

Responses to the Consultation paper on the Review of Part One of the Sex Offenders Act 1997

This document sets out the public's and the Government's responses to each of the recommendations made in the Consultation on the Review of part one of the Sex Offenders Act 1997. The public's and the Government's responses to each recommendation made in 'Setting the Boundaries; Reforming the law on sex offences', a review of the law on sex offences have also been published. They can be found at www.sexualoffencesbill.homeoffice.gov.uk under the 'consultation documents' link.

The reviews and the responses to the consultation processes which ensued have been carefully considered, and the Government will be introducing a Sexual Offences Bill in Parliament in the New Year. 'Protecting the Public; strengthening protection against sex offenders and reforming the law on sex offences', a command paper setting out what the Government proposes to do in the Bill, has also been published. You can access this document online at www.protectingthepublic.homeoffice.gov.uk or purchase a copy from The Stationery Office (call 0870 – 6005522 to order your copy).

COMMENT ON RESPONSES TO RECOMMENDATIONS

Recommendation 1

Chapter 4, Paragraph 10

A list of violent offences should be drawn up with respect to which the court should have discretion to decide in an individual case whether or not an offence was sexually motivated. If the court concludes that it was, it must order the offender to be subject to the requirements of the Sex Offenders' Act 1997. The list of offences should include murder, manslaughter, malicious wounding, grievous bodily harm, kidnapping, false imprisonment, abduction and attempts to commit these acts. The defendant should be able, where he feels the determination was incorrect, to challenge it by appealing against sentence.

NUMBER OF RESPONSES

45	Total
21	E&W
9	Scotland
15	NI
38	Agreed (E&W 17, S 7, NI 14)
7	Agreed in principle but proposed some amendment (E&W 4, S 2, NI 1)
0	Disagreed

Comment

There was universal support for the principle underlying the recommendation – that those convicted of violent offences with a sexual motivation should be required to register.

A number of suggestions were made for further offences which should attract registration, including child abduction, cruelty to animals, robbery, ABH, harassment and domestic violence.

A small minority argued that there would be considerable practical difficulties in giving the court such a discretion. Where they suggested an alternative way forward, it was that instead of giving the courts discretion, there should be a new range of sexually motivated offences, along the lines of racially motivated offences in the Crime and Disorder Act 1998.

The problems and unanswered questions identified were:

- The evidence before the court in relation to the substantive offence may not be accurate or sufficient to decide the sexual motivation
- Who provides the evidence of sexual motivation?
- If an offender were charged with an offence of violence and a sexual offence in relation to the same incident and were acquitted of the latter, would he still be liable for registration?
- If a guilty plea is entered, how does the court get to hear about the sexual motivation?
- In the Crown court, is the decision made by the judge or jury?
- Should the standard of proof be civil or criminal?

- Evidence of sexual motivation may be inadmissible on the grounds of being prejudicial. If so a (time-consuming) Newton hearing would be required after conviction.
- A court power to order registration undermines the Act's ECHR proofing; it makes it harder to argue that registration is not a sentence but an administrative requirement flowing automatically from conviction.
- If court ordered registration is not to be part of the conviction, it will not be available as conviction history to future courts.
- What arrangements should there be for notice and disclosure?
- Appeal against sentence is not the best way of dealing with a challenge to registration. The appeal could well be based on a challenge to the facts of the case in relation to sexual motivation

Government Response

We are not going ahead as recommended by the review. However the key point, of bringing violent offenders who display sexually abusive behaviour under the registration requirements will be addressed. A list of serious violent offences will be added to the Sex Offenders Act. Following a conviction for an offence on the list, the court will be able to make a restraining order (RO) or the police will be able to apply for a sex offender order (SOO) if there is evidence that the offender poses a risk of causing serious sexual harm. As part of the orders, offenders will be subject to the notification requirements of the Sex Offenders Act. Offenders will be able to appeal against the orders.

Recommendation 2

Chapter 4, Paragraph 11

Schedule 1 of the SOA should be amended to include the offence of burglary with intent to rape and attempting to commit this act.

