of the events specified in regulation 4 of the Regulations occurs, that offender must notify any changes to the police within three days of such a change taking place.

7. These Regulations partly implement recommendation 1 of the Report by Professor Irving "Registering the Risk - Review of Notification Requirements, Risk Assessment and Monitoring of Sex Offenders". Among other things, Professor Irving called for all sex offenders who are subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 to provide the police with details of their bank accounts.

8. The justification for requiring relevant offenders to notify this financial information relates to the use of bank accounts and credit cards by sex offenders in pursuance of criminal activity. For example, bank, building society, debit card and credit card details were an important element in Operation Ore which was the co-ordinated response from the National Criminal Intelligence Service and police forces in the UK to target individuals accessing and downloading images of child pornography on the internet. Access and downloading of such material carries a cost and the transactions were often confirmed by gaining access to bank and building society accounts and credit card transactions. As individuals who are self employed, could use their business accounts to commit such offences, there is a requirement to notify details of any business accounts, debit and credit cards to the police.

9. Financial information such as bank accounts, credit card accounts, debit and credit cards is also a useful tool for identifying relevant offenders. Being in possession of such information allows the police to track down missing sex offenders, i.e. those who have failed to notify their details with the police and whose whereabouts are unknown. Information gained from access to accounts can confirm where and when cash has been withdrawn. This information is also extremely beneficial in enabling the police to concentrate their investigations in the right areas. For example, if the police were able to obtain credit card details that showed that an offender had purchased a rail ticket with the destination on it they could deploy offices accordingly or notify a sister force of that fact.

10. Failure to comply with the requirements imposed by virtue of these Regulations, without reasonable excuse, will be a criminal offence under section 91 of the 2003 Act. A relevant offender convicted of such an offence on summary conviction will be liable to a term of imprisonment of up to six months or to a fine or both; conviction on indictment may lead to a term of imprisonment of up to five years.

ECHR

11. The ECHR issues which arise in respect of these Regulations have been considered. The key issues are whether imposing additional requirements on relevant offenders could be seen to be sufficiently burdensome to amount to a penalty in terms of Article 7 of the ECHR and whether they would interfere with a right to private life in a way that could not be

justified (Article 8 of the ECHR). It is considered that the Regulations are compatible in this respect.

12. Whilst the Regulations will result in a greater burden being imposed on relevant offenders, it is not considered that the measures in the Regulations are any different in principle from the current requirements in Part 2 of the 2003 Act and their lack of severity. As set out in paragraphs 9 and 10 above, the requirement to provide financial information set down in the Regulations is directed at public protection and the prevention of re-offending. This information is also useful in confirming the identity of relevant offenders. The measures are considered to be proportionate, particularly when the slight inconvenience caused to relevant offenders of having to notify the required financial information is balanced against the reasons why relevant offenders are being required to notify this information (public protection and prevention of re-offending).

Consultation

13. These Regulations form part of the implementation of the Irving Report, which was taken forward in the Police, Public Order and Criminal Justice (Scotland) Act 2006, which the Scottish Parliament approved in May 2006. The Association of Chief Police Officers in Scotland was consulted on the instrument.

Financial Effects

14. The instrument has no financial effects on the Scottish Executive's program expenditure.

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