The Sex Offenders Bill
[Bill 66 of 1996-97]

Research Paper 97/11

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The *Sex Offenders Bill*, which is due to be considered on Second Reading on 27 January 1997, is intended to require certain sex offenders to notify the police of their names and addresses and any subsequent changes. It is also designed to enable the UK courts to prosecute British citizens or residents who commit certain sexual acts abroad against children. This paper considers the provisions of the Bill and other related subjects, including the question of public access to information about sex offenders.

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Summary

In the Home Office Press Notice announcing the publication of the *Sex Offenders Bill* on December 18 1996 the Home Secretary, Michael Howard is quoted as saying:

> The Bill would provide the police with the information that they need to apprehend sex offenders and help them to protect the public from those who would seek to do harm to children. It will also give our courts the power to penalise those who engage in the evil trade of child prostitution overseas.

Part I of the *Sex Offenders Bill* [Bill 66 of 1996-97], which is considered in the first chapter of this paper, is designed to implement the Government's proposal by requiring those people who are convicted of or cautioned in respect of certain specified sex offences in England and Wales, Scotland and Northern Ireland to notify the police of their names and addresses and any subsequent changes. The proposals for sex offender registration are distinct from provisions in Part V of the *Police Bill* [HL Bill 10 of 1996-97], which are intended to enable criminal conviction certificates to be issued to prospective employees in general, and to enable criminal record certificates and enhanced criminal record certificates to be issued to applicants for particular types of paid and unpaid work. They are also distinct from proposals for permitting public access to the register of sex offenders or otherwise notifying the public of the presence of convicted sex offenders in the community. The Government is currently consulting with the Association of Chief Police Officers (ACPO) about how information about sex offenders is currently disclosed by police forces and how such information might be made available in future. The Government's proposals for change in the arrangements concerning access to criminal records for employment and other related purposes are summarised in the third chapter of this paper, which also describes arrangements in the USA for public notification of the presence of sex offenders in particular communities.

Part II of the *Sex Offenders Bill*, which is considered in the second chapter of this paper, is designed to confer extra-territorial jurisdiction on the courts in England and Wales, Scotland and Northern Ireland in respect of certain sexual offences committed abroad by British citizens or UK residents.

I. Notification Requirements for Sex Offenders

A. Background

Compulsory registration schemes for different types of offences have been in place in some states in the USA for many years. In a paper published in the *Howard Journal of Criminal Justice* in May 1996, Bill Hebenton and Terry Thomas note that in most US states which require sex offenders to be registered the requirement applies to convicted offenders; in some it applies to individuals found to have committed a sexual offence by judicial decision (such as those found not guilty by reason of insanity); in one state (Minnesota) the requirement has been extended to those charged with sexual offences. They also report that there is considerable variation between states on which types of offender to include in a registry, with some states only registering adult offenders and others only registering adult offenders whose victims were under 18[1]. Under the Violent Crime Control and Law Enforcement Act of 1994 states in the USA are required to enact statutes or regulations requiring those considered to be "sexually violent predators" or who are convicted of sexually violent offences, to register with appropriate law enforcement agencies for ten years after release form prison. States which fail to establish registration schemes may have Federal grant money reduced.

On 27 March 1996 Janet Anderson presented a *Sexual Offences against Children (Register of Offenders) Bill*[2] which was intended to provide for the maintenance of registers of people convicted of certain sexual offences against children. Under the Bill's provisions, the information in the registers would have been available to those public bodies, charities and other persons or bodies involved in work with children but not to the wider public. On June 12 1996 Anthony Coombs presented a Ten Minute Rule Bill to control and monitor convicted paedophiles. Neither of these Bills progressed any further, but there were increasing calls, from the police and others for the establishment of such a register.

The Government set out proposals for a requirement that those convicted of sexual offences notify changes of address with the police in its consultation paper *Sentencing and Supervision of Sex Offenders*, published in June 1996.[3] The Government set out the background to its proposal and its view of the purpose which such a requirement might serve:[4]

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1 "Tracking" Sex Offenders - *Howard Journal of Criminal Justice* May 1996 p.97-112
2 Bill 91 of 1995-96
3 Cm 3304 paras 41-63
4 ibid. paras 42-43

42. There have, separately, been proposals, notably by the Superintendents Association, that there should be a national register of those convicted of sexual offences against children. Most recently, Ms Janet Anderson MP brought forward a Bill (The Sexual Offences against Children (Registers of Offenders) Bill) which proposed a duty on the Secretary of State to maintain registers of those convicted of sexual offences against children. The Bill also made provision for access to these registers by certain categories of organisations, with a view to vetting those who might seek employment on a paid or voluntary basis, which would involve access to children.

43. The purpose of requiring convicted sex offenders to notify the police of any change of address would be to ensure that the information on convicted sex offenders contained within the police national computer was fully up to date. At the moment, information held in the National Criminal Record collection will only contain the last address known to the police, usually the one at which the offender was residing when he was convicted. The major drawback with the records as they stand at present is that the local police have no means of learning from them whether a convicted sex offender has moved into their area. If the police were armed with this information, it could not only help them to identify suspects once a crime had been committed, but could also possibly help them to prevent such crimes. It might also act as a deterrent to potential reoffenders.

The requirement that certain sex offenders notify the police of their names and addresses is set out in Part I of the *Sex Offenders Bill*, which was published on 18 December 1996.

B. Offences to which the notification requirement will apply

The offences to which it is intended that the notification requirement should apply are listed in *Schedule 1* to the Bill, which is set out in the appendix to this paper. The requirement to register principally applies to those convicted of offences against children, although those convicted, dealt with or cautioned in respect of offences of rape, attempted rape and in some cases indecent assault involving adults will also be required to register.

In England and Wales, the offences of intercourse with a girl between 13 and 16, buggery, and indecency between men are excluded where the offender was under 20. The offences of incest by a man, buggery, indecency between men, and assault with intent to commit buggery do not apply where the victim or other party to the offence was 18 or over. The offences of indecent assault on a man or indecent assault on a woman do not apply where the victim or other party to the offence was 18 or over, unless the offence is one in respect of which the offender has been sentenced to imprisonment for 30 months or more (a sentence which would only be available to the Crown Court) or has been admitted to hospital subject to a restriction order. Similar restrictions apply to the offences to which the notification requirement will apply in Scotland and Northern Ireland.