NUMBER OF RESPONSES

27 Total
14 E&W
3 Scotland
10 NI

21 Agreed (E&W 11, S 2, NI 8)
2 Agreed in principle but proposed some amendment (E&W 2)
2 Disagreed (E&W 1, S 1)

Comment

The overwhelming majority of respondents agreed with the recommendation. Those that disagreed did so in the E&W case because they opposed automatic registration in any circumstances, and in the Scottish case because there was no equivalent offence.

One respondent pointed out that this requirement should be retrospective to the extent that the SOA was when first implemented.

The Scottish responses were mainly concerned with the equivalent Scottish offences.

Government Response

Proposals for reform of the law on sexual offences will include a new, catch-all offence of committing any criminal offence with intent to commit a sex offence. A further offence of trespass with intent to commit a sex offence will also be introduced. These offences will trigger registration. Assisting or encouraging commission of a sex offence (including attempt; conspiracy; incitement; and, in England and Wales, and Northern Ireland, aiding and abetting; counselling; or procuring) already triggers the requirements of the Sex Offenders Act and will continue to do so.

Recommendation 3

Chapter 4, Paragraph 17

Those convicted of indecent assault should be subject to the requirement of the SOA where the victim is aged under eighteen or the sentence is a period of imprisonment of any length or of community supervision lasting twelve months or more or the person is committed to hospital subject to a restriction order.

NUMBER OF RESPONSES

24	Total
15	E&W
3	Scotland
6	NI
13	Agreed (E&W 6, S 3, NI 4)
9	Agreed in principle but proposed some amendment (E&W 9)
2	Disagreed (NI 2)

Comment

Only 2 out of the 24 respondents to the consultation disagreed with the recommendation, both of whom said that the present sentence threshold should stand. There were a significant number (9) of respondents who suggested some modification in the recommendation. Of these, 2 recommended that there should be a change to the proposed age limit, and 5 suggested some element of judicial discretion, either in all cases of indecent assault or where registration is not automatically triggered. 6 respondents proposed that registration should be triggered by a community penalty of any length, or even (1 respondent) any conviction or final warning.

Government Response

The reform of the law on sexual offences will replace the existing offence of indecent assault with the following offences: sexual assault by penetration; sexual assault; adult sexual activity with a child; sexual activity between minors. These offences will trigger registration.

Recommendation 4

Chapter 4, Paragraph 21

Where the offender was below the age of twenty, registration should not be required for offences of

- **Unlawful sexual intercourse with a girl aged between 13 and 16**
- **Buggery**
- **Indecency between men**
- **Abuse of trust**

Unless the sentence is imprisonment of any length, community supervision of twelve months or more or admission to hospital subject to a restriction order

Where the offender was over twenty years of age, anyone committing these offences should be liable for registration immediately.

NUMBER OF RESPONSES

28	Total
17	E&W
3	Scotland
8	NI
9	Agreed (E&W 4, S 2, NI 3)
16	Agreed in principle but proposed some amendment (E&W 10, S 1, NI 5)
3	Disagreed (E&W 3)

Comment

Of the 28 responses, 25 agreed fully or in principle. Of the 3 who disagreed, 2 were hostile to the offences themselves, and one argued against any leniency on the grounds of age.

There were a number (16) of suggested amendments and improvements, which covered a wide range. Two proposed an exemption if the sexual activity were consensual; 1 proposed the court should have discretion to order registration; 2 argued for a greater role for risk assessment; and 1 suggested repeat conviction should be the trigger.

However, 7 respondents took issue with the proposed qualifying age of 20, of whom 5 suggested that it should be 18 instead.

Two respondents questioned why those convicted of breach of trust should be exempt.

The change proposed by the review relates to an exclusion from the exemption for higher sentences. Only 4 respondents made suggestions in relation to this. Two suggested registration should be triggered by a community penalty of any length; and one each proposed a higher and a lower sentence threshold. All other respondents appeared content with the change.

Government Response

The reform of the law on sexual offences will introduce new offences of sexual assault by penetration, adult sexual activity with a child, abuse of a position of trust and sexual assault. These offences will trigger registration.

Recommendation 5

Chapter 4, Paragraph 23

Indecent exposure should remain excluded from Schedule 1 of the SOA.

