EXPLANATORY MEMORANDUM TO

THE SEXUAL OFFENCES ACT 2003 (NOTIFICATION REQUIREMENTS) (ENGLAND AND WALES) REGULATIONS 2012

2012 No. 1876

1. This explanatory memorandum has been prepared by the Home Office ("the Department") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the requirements as to the information which offenders, who are subject to the requirements of Part 2 of the Sexual Offences Act 2003 ("the 2003 Act"), must notify to the police.

2.2 These Regulations amend the notification requirements in two ways. First, they require offenders to notify additional information when they intend to travel outside the United Kingdom (for example, by replacing the existing requirement to notify foreign travel of three or more days with a requirement to notify all foreign travel). Secondly, they introduce a new requirement that offenders notify information in relation to their residence, banking arrangements and passports or other forms of identification (for example, to notify information on a weekly basis where the offender does not regularly reside at one place, or to notify where the offender resides with a child).

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

3.1 None.

4. Legislative Context

4.1 An offender convicted of an offence which is listed in Schedule 3 to the 2003 Act ("a relevant offender") becomes subject to the notification requirements set out in sections 83 to 86 of that Act. A person must also comply with the notification requirements if they become subject to one of the civil preventative orders under Part 2 of the 2003 Act (a sexual offences prevention order, risk of sexual harm order or notification order). In accordance with these requirements, relevant offenders must initially notify to the police certain personal information including (but not limited to) their name, address, date of birth, and national insurance number. Following this initial notification, relevant offenders must notify this information annually, and whenever there are any changes to it. These requirements are set out in sections 83 to 85 of the 2003 Act. Moreover, there is a requirement under section 86 of the 2003 Act to notify intended travel outside the United Kingdom for three or more days; the information relates to the intended departure and return dates, foreign destination and carriers.

4.2 These Regulations will introduce a new requirement to notify:

- weekly if the relevant offender does not regularly reside or stay at one place;
- if the relevant offender has resided, or stayed for the period of at least 12 hours, at a household or other private place where a child resides or stays;
- information in relation to any bank accounts, credit and debit cards held by the relevant offender (whether alone or with another person, and whether in the name of an unincorporated business run by the relevant offender); and
- information contained in any passport or other form of identification held by the relevant offender.

4.3 These Regulations will also amend the existing requirements to notify foreign travel whereby:

- all foreign travel must be notified;
- notification may be given 12 hours before intended departure (in place of the existing minimum period of 24 hours); and
- information about intended additional destination countries, accommodation in such countries and carriers used to reach them must also be notified.

4.4 These Regulations represent the first use of the powers in sections 83(5) and (5A), 84(1) and (5A) and 85(5) of the 2003 Act.

5. Territorial Extent and Application

5.1 These Regulations apply to England and Wales.

5.2 Criminal law (including the law governing aspects of the notification regime to which relevant offenders are subject) is a devolved matter. The Department continues to work closely with its counterparts in Scotland and Northern Ireland to ensure that there is alignment in the systems, where possible, and believes that the need to maximise public protection requires that sex offender notification be considered in the context of the United Kingdom as a whole.

6. European Convention on Human Rights

6.1 Lynne Featherstone MP, the Parliamentary Under-Secretary of State for Equalities and Criminal Information, has made the following statement regarding Human Rights:

In my view the provisions of the Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012 are compatible with the Convention rights.

7. Policy background

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

7.1 The 2003 Act was substantially brought into force in May 2004 and provides a comprehensive new legislative framework for sexual offences including offences against adults and children, and familial sexual offences. It amended the law, originally introduced in the Sex Offenders Act 1997, governing the notification requirements (commonly referred to as the 'sex offenders' register') and modified the civil preventative orders which are available for the purposes of managing individuals in the community who are considered to pose a risk of sexual harm.

7.2 The circumstances in which a person becomes subject to notification requirements are summarised in paragraph 4.1 above.

7.3 The notification requirements contained in Part 2 of the 2003 Act form an invaluable tool to the authorities and provide a robust framework for managing relevant offenders in the community. Public protection is a priority for the Government and the Department works closely with the police and other law enforcement agencies to ensure that the right tools and powers are available for the authorities to tackle serious sexual crimes and to bring perpetrators to justice. Each of the additional requirements introduced by these Regulations was identified by practitioners and experts as a priority area where action is required to prevent relevant offenders from seeking to exploit gaps in the system. Further information on the evidence informing this policy can be found on the Department's website[1].

7.4 The new requirement to notify all foreign travel will enable the police to engage more pro-actively with international enforcement agencies and, where appropriate, utilise existing tools such as foreign travel orders to manage any risk identified from the additional information notified. Weekly notification by relevant offenders who are recorded as not residing regularly at the same place will enable the police to build a more comprehensive picture of the whereabouts of such individuals in order to manage the risk they pose, and the new requirement for offenders to notify residence with a child will aid the safeguarding of children and help the police to identify situations where intervention may be appropriate to protect children from harm. The new requirement to notify bank account and credit card details will assist the police in tracing a relevant offender who has failed to comply with the notification requirements, and notification of passport details or other forms of identification will tighten

[1] http://www.homeoffice.gov.uk/publications/about-us/consultations/notification-sex-offenders/

the rules, ensuring that offenders cannot seek to avoid the system by changing their name.

- ***Consolidation***

7.5 The Government does not intend to consolidate the legislation.

8. Consultation outcome

8.1 The Department has worked closely with key partners (for example, the police) in the development of this policy. A consultation: 'Reforming the Notification Requirements of Registered Sex Offenders' was launched on 14 June 2011 and closed on 8 August 2011.

8.2 This was a targeted consultation which specifically sought views from interested parties (including law enforcement agencies, members of the judiciary, charities and other voluntary sector organisations) who have expertise in this field, including the application of the notification requirements under the 2003 Act and how this framework operates within the Multi Agency Public Protection Arrangements framework for managing sexual offenders in the community. The consultation was also available on the Department's website and open to members of the public; its aim was to inform decisions regarding reform of the notification requirements, and to ensure that the proposed changes will achieve, in a proportionate way, their intended purpose of strengthening the tools that the police have available, to protect the public from the risk posed by sexual offenders. The Department has carefully considered all of the comments made in response to the consultation and, in light of the consultation responses, it is implementing each of the proposals.

8.3 A summary of responses received to the consultation is available on the Department's website.

9. Guidance

9.1 The Department's guidance on Part 2 of the 2003 Act will be updated to include details of these legislative changes, and will be published when these Regulations come into force. The Department is working closely with key partners to ensure that existing processes and documentation within relevant agencies is amended to reflect the changes these Regulations will introduce, which will also be communicated to police forces across England and Wales and to individuals affected by the new provisions via the Association of Chief Police Officers.

10. Impact

10.1 There is no foreseeable impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is less than £5 million per annum.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 These Regulations do not apply to small business.

12. Monitoring and review

12.1 The effectiveness of the amendments to the notification requirements will be monitored on an ongoing basis by the Department, and information relevant to the additional requirements will be stored on ViSOR (the database used to capture information on a range of offender types who are considered to pose a risk of harm to the public, including Registered Sex Offenders).

13. Contact

13.1 Faye Ricketts at the Home Office on 020 7035 8430 or email: faye.ricketts4@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.