Consensual heterosexual acts between people who are aged 16 or over (17 in Northern Ireland) are not generally subject to criminal sanction except in the case of buggery, where the age of consent is 18, or incest. The age of consent for homosexual acts in private was lowered from 21 to 18 by section 145 of the *Criminal Justice and Public Order 1994*. In its briefing on the *Sex Offenders Bill* the lesbian and gay rights group Stonewall, which has campaigned for an equal age of consent for both homosexual and heterosexual acts, criticises the inclusion of offences involving consenting homosexual sex with 16 or 17 year olds in the list of offences to which the notification requirement will apply. It notes that there is no equivalent requirement to register those who have consenting heterosexual sex with 16 or 17 year olds, since this is not generally an offence. Stonewall states that the effect of the additional provisions concerning the age of offenders convicted of certain consenting sex offences will be that a young gay man of 20 having a relationship with a 17 year old could be prosecuted, convicted and required to register as a dangerous sex offender. It adds that even if the police felt that the matter was not serious enough to warrant prosecution and such a man was cautioned, he would still have to register as a sex offender[5]. In its briefing on the Bill Liberty also takes the view that the Bill will "highlight the discriminatory nature of the criminal law as it relates to homosexual sex in the United Kingdom"[6].

C. Retrospective and prospective application of the notification requirement

Clause 1 of the *Sex Offenders Bill* seeks to establish the circumstances in which people who are found to have committed certain specified sexual offences may be required to notify the police of their names and addresses and of any subsequent changes. The Home Office press notice issued on the day of the Bill's publication notes that the registration requirement is intended to be retrospective and that it will apply to offenders who are in custody or under supervision in the community[7]. The retrospective elements of the requirement may be the subject of some criticism as there is a general principle and a general presumption of statutory construction that, except in relation to procedural matters, changes in the law should not take effect retrospectively. *Bennion on Statute Law* observes that[8]:

> A person is presumed to know the law, and is required to obey the law. It follows that he should be able to trust the law. Having fulfilled his duty to know the law, he should then be able to act on his knowledge with confidence. The rule of law means nothing else. It follows that to alter the law retrospectively, at least where that is to the disadvantage of the subject,, is a betrayal of what law stands for. Parliament is presumed not to intend such betrayal.

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5 Stonewall Briefing on the Sex Offenders Bill - January 1997

6 *The Sex Offenders Bill: Liberty Briefing* January 1997

7 New measures to tackle sex offenders.... - Home Office 18.12.1996

8 Third Edition p.151

As *Bennion* notes, the principle against retrospectivity is a presumption, rather than a hard and fast rule. It may therefore be rebutted. Where, however, the courts are considering the application of a particular statutory provision in relation to an individual case and it seems to the court that some retrospective effect was intended, the presumption against retrospectivity indicates that this should be kept to as narrow a compass as will accord with the legislative intention.[9]

Article 7 of the *European Convention on Human Rights* provides that:

> 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
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> 2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

The categories of convicted sex offender on which registration requirements are to be imposed under Clause 1, those on whom the requirement will not be imposed, and the circumstances in which these requirements may apply retrospectively, may be summarised as follows:

Table: Sex Offender registration requirements under Clause 1 and their retrospective application

Categories of Offenders	**Application of registration requirement**
1. Where, after commencement, offender is convicted, found not guilty by reason of insanity etc. or cautioned.	Requirement will apply. Possible retrospective application where offence was committed before commencement.
2. Where, at the time of commencement, offender has been convicted, found guilty by reason of insanity etc. but has not yet been sentenced or otherwise dealt with.	Requirement will apply. Retrospective application, as offence will have been committed before commencement.

[9] *Lauri v Renad* [1892] 3 Ch 402, 421; *Skinner v Cooper* [1979] 1 WLR 666

Categories of Offenders	**Application of registration requirement**
3. Where, at the time of commencement, offender has been convicted and sentenced or otherwise dealt with, and is serving a sentence of imprisonment or a term of service detention, or is subject to a community order, or is subject to supervision, having been released from prison, or is detained in hospital or subject to a guardianship order following conviction, or is detained in hospital having been found not guilty by reason of insanity etc.	Requirement will apply. Retrospective application as offence will have been committed before commencement.
4. Where, at the time of commencement offender has served a sentence of imprisonment, and is no longer subject to supervision following release, or is no longer subject to a community order, or where offender has been released from hospital and is not subject to a guardianship order.	Requirement will not apply. Application would be retrospective as offence would have been committed before commencement.

Under Clause 1(1) it is thus intended that individuals should become subject to the notification requirement if, after the commencement of this Part of the Bill they are either cautioned (in England and Wales and Northern Ireland) by a police constable in respect of an offence which they admit at the time the caution is given, or they are convicted, found not guilty by reason of insanity, or found to be under a disability and to have done the act charged against them.

Where the act complained of took place after the commencement of this part of the Bill there will be no retrospective element in Clause 1(1), but claims of retrospectivity might be made where the person was convicted (or found not guilty by reason of insanity etc.) after commencement but the act in respect of which they were charged took place before commencement when notification was not required.

Under Clause 1(2) a person will also be subject to the notification requirement if, at the time when this Part of the Bill is brought into force, he has already been convicted of one of the specified sexual offences (or found not guilty of it by reason of insanity etc.) but has not yet been sentenced or otherwise dealt with in respect of the conviction or finding. It will not apply where an offender was dealt with by being cautioned by a police constable. Claims of retrospectivity may be made in respect of the requirement under Clause 1(2) as it will clearly apply the notification requirement, which may be seen as a "heavier penalty", to cases where this penalty was not available at the time when the offence was committed. The same is true of Clause 1(3), under which the notification requirement will apply where, at the time when this Part of the Bill is brought into force, a person has been convicted of a specified sexual

offence, (or found not guilty by reason of insanity etc.) and is in the process of serving a custodial sentence, or is subject to a community order, or is subject to supervision following release from a custodial sentence, or is subject to a guardianship order following conviction, or is detained in a hospital following conviction or a finding of insanity or disability. The notification requirement will also apply to offenders who would come within the categories set out in Clause 1 (3) but for the fact that, at the Bill's commencement, they are unlawfully at large or absent without leave, on temporary release or leave of absence, or on bail pending an appeal.

A person who, at the time of the commencement of this part of the Bill, has already completed a sentence and is not subject to supervision, or has been released from hospital and is not subject to a guardianship order, will not, it would seem, be required to notify the police of his name and address under the terms of the Bill as currently drafted. Claims of retrospectivity would, of course, be likely to be made if the notification requirement were imposed on this category of offender.