NUMBER OF RESPONSES

27	Total
15	E&W
5	Scotland
7	NI
7	Agreed (E&W 5, NI 2)
7	Agreed in principle but proposed some amendment (E&W 3,S 1, NI 3)
13	Disagreed (E&W 7, S 4, NI 2)

Comment

Responses were evenly balanced. 14 respondents agreed with the recommendation, although 7 of these suggested modifications. 13 of the 27 respondents disagreed with the proposal, and thought that indecent exposure should trigger registration.

The two alternatives suggested by consultation respondents were:

- a) to make indecent exposure registerable for repeat convictions (4 respondents); or
- b) to make registration apply either where there was a sexual motive or at the discretion of the courts.

Government Response

The reform of sexual offences proposes a new offence of exposure. The offence will cover where the offender intends to cause or is reckless as to causing alarm or distress. The thinking behind the recommendation of the consultation paper on the review of the Sex Offenders Act was that to include the offence would mean an increased proportion of offenders who pose a low-risk of causing serious harm would be subject to the requirements of the Sex Offenders Act. Nevertheless, such an offence could be serious in certain circumstances, for example, if an offender targeted a previous victim. The offence will therefore trigger the requirements of the Sex Offenders Act in the most serious cases, subject to a sentence and age threshold.

Recommendation 6

Chapter 4, Paragraph 34

If the legislation recommended in STB is implemented:

- The existing or proposed offences of rape, sexual assault by penetration, assault to commit a serious sexual offence, abduction with intent to commit a serious sex offence, obtaining sexual penetration by threats or deception, adult sexual abuse of a child, familial sexual abuse (where the victim was under 18 years of age), persistent sexual abuse of a child, sexual activity with a person with severe mental incapacity, obtaining sex with a mentally impaired person by threat or deception, trespass with intent to commit a serious sexual offence, compelling another person to carry out a serious sexual act, administering drink or drugs to overcome a person for the purpose of sex should all be included in schedule 1 of the SOA whatever the nature of length of the sentence imposed.
- The existing or proposed offences of sexual assault, familial sexual abuse (where the victim was over 18 years of age), indecent exposure relating to exposing the penis when the offender knew or should have known that he might cause fear, alarm or distress to another person, breach of a relationship of care, voyeurism, bestiality and sexual interference with human remains should trigger registration where either the victim was below eighteen years of age or the sentence was imprisonment of any length or community supervision of twelve months or more or admission to a hospital subject to a restriction order.
- The existing offence of abuse of trust should trigger registration dependent on the age of the offender. Where he is under 20, registration should not be required unless he is sentenced to imprisonment of any length, community supervision of twelve months or more or admission to a hospital subject to a restriction order. Where he is over 20, registration should be automatic.
- The existing or proposed offences of sexual activity in public places, outraging public decency, solicitation for immoral purposes should not trigger registration
- The existing or proposed offences of trafficking, commercial sexual exploitation of a child, recruiting a person into prostitution, managing or controlling the activities of men or women who are prostitutes for money or reward, exploiting others by receiving money or reward from men or women who are prostitutes should only trigger registration if a court determines that they were committed with a sexually abusive motive. Identical arrangements would apply as to those described above for sexually motivated offences of violence.

(If the definitions of any of the above offences alter, it will be necessary to re-consider the above list.)

NUMBER OF RESPONSES

34 Total
23 E&W

4	Scotland
7	NI
9	Agreed (E&W 3, S 2, NI 4)
22	Agreed in principle or in part but proposed some amendment (E&W 17,S 2, NI 3)
3	Disagreed (E&W 3)

Comment

Many respondents either commented only on some issues, or agreed with some points and disagreed with others. There were some general comments including; proposed new offences (2 respondents) greater scope for judicial discretion (2 respondents), the offences and their categorisation are too complicated (1 respondent).

Category 1

13 respondents agreed (E&W 10, NI 3). None disagreed. There were a number of suggestions for other offences which could fall within this category, including bestiality (proposed for category 2), child pornography, internet abuse.