In the consultation paper *Sentencing and Supervision of Sex Offenders*[10], published in June 1996 the Government discussed the question of potential retrospectivity. While noting that arguments on both sides of this question were strong, the Government took the view that the important factor in determining the extent of the notification requirement should be the ease with which offenders could be notified that they were subject to them. The paper states that:[11]

> It is necessary to consider for how long the requirement to register should apply and whether it should apply to those convicted of any of the qualifying offences before the passage of the legislation. A separate question, if so, is how far back the obligation should extend.
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> If the requirement applied only to those convicted of a qualifying offence after the introduction of the requirement, there would be no doubt as to whether the offender were aware of the requirement, as he could be made aware of it at court. It follows that any failure to notify a subsequent change of address would be culpably negligent. However, without some element of retrospectiveness it could be some time before those who needed to use the records could be confident that the addresses were up to date. In short, there might be no benefit for many years. This would clearly be undesirable.
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> As the purpose of the requirement to register would be to provide better protection for the public which is needed now, there therefore appears a strong argument for concluding that it should in some respects be retrospective. On the other hand, seeking to impose this proposed requirement retrospectively would create an obligation in respect of a past conviction for a sex offence which did not exist at the time of conviction. In principle, in all but the most exceptional circumstances, new laws speak only as to the future. Retrospectiveness runs contrary to this rule. It may also prove impossible to contact previously convicted sex offenders in order to inform them of the new requirement, and this would seriously reduce the effectiveness of the system. These practical objections do not apply to previously convicted sex offenders who have regular contact with the criminal justice agencies, including those who are still in custody or under supervision in the community. It

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[10] Cm 3304

[11] ibid paras 49-52

would probably be possible in practical terms to extend the requirement to register to them.

The period for which notification requirements will remain in force in respect of particular offenders will depend on the sentence or order imposed on them. Clause 1(4) sets out the applicable periods as follows:

Description of person	*Applicable period*
A person who, in respect of the offence, is or has been sentenced to imprisonment for life or for a term of 30 months or more	An indefinite period
A person who, in respect of the offence or finding, is or has been admitted to a hospital subject to a restriction order	An indefinite period
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of more than 6 months but less than 30 months	A period of 10 years beginning with the relevant date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of 6 months or less	A period of 7 years beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital without being subject to a restriction order	A period of 7 years beginning with that date
A person of any other description	A period of 5 years beginning with that date

By virtue of Clause 4 the notification requirements will apply to young sex offenders serving custodial sentences, or periods of detention under certain statutory provisions in England and Wales, Scotland and Northern Ireland. Where offenders who would otherwise be subject to notification periods under Clause 1(4) of 10, 7 or 5 years respectively are under the age of 18 on the relevant date Clause 4(2) is intended to provide that these periods should be halved.

The "relevant date" from which the notification period is to be measured in the case of both adult and young sex offenders is the date of conviction, the date of the finding of disability or the date of the caution, whichever is appropriate (Clause 1(8)).

Where a convicted offender has been sentenced to consecutive or partly concurrent terms of imprisonment in respect of two or more sexual offences to which the notification requirement applies, Clause 1 (5)-(6) seeks to provide that the applicable periods will have effect as if the person were or had been sentenced, in respect of each of the offences, to a term of imprisonment which, in the case of consecutive terms, was equal to the aggregate of those terms, or in the case of concurrent terms, was equal to the aggregate of those terms after

making such deduction as might be necessary to secure that no period of time was counted more than once.

Where a person is found to be under a disability but to have done the act charged against him in respect of a sexual offence and that person is subsequently tried for the offence, Clause 1(7) provides that the finding of disability and any order made under it must be disregarded for the purposes of the section. This provision may be intended to ensure that the period for which an offender is subject to the notification period following a finding of disability is not deducted from the full period for which he or she may be subject to such a requirement following conviction.

Clause 6(3) states that a reference to a person being "under a disability and to have done the act charged against him" includes a reference to his being or having been found:

a) unfit to be tried for such an offence;

b) insane so that his trial for such an offence cannot or could not proceed; or

c) unfit to be tried and to have done the act charged against him in respect of such an offence.

Under amendments to the *Criminal Procedure (Insanity) Act 1964* brought in by the *Criminal Procedure (Insanity and Unfitness to Plead) Act 1991*, where a jury has determined that a defendant in a criminal trial is under a disability which would constitute a bar to his being tried, a jury must then proceed to determine whether or not it is satisfied, on the basis of evidence already given and any additional evidence which may be adduced by the prosecution or a person appointed by the court to put the case for the defence, that the defendant did the act or made the omission charged against him. In trials at which the defendant has been found to be under a disability since this provision was implemented on January 1 1992 the court will therefore generally have gone on to determine whether or not the defendant did the act charged. In these cases or those where the defendant has been found not guilty by reason of insanity, and the offence concerned is a sexual offence to which the notification requirement will apply, the provisions of Clauses 1(1)(b), 1(2)(b) and 1(3)(d) seek to ensure that the defendant will be subject to the notification requirement for the appropriate period.

The extension in Clause 6(3) of the definition of the expression "under a disability and to have done the act charged against him" to cases where a person has been found unfit to be tried or insane so that his trial cannot or could not proceed, without reference, in these two cases, to findings as to whether or not the defendants did the acts charged, is intended to ensure that the notification requirement can be applied to defendants who are still detained in hospital having originally been charged and ordered to be detained in hospital before the

implementation of the 1991 Act[12].

D. Cautions

There has been some criticism of the extension of the registration requirement to offenders who, after the commencement of Part 1 of the Bill, are cautioned by police constables rather than being convicted or otherwise dealt with by courts. In a leading article on June 14 1996 the *Daily Telegraph* expressed the view that the inclusions of cautions on a national register of sex offenders would be unjustified, since cautions were not public information.[13]

In its briefing on the Bill Liberty suggests that, as cautions can be offered in informal situations, individuals may consent to them without the benefit of legal advice or representation. Liberty notes that cautions are non-statutory and that they are intended to act as a warning. It considers that if cautions are being used for offences serious enough to merit notification they should not be, and goes on to suggest that attaching a sentencing and punitive function to them threatens to undermine their potential and amounts to an unreasonable extension of executive power and due process. Liberty also takes the view that if the extension of the registration requirement to cautions is enacted, it will not be in an individual's interest to accept a caution, and there is likely to be a considerable rise in challenges to cautioning decisions by way of applications for judicial review.

In the consultation paper *Sentencing and Supervision of Sex Offenders* the Government said the registration requirement would probably best be targeted on those who were convicted of any sexual offence which was serious enough to attract the possibility of custody[14]. The Government added that there was evidence that the "single offence" sex offender was likely to be the exception and that many who were convicted of one offence might well have committed others in the past. It added that there was evidence that securing a conviction for a sexual crime was very difficult[15].

E. Certification for the purposes of the notification requirement

Clause 5 is designed to enable courts, by or before which defendants are convicted of the relevant sexual offences (or found not guilty by reason of insanity or found to be under a disability and to have done the act charged) after the implementation of this Part of the Bill,

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[12] Source: Home Office Mental Health and Criminal Cases Unit
[13] When inquiries are abused - *Daily Telegraph* 14.6.1996
[14] Cm 3304 para 46
[15] ibid. para 45

to state in open court that this has happened on the date in question, that the offence in question is a sexual offence to which this part of the bill applies, and to certify these facts, whether at the time or subsequently. The certificate will be evidence or, in Scotland, sufficient evidence of those facts, for the purposes of the Bill's provisions concerning the notification requirement.

Where a person is cautioned by a police constable in respect of a relevant sexual offence which the offender has admitted at the time the caution is given, and the constable informs the offender that he has been cautioned on that date for a sexual offence to which the notification requirement applies and certifies those facts in a form to be prescribed by the Secretary of State[16] this certificate will also constitute evidence of these facts for the purposes of this Part of the Bill. The certification provisions in Clause 5 would seem to be intended, amongst other things, to provide a means by which offenders may be made aware that the notification requirement applies to them.

F. Effect of the notification requirement

Under Clause 2, a person who is subject to the notification requirement will be required to notify the police of certain information within 14 days of the date of the conviction, finding of disability or caution which gave rise to the requirement. The person concerned will have to notify any police station in writing or attend a police station and give an oral notification to a police officer or to any person authorised for the purpose by the officer in charge of the station. A police will be required to provide written acknowledgment of the notification.

Under Clause 2(1) the person subject to the notification requirement will have to provide the following information:

a) his name and where he also uses one or more other names, each of those names: and

b) the address of his sole or main residence in the United Kingdom or, where he has no such residence, the address of premises in the United Kingdom which he regularly visits.

A person subject to the notification requirement will also have to inform the police within 14 days of his using a name which has not been notified to the police or of any change "which has the effect of falsifying" information concerning the address of the person's sole or main address in the UK or, if he has no such residence, the address of premises which he regularly visits. The person will be required to notify the police of his new or additional name or names and of the effect of any change in the information concerning his address.

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[16] In a statutory instrument subject to annulment under the negative procedure

Any time when the person is remanded or committed to custody by a court, or is serving a sentence of imprisonment or a term of service detention, or is detained in a hospital, or is outside the UK, is to be disregarded for the purposes of determining whether initial or subsequent notification has been made within 14 days (Clause 2(3)).

Under Clause 3 it will be an offence, punishable on summary conviction by up to one months' imprisonment and a £1,000 fine, for a person who is subject to the notification requirement to fail, without reasonable excuse, to notify the police as required by Clause 2, or to provide information under these provisions which the person knows to be false. Clause 3(2) is intended to enable proceedings for this offence to be commenced in any court having jurisdiction in any place where the person charged with the offence resides or is found.

The Bill does not appear to provide specific guidance on the definition of premises which a person "regularly visits" for the purposes of determining whether or not a person, who is subject to the notification requirement but has no sole or main residence in the UK, has fulfilled his or her obligation. It is presumably intended that these words should be given their ordinary, natural meaning, given the absence of specific provision to the contrary, and it is perhaps intended that this question be left to be worked out on a case by case basis. There may, however, be an element of uncertainty about whether the notification requirements have been fulfilled, and consequently about whether or not the offence of non-compliance has been committed, in cases involving offenders who are either homeless or otherwise without a sole or main residence in this country. The Home Office consultation paper *Sentencing and Supervision of Sex Offenders* made the following observations about offenders with temporary addresses or no fixed abode[17]:

> 58. Some of those convicted of designated offences requiring notification of changes of address will not have a fixed address. One possibility is that they should be exempted from registration until they had acquired a fixed residence. The disadvantage with this suggestion is that it could provide a loophole for those determined to avoid registration. In these circumstances, we therefore propose that offenders should be required to give an address <u>in the locality</u> through which they could be contacted. So, for example, a person staying for a few nights at a time with different friends around Manchester could (subject to agreement) give one of the friend's address, his place of work, or the address of an organisation he visits frequently and regularly, as the contact address. If, however, he moved to Birmingham, he would be required to give a new contact address in that city.

[17] Cm 3304 p.11

> 59. It is inevitable that the register would not be so comprehensive as to provide information on all the places where a convicted offender may seek to reoffend. For example, an offender who lived in Reading, and whose address was correctly registered, might have widespread opportunities to offend elsewhere, particularly if his employment involved travel. Police in the areas he visited would not be aware from the record of his presence in their force area even though it was entirely up to date. With this in mind, and also conscious of the need to reduce the burden on offenders and the bureaucratic burden on police, we propose that temporary changes of address of less than four weeks would not need to be notified. This would allow an offender to spend a reasonable time away from his permanent address on holiday or visiting relatives without notifying the police, so long as he returned home within four weeks.

It could be argued that it may be easier to secure convictions for non-compliance with a notification requirement than it would be for a sexual offence and that the creation of the new offence of non-compliance may increase the prospect of such offenders being apprehended and dealt with, although not for sexual offences themselves. Similar arguments have been put forward for the extension of the penalty of disqualification for driving to offences other than driving offences.

G. The mandatory nature of the notification requirement

In its briefing on the *Sex Offenders Bill*[18], Liberty notes that a notification requirement could prove a valuable additional aspect of the courts' sentencing powers in dealing with certain convicted sex offenders who may continue to pose some risk once released back into the community. It takes the view, however, that for a registration scheme to be workable and to have any merit it should be targeted to the offender, rather than to the offence. Liberty's view is therefore that a notification requirement should be an additional sentencing option available to judges. It is concerned that the Bill seeks to impose a blanket requirement based not only on conviction but also on accepting a caution. Liberty notes that the Bill will require registration regardless of the facts of the case or of the danger posed by the offender and suggests that the list of offences which will carry a registration requirement is too broad to prevent injustice. Liberty is also concerned that the Bill does not provide for additional resources to be made available to the police to enable them to cope with the administrative burden of compiling and maintaining the register and suggests that this may reduce the effectiveness of the registration scheme.

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[18] *The Sex Offenders Bill: Liberty Briefing* - January 1997 part 1

In the consultation paper *Sentencing and Supervision of Sex Offenders* the Government made the following observations about whether or not the imposition of a notification requirement should be at the discretion of the sentencing court:[19]

> 47. The requirement to register could either be automatic on conviction for an appropriate offence, or could be at the discretion of the court. An element of discretion would provide for the requirement to be targeted more sharply on those who appeared to represent the greatest potential threat. However, discretion would risk excluding from the requirement those who may in fact reoffend. If the power were discretionary, the courts might wish to call upon reports about the offender before deciding to make such an order. Any discretionary power would be subject to appeal to a higher court.
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> 48. A middle path may be possible, whereby registration would be compulsory for those convicted of serious offences, but would otherwise be at the discretion of the court. If this approach were adopted, it might be appropriate to define 'serious offences" by way of the sentence imposed, rather than the offence of which the person was convicted. We consider that, under this arrangement, automatic registration could apply to all those sentenced to 12 months or more.