Category 2

13 respondents agree (E&W 9, NI 4), and 1 disagreed (E&W 1). Some respondents took the opportunity to restate arguments against particular offences proposed by STB. Those committing such acts should not be registered, they argued, because the act should not be criminal anyway. The proposed offences in question were voyeurism (2 respondents), necrophilia (1) and indecent exposure (1). One further respondent argued that voyeurism should not be included in this category, and another argued against the proposed age threshold in the category..

Category 3

12 respondents agreed (8 E&W, 4 NI). One (E&W) agreed subject to removing the exclusion for offenders aged under 20. 1 disagreed.

Category 4

11 respondents agreed (8 E&W, 3 NI). 2 disagreed (S1, NI1). One respondent proposed that the offence of outraging public decency should be included in category 2.

Category 5

Category 5 attracted the majority of the specific comments. 9 agreed (E&W 5, NI4) and 14 disagreed (13 E&W, 1S). Many of those who agreed simply expressed general agreement with the proposals, without focussing closely on this proposal. Those that disagreed argued that it was impossible to make a clear distinction between direct sexual abuse and commercial sexual exploitation. Although few respondents picked up on proposed judicial discretion, the few who did made similar arguments for and against judicial discretion as they had in relation to earlier recommendations.

One a point specific to Scotland, 2 of the Scottish responses specifically mentioned the new Mental Health Act, and proposed that the new sexual offences within it should trigger automatic registration.

Government Response

Proposals for the reform of the law on sexual offences will contain new offences and amended existing offences. The most serious of these offences will automatically trigger registration as will those against children and vulnerable adults. Those offences that cover a range of potential behaviour will lead to registration where age and sentence thresholds are met. The offences of trafficking and commercial sexual exploitation will be offences against which sex offender orders and restraining orders can be made. These orders include a requirement to register.

Recommendation 7

Chapter 5, Paragraph 14

- Itinerant offenders are subject to the same requirements as those with more settled addresses and if they are absent from the last registered location for more than 8 days, must attend a police station to register their new location.
- The definition of “home address” in the SOA be broadened so that it can include both very temporary addresses and other locations which are not conventional home but at which the offender regularly sleeps.
- There should be provision for the offender to notify to the police area in which his home is situated his home and one other address where he spends period adding up to eight or more days in a twelve month period in a single notification to the police as long as he knows the dates when he will be resident at each address.

NUMBER OF RESPONSES

25	Total
15	E&W
4	Scotland
6	NI
13	Agreed (E&W 8, S 3, NI 2)
10	Agreed in principle but proposed some amendment (E&W 5,S 1, NI 4)
2	Disagreed (E&W 2)

Comment

Respondents were broadly content with the proposals. Of those who disagreed, one simply said they were inadequate, while the other took issue with the requirement because it prevented a registered offender spontaneously having a weekend away.

While none disagreed with the proposal that itinerant offenders should be subject to the same requirements, 3 respondents were concerned that the requirement that they should re-register every 8 days may be too onerous on homeless people, and difficult in practice to administer.

Two probation areas suggested that the definition of home address need not be restricted to a location where the person sleeps, but may include places regularly visited during the day such as an outreach centre. The CPS warned that it may be difficult to enforce registration the more vague an address was, or where the offender had no right to stay there; they favoured a formal postal address

For Northern Ireland, the alternative address provision would be more complete if it could include an address in the Republic of Ireland.

Government Response

The definition of “home address” will be widened to include any location at which the offender can reliably be found, be it a day care centre, caravan or a friend’s house. Genuinely homeless

offenders are, in any case, required to attend at a police station in order to notify the police of their requirement to register, their name(s) and date of birth, at which time they are also required to submit to the police taking their photograph and fingerprints. Nevertheless, they should no longer be able to declare “no fixed abode” and thereby avoid registration requirements.

Recommendation 8

Chapter 5, Paragraph 8

- **The offender should be required to notify the police of a change of name or address in person at designated police stations rather than by post**
- **The time limit within which the registered offender should be required to notify the police of a change of address should be reduced from 14 days to 8. For the sake of clarity, this means that the offender would be required to re-register on the eighth day following a change of address.**
- **No longer than twelve months from registration or re-registration, the offender must confirm in person to the police that the details held about them are correct. This should continue to occur within every subsequent twelve-month period. The police should annually remind offenders of this requirement.**
- **All these changes should apply to offenders registered before as well as after the passage of legislation to incorporate these amendments to the Act.**

NUMBER OF RESPONSES

43	Total
23	E&W
9	Scotland
11	NI
25	Agreed (E&W 14, S 6, NI 5)
14	Agreed in principle but proposed some amendment (E&W 5,S 3, NI 6)
4	Disagreed (E&W 4)

Comment

The great majority of respondents agreed with the recommendation, although there were a large number of wide-ranging suggestions about how it might be improved. 4 respondents argued that more effective monitoring/supervision/risk assessment of offenders was required.

Only one respondent argued that registration by post should continue to be allowed, but one made the point that there would need to be some provision for those prevented from registering in person e.g. because they were detained in hospital. However, 2 suggested that the registration in person could be pre-arranged with an identified officer.

On the reduction of the time limit for re-registration from 14 days to 8, one respondent proposed registration should be made in advance of the move. 2 respondents suggested the time limit should be 3 days; one suggested 5 days. A further respondent suggested that each offender could be given an individual time limit, according to the level of risk he posed. Among those who agreed with the 8 day proposal, there was some confusion about exactly what this meant. It was suggested that there might be a fixed penalty for late reporting.

Two respondents proposed that periodic re-registration should be 6 monthly rather than annual. Two respondents specifically agreed that the onus should be on the offender to re-register, but one thought it should be on the police in all cases, and another thought it should be on the

police if the offender had a mental incapacity. It was suggested that offenders may be given the option of not being reminded to re-register. There were only a few mentions of the resources police would need to deal with their increased activity arising from this recommendation. It was suggested that probation officers may be aware of a registered offender moving, and if they were planning to breach him for this, should share the information with police.

One respondent disagreed with the recommendation wholly because it was proposed that it be retrospective.

Government Response

Offenders will be required to notify any changes to their registered details in person at a designated police station.

The qualifying period for staying at another address before the police need to be notified will be reduced from fourteen to seven days. The period during which an offender must notify the police of changes to notified information is to be reduced from fourteen days to three days.

A new requirement for offenders to annually confirm, in person, that their details are correct will be introduced.

All these changes will apply to every offender who is subject to the requirements of the Sex Offenders Act, irrespective of when they became subject.

Recommendation 9

Chapter 6, Paragraph 14

Registration should continue to apply to children and young people as at present on an interim basis.

We are actively seeking views during the consultation period about the best way forward with respect to whether and how the SOA should apply to children and young people who sexually abuse. Specifically, views are sought on the following possible alternatives:

- a) continuing the present registration regime for those aged under 18**
- b) continuing to register those over 16 as at present whilst removing the registration requirement from those under this age unless they had been sentenced to a custodial sentence of any length or admitted to hospital subject to a restriction order.**
- c) registering children and young people who sexually abuse with an agency other than the police which had a remit to address both their abusive behaviour and their wider needs.**
- d) judicial discretion to require registration only in those cases where this was considered necessary after hearing the circumstances of the case**
- e) continuing registration as at present by introducing provision for de-registration when the young person reached 18 if they were assessed as no longer presenting a risk.**

NUMBER OF RESPONSES

46 Total
24 E&W
7 Scotland
15 NI

See below for numbers agreeing with each proposal

Comment

Although the review implied that respondents should choose between the proposed options, they are not in fact mutually exclusive, and so a number of respondents opted for a combination of them. No fewer than 10 respondents expressed no clear preference between the options, but rather offered comments on all of them.

Option a)

6 respondents agreed wholly or in principle with option a), but without necessarily disagreeing with any of the other options. Of the 3 who suggested a modification of option a), 1 proposed that there could be scope for relaxing the registration requirement in cases where the sexual

activity was consensual. A further two respondents agreed subject to an appropriate assessment of the offender. One respondent favoured option a) on an interim basis.