H. Further Comment

The proposal that people convicted of certain sexual offences be required to register their names and addresses with the police has met with little criticism. As has already been mentioned, some commentators have, however been concerned about the proposed extension of the requirement to people who have been cautioned rather than convicted. The *Daily Telegraph,* for example, expressed the view that although it had reservations about "strong-armed measures directed against the freedoms of the individual" a national register of convicted sex offenders would be a good thing. It added, however, that it did not consider the inclusion of cautions to be justified, as they were not public information.[20]

Some commentators have questioned whether sex offenders are likely to comply with registration requirements or be deterred from re-offending by them. An article in *Police Review* on July 19th 1996 referred to a study of registration in Washington State, USA, which apparently showed that only 70 % of offenders registered with the police, with the remaining 30% being those most likely to re-offend.[21]

In an article on "Sex offender registration and community notification in the USA" in the Autumn 1996 issue of *Criminal Justice Matters* Bill Hebenton and Terry Thomas note that part of the premise behind sex offender registration is that at any one time the police should

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[19] Cm 3304 paras 47-48

[20] When inquiries are abused - *Daily Telegraph* 14.6.1996

[21] Registering sex offenders "of little use" - *Police Review* 19.7.1996

be able to locate with some precision the known sex offenders living in their area. It is then argued that this in turn will aid the investigation of new sex crimes, act as a deterrent to those on the register and assist other agencies offering treatment programmes. On this basis, identifying the location of a perceived risk or threat to the community posed by a known sex offender can be seen as the first step to assessing and managing that risk or threat. As Hebenton and Thomas go on to observe, critics may point out that registration has its limitations as an aid to policing. They note that an offender may travel out of the local police area to avoid detection. An unregistered person may commit a crime and the police waste hours checking the register while the trail leading to the offender "goes cold." At worst, they say, registers will only serve to help "round up the usual suspects" who will be continually harassed and prevented from living a normal life.

II Sexual Offences Committed Outside the United Kingdom

A. Background

Generally speaking, the jurisdiction of the UK criminal courts is territorial and is thus restricted to offences committed here, whether by UK citizens or citizens of other countries. The courts do not have general jurisdiction over British nationals abroad, although there are some notable exceptions, such as British nationals who commit murder abroad, who may be tried here. Where British nationals are alleged to have committed crimes abroad the preferred option is to extradite them to the country in which the crime is alleged to have taken place, rather than try to locate and bring in all the possible witnesses and evidence for a trial here. Some other countries, such as Germany, for example, are unable to extradite their own nationals because there are constitutional prohibitions on such a course of action or for other reasons. These countries therefore need to rely on their courts being able to invoke more comprehensive extra-territorial jurisdiction in criminal matters.

In recent years there have been calls for the jurisdiction of the criminal courts in the UK to be extended to permit the trial in this country of people from the UK who commit acts with children while overseas which would amount to sexual offences if committed in this country. The Government was initially reluctant to extend the jurisdiction of the UK courts in this way. It set out its position on the matter in a number of Written Answers. For example, in a Written Answer of 11 February 1994 the Home Office minister, David Maclean, said[22]:

> The Government deplore sexual offences against children wherever they occur. Our own law against such abuse is rightly severe. However, our courts' jurisdiction is territorially based rather than nationally based; and we have no plans to extend their jurisdiction over paedophile offences committed by British citizens abroad. We believe that such jurisdiction would be largely unenforceable in practice and that where such offences have been committed abroad it is right for the country concerned to enforce its own law.
>
> Unlike some countries which do claim a wide extra-territorial criminal jurisdiction over their nationals, the United Kingdom is willing to extradite its own nationals to stand trial for these offences abroad, subject to the usual safeguards. We are also willing to give legal assistance to other countries under the *Criminal Justice (International Co-operation) Act 1990*.

On February 7th 1995, Lord Hylton introduced a *Sexual Offences (Amendment) Bill* in the House of Lords which was intended to extend the jurisdiction of United Kingdom courts to try sexual offences against children committed overseas. The Bill, which was not supported by the Government, completed all its Lords stages and was introduced into the Commons on

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[22] HC Deb Vol 237 c.532W 11.2.1994

May 3rd 1995, but did not progress any further.

On 12 July 1995 the Home Secretary announced the Government's plans for dealing with sex tourism. He said:[23]

> The Government share the abhorrence felt by the vast majority of people about the sexual exploitation abroad of young children. The introduction, by Lord Hylton, of his *Sexual Offences (Amendment) Bill* has done much to highlight the issue and we have listened very carefully to all that has been said both inside Parliament and more generally. We are anxious that effective action should be taken to deal with this problem. That must involve action by the foreign governments concerned, but that alone is not enough. We must also do all that we can.
>
> Despite its admirable aim, Lord Hylton's Bill is, in the Government's view, seriously flawed and does not provide a workable or effective solution to the problems posed by sex tourism. The Government cannot therefore support it.
>
> We are, however, urgently examining the scope of the law in each of the United Kingdom jurisdictions to see what steps could be taken to deal with those who, in this country, conspire or incite others to commit offences abroad. This would enable us to deal with those who organise sex tours or encourage others to travel abroad for the purpose of sexually exploiting children.
>
> Any legislation which might be brought forward to achieve this aim would need careful thought to ensure that it would be effective. We would hope to have proposals for legislation ready as soon as the details can be satisfactorily resolved.

On December 8th 1995 the Government announced proposals for additional measures designed to deal with the problem of sex tourism through an extension of the law on conspiracy and incitement. The intention behind the new provisions was to facilitate the prosecution of those who organise tours abroad to commit sexual offences against children and encourage others to travel abroad for the purposes of sexually exploiting children. [24]

The *Sexual Offences (Conspiracy and Incitement) Bill 1995/96*, a Private Member's Bill designed to implement the Government's proposals, was introduced by John Marshall on December 13th 1995 and had its Second Reading in the House of Commons on February 2nd 1996.[25] The Bill, which is now the *Sexual Offences (Conspiracy and Incitement) Act 1996*, extends to England and Wales, Scotland and Northern Ireland and came into force on October 1st 1996. The Act sets out an offence of conspiring to commit certain sexual acts abroad against children or inciting a person to commit certain acts against children where these acts would, if committed in the UK, amount to one of a number of specified sexual offences. The

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[23] HC Deb Vol 263 c.600 (W) 12.7.1995

[24] "New measures to stamp out sex tourism" - Home Office 8.12.1995; HC Deb Vol 268 c.451-2 (W) 8.12 1995

[25] HC Deb Vol 270 c.1225-1267 2.2.1996

sexual acts must be considered to be criminal offences in the place where they are alleged to have been committed. Government-supported amendments introduced during the legislation's report stage in the House of Commons provide that any act of incitement by means of a message (however communicated) is to be treated as done in England and Wales, or Scotland if the message is sent or received in England and Wales or Scotland. (For the purposes of the Act, "England and Wales" includes Northern Ireland.) In the course of the debate on these amendments the Home Office minister Mr Maclean said that they were intended to extend the scope of incitement to ensure that incitement by means of a telephone call, fax, Internet message or any other modern form of communication is deemed to take place in this country if it is received in this country.[26]

Some commentators suggested that the Act should have gone further and extended the jurisdiction of the UK courts to enable them to try people accused of sexual offences committed overseas. On December 5th 1995 Lord Hylton re-introduced his *Sexual Offences (Amendment) Bill*, which was intended to enable the courts to do this. The Bill completed its passage through the House of Lords and was introduced in the House of Commons, but it did not have Government support and did not complete its passage through Parliament before the end of the session.

On February 1st 1996, the eve of the Second Reading of John Marshall's Bill which became the 1996 Act, the Government announced an interdepartmental review of the extra-territorial jurisdiction of the UK courts. The review was not only concerned with sex tourism, but included discussion of other serious crimes, such as violent assault and offences committed aboard aircraft travelling to this country. The Home Office Press Notice announcing the review stressed the Government's view that the countries in which child sex tourism is rife should step up their efforts to deal with the problem and enforce their own laws. It reported the Home Office minister David Maclean as saying;[27]

> This is not an attempt to export British laws worldwide. The review is looking at situations in which British nationals or residents commit crimes abroad which are offences both here and in the country concerned. And I do not want to raise expectations that change will necessarily follow this review. The practical difficulties of taking extra-territorial jurisdiction will not be easy to overcome. A prosecution is generally best pursued in the territory in which the crime is alleged to have been committed. It would be dangerous for us to give our courts jurisdiction as a token gesture. We might be left in a situation in which we could not prosecute here because we could not get the evidence to convict and we could not extradite because the tourist-receiving countries had washed their hands of the matter. We prefer to help those countries to face up to the problems in their own backyard.

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[26] HC Deb Vol.275 c.953-4 19.4.1996

[27] "Review of extra-territorial jurisdiction announced" Home Office Press Notice 1.2.1996

The Press Notice referred to some of the potential practical problems of extra-territorial jurisdiction as follows:

> - British police have no powers to investigate crimes or gather evidence in other countries;
>
> - British courts require witnesses to give evidence and be cross-examined in person, but would not be able to compel the attendance of foreign witnesses; and
>
> - if the authorities in the place where an offence is alleged to have been committed are unwilling, or are unable to come up with sufficient evidence, to bring proceedings, our authorities would have great difficulty in carrying out a successful investigation.

In his speech during the Second Reading debate on Mr Marshall's Bill the Home Office minister David Maclean set out in some detail the Government's view of the advantages and disadvantages of extending the courts' extra-territorial jurisdiction, including practical difficulties and potential problems with the law of evidence.[28] Similar issues were raised during the debate on the Bill's report stage and third reading in the House of Commons.[29] During the debate on Third Reading Mr Maclean re-iterated the Government's view that only effective action by the tourist-receiving countries would make a difference on the ground and improve the lives of the children who are subjected to abuse by paedophile tourists. He added that:[30]

> I am encouraged by some of the steps that have been taken by the Philippines, for example, to crack down on sex tourists. I am puzzled by those who act as apologists for the inaction by tourist-receiving countries when they say that those countries cannot be seen to prosecute western tourists because of the harm that it will do to their tourist trade. Therefore they must pass the buck back to western countries to do something. Of course those countries will attract the scum of the earth if they fail to purge their sleazy child brothels. I suggest that their tourist trade might expand if families and decent people felt able to visit such places, free from the fear either of being thought a pervert or of having to consort with them. My message to those countries is, "Prosecute those scum and see your international standing rise." Soho was cleaned up by taking action there, not by exhorting people in foreign countries not to come to London.

In a Press Notice issued by the Home Office on July 23rd 1996, the Government announced that its inter-departmental review of extra-territorial jurisdiction in respect of criminal offences had been completed. The Press Notice added that the Government had accepted the review's

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[28] HC Deb Vol 270 c.1249-1254 2.2.1996
[29] HC Deb Vol 275 c.945-998 19.4.1996
[30] HC Deb Vol 275 c.996 19.4.1996

recommendation that decisions on extending jurisdiction should be based on the following six guidelines:

a) The offence would have to be serious;

b) Witnesses and evidence needed for a prosecution are likely to be available in this country;

c) There is international agreement that certain conduct is reprehensible and concerted action is needed;

d) Action is needed because of the vulnerability of the victim;

e) It is in the interests of the standing and reputation of the UK in the international community;

f) There is danger that no action would be taken to deal with the offences

The press notice added that:

> Meeting any of the guidelines would not necessarily mean that wider jurisdiction would be taken over a particular offence, but it would establish whether there was a "prima facie" case - that is the case merited further consideration with a view to legislating to extend the jurisdiction of the courts.

The Press Notice also announced that legislation to provide new powers to prosecute child molesters who commit offences abroad and people who, while in this country, conspire with or incite others to commit offences abroad, would be introduced at the earliest opportunity. The *Jurisdiction (Conspiracy and Incitement) Bill*[31], which was introduced by Nigel Waterson on November 11 1996, is supported by the Government and is due to be debated on Second Reading on January 31 1997, is designed to extend the courts' jurisdiction over people in this country who conspire with or incite others to commit offences abroad. Measures designed to enable the courts in England and Wales, Scotland and Northern Ireland to prosecute people who commit certain sexual offences while outside the United Kingdom are set out in Part II of the *Sexual Offenders Bill*.[32]

B. Part II of the Sex Offenders Bill

Clause 7 of the Bill seeks to give the courts in England and Wales and Northern Ireland jurisdiction over acts done, by persons in countries or territories outside the United Kingdom, which constitute offences under the laws in force in those countries or territories (in that they

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[31] Bill 19 of 1996-97
[32] Bill 66 of 1996-97

are punishable under the law in force in that country or territory, however they may be described in that law) and would have constituted one of the sexual offences to which the Clause applies if they had been done in England and Wales or Northern Ireland. Clause 8 is designed to give similar jurisdiction to the courts in Scotland by inserting a new section 16B into the *Criminal Law (Consolidation) (Scotland) Act 1995.*

Only those people who are British citizens or residents in the United Kingdom at the time when Clauses 7 and 8 are implemented, or who subsequently become British citizens or become resident in the United Kingdom, will be liable to prosecution under these arrangements. Foreign nationals who are not resident in the UK when these Clauses are implemented and do not subsequently become resident here will not, therefore be triable in the UK criminal courts under these provisions.