Option b)

11 respondents agreed wholly or in principle with option b), but without necessarily disagreeing with any of the other options. Of these, 2 proposed a combination of options b) & c), and one a combination of options b) & e). 3 suggested modifications to the proposal. One respondent thought registration should be automatic for those aged 14 and over, and at the discretion of the courts below this age. Another respondent agreed subject to an appropriate assessment of the offender. Three respondents commented that having an exclusion by age and sentence length as proposed might mean that some offenders under 16 who represented a considerable risk and should be subject to the registration requirements would not be as they had been given relatively short sentences.

Option c)

13 respondents agreed with option c), and a further 7 gave or implied agreement subject to modifications. None of the responses from Scotland favoured this option.

Three respondents commented that there needed to be an appropriate assessment of the offender, and there was support for a multi- agency approach; one respondent suggested that a child care agency should be the lead agency.

It was pointed out that the police could continue to be responsible for the registration of young people while another agency led on the assessment/care/therapy issues in their case. One respondent thought that it would be better in principle for the “registering” agency and the “caring” agency to be separate. A small number of respondents noted that there would be significant practical problems of having part of the register with one agency, and another part with another

Option d)

18 respondents agreed wholly or in principle with option d), but without necessarily disagreeing with any of the other options.

Of those who disagreed, one made the point that this would exclude registration for cautions, where sometimes the offender represented a considerable risk. Two commented that judicial discretion allowed scope for inconsistency in the way the requirement was imposed, but one of these suggested guidelines for the courts to help promote consistency.

Option e)

15 respondents agreed wholly or in principle with option e), but without necessarily disagreeing with any of the other options.

Both those who agreed and disagreed with the option commented that a proper risk assessment would be required – those who opposed the option did so on the basis that it would not be possible to assess risk accurately for 18 year olds. One respondent suggested that de-registration should be possible at the age of 25 instead.

Other points

The review pointed out that cautions for those under 18 did not attract the registration requirement. None of the respondents commented on this.

The Scottish children's hearing system was proposed by a number of Scottish respondents as a useful model for dealing with decisions on how to deal with young people who offend. It would provide a mechanism for assessment and provision of support and services to the young person.

Government Response

Registration will continue to apply to offenders above the age of criminal responsibility (10). We are introducing sentence and age thresholds for some of the offences which will mean that a young offender is only required to register where the seriousness of the offence warrants it.

Recommendation 10

Chapter 6, Paragraph 16

Detention and Training Orders of a maximum of two years duration, Action Plan and Curfew Orders should be available to the courts as penalties for those under 18 who fail to comply with the requirement of the SOA, in addition to the currently available fine.

Parenting Orders should also be available to courts to ensure that advice and support can be made available to those with parental responsibility for children and young people failing to meet the requirements of the legislation.

NUMBER OF RESPONSES

26	Total
12	E&W
4	Scotland
10	NI
12	Agreed (E&W 6, S 1, NI 5)
12	Agreed in principle but proposed some amendment (E&W 5,S 2, NI 5)
2	Disagreed (E&W 1, S 1)

Comment

The great majority of respondents (24 of 26) were broadly content with the recommendation. Of those who opposed it, one said that there was no evidence that having only fines available to the courts was inadequate, and the other (from Scotland) thought that breach was better dealt with through a children's hearing, and that under 16s should not be registered in the first place. One respondent commented that only fines should be available for 10-13 year olds who breach.

4 respondents opposed the use of DTOs for breach, and one other while not opposing it pointed out that DTOs were used quite freely by the courts, and this may result in a greater use of custody for breach of juveniles than for adults. One further respondent proposed that there should be some therapeutic input where a DTO was imposed.

Government Response

The courts will be able to use the full range of penalties available for juveniles in cases where they are convicted of a failure to comply with the Act's requirements. The maximum penalty available will be two years in custody (Detention and Training Order) and community sentences or a fine will also be available, as will parenting orders.

Recommendation 11

Chapter 6, Paragraph 18

With respect to those convicted of sexual activity between minors, the offender should be automatically liable for registration where the victim was below the age of thirteen years.

Where the victim was between thirteen and sixteen, the offender should be liable for registration if he receives a Detention and Training order of any length or community supervision of twelve months or more or is admitted to hospital subject to a restriction order.