Clauses 7 and 8 seek to provide that the condition, that an act constitute an offence under the law in force in another country, be taken to be satisfied unless, within a period of time to be determined by rules of court in England and Wales and Northern Ireland (or an Act of Adjournal in Scotland) the defence serves on the prosecution a notice stating the defence's view that the condition is not satisfied, showing its grounds for that view and requiring the prosecution to show that it is satisfied. The courts will have discretionary powers to dispense with this prior notice requirement if they see fit. In the Crown Court in England and Wales and the courts in Scotland the question whether the condition, that an act done by a person must constitute an offence under the law in the country or territory where it took place, has been satisfied in a particular case will be for the judge alone.

The offences in respect of which it is intended that the courts in England and Wales, Northern Ireland and Scotland should have extra-territorial jurisdiction under Part II of the Bill are set out in Schedule 2 and Clause 8 and summarised in Appendix II to this paper. In all three of these UK jurisdictions the age of consent for homosexual acts is 18, having been lowered from 21 by Section 145 of the *Criminal Justice and Public Order Act 1994.* Liability for prosecution under the provisions of Part II of the *Sex Offenders Bill* for homosexual offences committed abroad will, however, be restricted to acts where the other party is under the age of 16. Some commentators may argue that this provides support for the argument that the age of consent for homosexual acts should be lowered to 16, which is the age of consent for heterosexual acts other than heterosexual buggery.

The proposals to extend the jurisdiction of the UK courts to cover sexual offences against children committed by British citizens and UK residents abroad have generally been accepted or welcomed. In its briefing on the Sex Offenders Bill Liberty says that while it understands the sentiment behind the provisions in Part II of the Bill, it doubts whether the measures are workable. It considers it improbable that a defendant under such circumstances would receive a fair trial, particularly if he or she lacked the resources to bring defence witnesses to the UK

or such witnesses refused to travel here.[33]

[33] *The Sex Offenders Bill: Liberty Briefing* January 1997

In a report on *Action against the Commercial Sexual Exploitation of Children,* published by the Home Office in August 1996, the Government set out its decision to extend the jurisdiction of the UK courts to allow trials in the UK of those who commit child abuse abroad. It added:

> However, the Government recognises the considerable practical difficulties involved in gathering sufficient evidence and witnesses from abroad to mount a satisfactory prosecution in the UK courts - and for this reason continues to regard extradition to the country where the offence was committed as the best means of bringing offenders (even its own nationals) to trial.

The report went on to describe the current arrangements for assisting foreign countries who wish to take action against British tourists for committing sexual offences against children.[34]

[34] *Action against the Commercial Sexual Exploitation of Children: A Report by the Government of the United Kingdom* Home Office August 1996 p.11-12

III Other Matters Relating to Sex Offenders

The *Crime (Sentences) Bill*[35], which has just completed its passage through the House of Commons and been passed to the House of Lords, contains provisions designed to implement proposals for the sentencing and supervision of sex offenders in England and Wales which were set out in the White Paper *Protecting the Public*[36] and the Home Office consultation document *Sentencing and Supervision of Sex Offenders.*[37] These proposals are considered in Library Research Paper 96/99 on *The Crime (Sentences) Bill.* The *Crime and Punishment (Scotland) Bill*[38], which has just completed its passage through the House of Commons, contains provisions relating to the sentencing and supervision on release of offenders in Scotland. Provisions in both of these Bills on the treatment of mentally disordered offenders are considered in Library Research Paper 96/100 on *The Crime (Sentences) Bill and the Crime and Punishment (Scotland) Bill: provisions for mentally disordered offenders.* The proposal, in the consultation paper *Sentencing and Supervision of Sex Offenders,* to make it an offence for a convicted sex offender to seek employment involving access to children,[39] is shortly to be the subject of further consultation by the Home Office.

A. Access to information about sex offenders

In the White Paper *On the Record,* published in June 1996, the Government set out the current arrangements for access to criminal records for employment and other related purposes, and some of the problems arising from these arrangements[40]:

> 3. At present police forces conduct, free of charge and at the request of prospective employers, criminal record checks on a limited range of occupations. Those working with children form the largest group for which checks are undertaken. Over 600,000 such checks were made in the year to 31 March 1995. Several hundred thousand additional checks are made annually on other groups including taxi and minicab drivers, managers of residential homes and claimants for criminal injuries compensation. There have been many calls for checks to be made more widely available. But carrying them out is often a manpower-intensive activity, diverting police resources from other vital tasks. As a result it has not been possible, up to now, to reach agreement on the extension of criminal record checks to any new groups.
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> 4. At the moment there is no completely comprehensive collection of criminal records for the whole country. The national collection is held on microfiche at the National Identification Service (formerly the National Identification Bureau) at New Scotland Yard. It consists of records of individuals who have committed "reportable"

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35 Bill 3 of 1996-97
36 Cm 3190 March 1996
37 Cm 3304 June 1996
38 Bill 5 of 1996-97
39 Cm 3304 paras 68-77
40 Cm 3308 p.4-5

offences (ie those for which the offender could be imprisoned), plus a small number of non-reportable offences. The computerisation of this collection is under way but is not yet complete (see paragraph 11 below).

5. Details of non-reportable convictions and cautions, together with some information relating to suspected offences for which there has been no conviction ("non-conviction" information), are held by the police force which dealt with the matter. So any fully comprehensive crimincheck must be carried out at both national and local force level.

6. At present, those categories subject to checking are not the same as the categories which are exceptions to the provisions of the Rehabilitation of Offenders Act 1974 (ROA), although there is considerable overlap between the two groups. This means that although, for example, most people working with children are both exceptions to the provisions of the Act and subject to checking, a number of professions such as solicitors and doctors are exceptions to the provisions of the Act but not subject to checking, and some groups subject to checking - such as taxi and minicab drivers - are not exceptions to the provisions of the Act. This situation is hard to defend in principle and often causes misunderstanding and confusion in practice.

7. The present system, in which criminal record checks are only available to employers for certain types of staff, has led to an abuse of the subject access rights available to individuals under the Data Protection Act 1984 (DPA). Under the Act individuals can apply for a copy of information held about them on police computerised records. Prospective employers and others (such as overseas Governments who require information about criminal convictions from prospective immigrants) who have an interest in establishing whether individuals have a criminal record often require them to make an application for information under the DPA. This practice, known as 'enforced subject access", is unsatisfactory because it elicits both spent and unspent convictions, which clearly undermines the Rehabilitation of Offenders Act.