NUMBER OF RESPONSES

25	Total
12	E&W
3	Scotland
10	NI
15	Agreed (E&W 5, S 1, NI 9)
10	Agreed in principle but proposed some amendment (E&W 7,S 2, NI 1)
0	Disagreed

Comment

None of the respondents had great difficulty with the proposal, although a number suggested variations. No two respondents suggested the same amendment. Among those proposed were:

- Requirement should apply to community penalties of any length
- Should apply also to reprimands and final warnings
- Requirement should apply only to serious offences where there was a considerable disparity in age
- Should be at the courts discretion
- Should be automatic, but the courts should have a discretion to waive the requirement
- Should not be automatic where the victim was under 13
- Those under 16 should not be registered anyway

Government Response

The Offence of sexual activity between minors will only cover victims over 13. **If a victim is under 13, they will be incapable of giving legally significant consent, and a non-consensual offence will have to be charged.** The offender will only be liable for registration if he receives a sentence of detention.

Recommendation 12

Chapter 7, Paragraph 17

The police should be able to apply to a magistrates' court for an Order to Register as a Sex Offender which would make the same requirements on an individual and have the same penalties as apply under the SOA. The application could be made in respect of UK or foreign nationals currently in the UK who, whilst overseas on or after September 1 1997 were convicted, found not guilty by reason of insanity or found to be under a disability or to have done the Act charged in respect of an offence equivalent to one under Schedule 1 of the SOA which also constituted an offence in the country in which it was committed.

NUMBER OF RESPONSES

34	Total
20	E&W
7	Scotland
7	NI
20	Agreed (E&W 8, S 7, NI 5)
13	Agreed in principle but proposed some amendment (E&W 11, NI 2)
1	Disagreed (E&W 1)

Comment

There was broad agreement with the proposals. Two specifically took issue with the review's conclusion that the FCO's overseas missions could not alert offenders convicted overseas of the need to register on their return to the UK, another 2 said the onus should be on the offender to register without the need for the police to initiate action.

There were questions about how it would possible to identify whether the overseas offence equated to a UK offence. Respondents did point out that it would be difficult, and possibly very time consuming, to gather the evidence for the court on (a) that the offender had been convicted by an overseas court, and (b) the nature of the offence and that it equated with a UK offence. It was noted that the conviction may have been imposed in the offender's absence.

It was questioned whether there would be a power of arrest and detention pending application for a ORSO.

It was suggested that there should be a provision for registration by consent. This would bypass the need for a court hearing if the offender does not object, so long as a requirement by consent could be enforced.

One respondent proposed that not only should police try to set up systems to warn of sex offenders travelling to the UK, there should be parallel arrangements for them to alert their foreign counterparts when a sex offender leaves the UK for another country.

Government Response

A new power will be introduced for the police to apply to a magistrates' court for an Order to Notify as a Sex Offender. Such an order will have the effect of making an offender convicted abroad of an offence equivalent to one listed in Schedule 1 to the Sex Offenders Act subject to the same requirements as would be the case if he had been convicted in the United Kingdom on or after 1 September 1997.

Recommendation 13

Chapter 8, Paragraph 10

Cautions and conditional discharges for relevant offences should trigger registration where the victim was under 18 and the offender was aged 20 or over for a period of twelve months

Absolute discharges should not trigger registration.

NUMBER OF RESPONSES

30 Total
19 E&W
5 Scotland
6 NI

on cautions

13 Agreed (E&W 6, S 4, NI 3)
6 Agreed in principle but proposed some amendment (E&W 5, NI 1)
8 Disagreed (E&W 7, NI 1)

on conditional discharges

14 Agreed (E&W 7, S 4, NI 3)
5 Agreed in principle but proposed some amendment (E&W 4, NI 1)
6 Disagreed (E&W 5, NI 1)

on absolute discharges

17 Agreed (E&W 9, S 5, NI 3)
3 Agreed in principle but proposed some amendment (E&W 2, NI 1)
3 Disagreed (E&W 3)

Comment

On the whole, respondents agreed with the review's conclusion that cautions and conditional discharges should continue to attract the registration requirement. However, the proposed length of 12 months prompted some criticism. 3 respondents made the point that registration for 12 months was pointless, and one respondent respectively argued that the period should be 5 years, 3 years or 2 years. Two respondents proposed that registration should be at the discretion of the courts, and one that those registered should be subject to a multi-agency assessment. Other respondents took issue with the age limits proposed – 3 thought that registration should be triggered regardless of the victim's age (and 2 regardless of the offender's age), while one proposed that the trigger should be a victim under 16 and an offender over 16.

The majority of respondents agreed that absolute discharges should not attract the registration requirement, although a number made the point that it is not easy to make clear distinctions between cautions, conditional discharges and absolute discharges.

Government Response

It is proposed that offenders who are cautioned will be subject to the requirements of the Sex Offenders Act for 2 years (1 year for under 18s). It is proposed that offenders sentenced to a

conditional discharge should be subject to the Act's requirements for the length of the conditional discharge. Absolute discharges will continue not to trigger registration.

Recommendation 14

Chapter 8, Paragraph 21

There is no viable way of extending the SOA to offenders convicted before the legislation came into force, beyond the existing limited retrospection with respect to those serving sentences of imprisonment or subject to community supervision by the probation service on September 1 1997.

Sex Offender Orders were intended to address the issue of those offenders convicted before 1997 whose current behaviour caused serious concern. Research into the use of these orders began early in 2001 and should inform consideration of their use and effectiveness.

No changes are currently proposed to the Crime and Disorder Act 1998 with respect to Sex Offender Orders.

NUMBER OF RESPONSES

16	Total
7	E&W
3	Scotland
6	NI
10	Agreed (E&W 6, S 2, NI 2)
4	Agreed in principle but proposed some amendment (E&W 1, S 1, NI 4)
0	Disagreed

Comment

Nobody disagreed with the Review's recommendation.

One respondent suggested that the matter should be kept under review, one other that applications for SOOs should usually be heard in camera.

One respondent suggested that where a person who would not previously have been subject to the registration requirement, but would be now as a result of changes to the qualifying criteria as a result of the review, the requirement should be retrospective to the same extent that the requirement was on its introduction (i.e. still in formal contact with the criminal justice system).

One NI respondent suggested that SOOs should be available in Northern Ireland. Under s. 6 of the Criminal Justice (Northern Ireland) Order 1998, they are.

Government Response

The provisions of the Crime and Disorder Act 1998 relating to sex offender orders, which were strengthened in the Police Reform Act 2002, will be strengthened and restated in the Sexual Offences Bill. No other changes to the legislation are envisaged.

Recommendation 15

Chapter 8, Paragraph 24

As a result of amendment to the SOA contained in the CJ& CS Act, the police have been given the power of arrest for offenders failing to comply with the requirements of the SOA.

No further changes are proposed to police powers with respect to the Sex Offenders Act.

NUMBER OF RESPONSES

13	Total
7	E&W
4	Scotland
2	NI
9	Agreed (E&W 3, S 4, NI 2)
2	Agreed in principle but proposed some amendment (E&W 2)
2	Disagreed (E&W 2)

Comment

This recommendation attracted relatively little interest from respondents. The two respondents who had reservations each questioned why a power of arrest for non-compliance with the Act, but they did not oppose the recommendation.

The two respondents who did oppose the recommendation both thought, unlike the review, that the police should have a power of entry.

Government Response

No further changes will be proposed.

Recommendation 16

Chapter 8, Paragraph 26

Guidance should be issued to the courts about the role that the SOA plays in enabling sex offenders to be monitored and about dealing with breach of the requirements of the SOA.

NUMBER OF RESPONSES

17	Total
10	E&W
4	Scotland
3	NI
12	Agreed (E&W 7, S 3, NI 2)
5	Agreed in principle but proposed some amendment (E&W 3,S 1, NI 1)
0	Disagreed

Comment

None of the respondents disagreed with the recommendation, although one questioned whether guidance on sentencing could properly be given to the judiciary by the Government. Other respondents suggested that the guidance could also be given to other agencies; that it could promote multi-agency assessment and risk management; and that it could educate sentencers on the impact of abuse. One respondent took the opportunity to argue that the maximum penalties for breach were too high.

Government Response

Following enactment of the Sexual Offences Bill, the Home Office will issue revised guidance to the judiciary and to relevant agencies.