The White Paper contained proposals for three new procedures for checking a person's criminal record, depending on the circumstances in which the information was requested. Similar proposals for Scotland were set out in a Scottish Office consultation document *On the Record in Scotland*, published in June 1996[41]. These proposals are now set out in Part V of the *Police Bill*, which was introduced in the House of Lords, where it is still being considered. In her speech opening the debate on the Second Reading of the Bill the Home Office minister, Baroness Blatch, summarised the Government's intentions in relation to Part V, which extends to England and Wales, Scotland and Northern Ireland, as follows:[42]

> A new criminal records agency will be established as part of the Home Office to undertake this work for England, Wales and Northern Ireland. In Scotland the work will be undertaken by the Scottish Criminal Record Office. Individuals will be able to obtain information about their criminal records. In carefully defined circumstances and with the consent of the individual, this will also be provided to those bodies which are registered with the agency which will include employers, licensing bodies and voluntary organisations.

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[41] UC 31 1995-96

[42] HL Deb Vol 575 c.794-795 11.11.1996

The Bill proposes three types of certificate. The first, a criminal conviction certificate, will be issued only to individuals. It will state whether they have convictions recorded in central police records which are not spent under the Rehabilitation of Offenders Act.

The second certificate, a criminal record certificate described as a "full" check in the White Paper, will be available for occupations which are exceptions to the Rehabilitation of Offenders Act. A joint application will be made by the individual and organisation which is seeking the check. Information will be provided from central police records about spent and un-spent convictions and about cautions.

The third certificate, an enhanced criminal record certificate described as an "enhanced" check in the White Paper, will be restricted to those working on a regular, unsupervised basis with children; for certain licensing purposes; and, prior to appointment, judges and magistrates. An enhanced certificate will include the information contained in a criminal record certificate, plus information from local police records. Where relevant, non-conviction information might be supplied. Very exceptionally this could be provided to the employer but not the individual. This would only happen where the information might prejudice an ongoing or future investigation.

We expect individuals to meet the cost of the checks although employers or others could reimburse them if they wished to do so. The cost of criminal conviction certificates and criminal record certificates is estimated at about £5 or £6. An enhanced criminal record certificate would cost about £8 to £10.

Bodies eligible to receive criminal record or enhanced criminal record certificates must register with the agency. A registration fee will be payable which we expect to be about £15 to £20. A condition of registration is that organisations should follow a code of practice. We will shortly be publishing responses to the consultation exercise which was undertaken on the draft code. Some of the responses have already led directly to the inclusion of provisions within the Bill but some further consultation will be required with interested parties before the code can be finalised.

We recognise that there are important civil liberties issues connected with criminal record checks. What we have tried to do is to strike a balance between the need to protect vulnerable members of society, particularly children, while avoiding the need for intrusive checks. That is particularly so when we come to information which has not been tested before the courts. That is why we have felt it important to restrict the use of non-conviction information to situations where children might be at risk because those working with them will be in a position which gives them regular and unsupervised contact and for various statutory licensing purposes where it is important to guard against fraud or where the information is necessary for probity in the administration of justice.

The proposed new arrangements for criminal record checks, which have caused some controversy, are to be implemented by a criminal records agency which is intended to be self-financing. Charges are therefore to be made for certificates issued. On current estimates the fee for a criminal conviction certificate or criminal record certificate will be £5 or £6, while the fee for an enhanced criminal record certificate will be between £8 and £10. Concern has been expressed by voluntary organisations, groups representing child-minders and others about the impact on their members and on volunteers of the cost of acquiring the various levels of certificate. During the Bill's committee stage in the House of Lords Lord Weatherill successfully moved amendments designed to exempt applicants for voluntary positions from having to pay the prescribed fees for criminal conviction certificates, criminal record certificates or enhanced criminal record certificates under *Clauses 100,101* and *102* of the Bill

as originally drafted[43]. He was concerned about the effect which the need to pay fees would have on organisations which depended on the services of a large number of volunteers.

In unsuccessfully opposing Lord Weatherill's amendment, the Home Office minister Baroness Blatch described some of the practical difficulties which the Government felt would arise if free or subsidised checks were made available to certain categories of applicants. She set out the Government's view that an even spread and a modest fee for criminal record information which would enhance the effectiveness of the voluntary sector and make vulnerable groups safer in the community was the fairest way forward, as this would not then become an unreasonable burden on individuals and/or taxpayers.[44] An amendment to exempt child-minders from the requirement to pay fees for criminal record checks was introduced, and subsequently withdrawn, by the Liberal Democrat peer Lord Rodgers of Quarry Bank during the report stage of the *Police Bill* in the House of Lords.[45]

Under Clause 109 of the *Police Bill* it will be an offence for a person to make a false certificate, alter a certificate, use another person's certificate in a way which suggests that it relates to himself or allow a certificate relating to him to be used by another person in a way which suggests that it relates to that other person. It will also be an offence for a person knowingly to make a false statement for the purpose of obtaining or enabling another person to obtain a certificate. These offences will be punishable on summary conviction by up to six months' imprisonment and a £5,000 fine, or both.

Clause 109 of the *Police Bill* also creates offences relating to the unauthorised disclosure of information provided under the provisions concerning criminal record certificates and enhanced criminal record certificates. These offences will be punishable on summary conviction by up to six months' imprisonment and a £1,000 fine or both. It is intended that criminal conviction certificates should only be issued to the individual concerned. Where an individual requests a criminal record certificate or an enhanced criminal record certificate in the prescribed form countersigned by a body registered under Clause 107 of the Bill, a copy of the certificate issued to the individual will be sent to the registered body, and in the case of the enhanced criminal record certificate certain additional, confidential information which is considered to be relevant may be provided to the registered body alone. There is, however no further provision in the *Police Bill* for wider public access to criminal records.

Other sources of information relating to the suitability of applicants for posts involving access to children are described in the consultation document *Sentencing and Supervision of Sex Offenders* as follows[46]:

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[43] HL Deb Vol 576 c.469-492 2.12.1996
[44] ibid. c.482-486
[45] HL Deb Vol 577 c.534-538 20.1.1997
[46] Cm 3304 paras 65-67

65. The Department of Health operate, on an advisory basis, a consultancy service, which applies to England and Wales, whereby local authorities, and private and voluntary organisations can check the suitability of those they propose to employ in a childcare post. The service:

- notes convictions against those who (at the time of conviction) are or were in child casework; it also notes the names of persons formerly in such work who have been dismissed or who have resigned in certain circumstances;
- at the request of employers, provides a check against these records in respect of individuals seeking work in a childcare post; and
- alerts employers if the check is positive.

The object is to make sure that, as far as possible, unsuitable people are not appointed to positions involving contact with children or responsibility for them. The type of jobs covered are those where the person would have substantial unsupervised access to children.

66. The Secretary of State for Education and Employment has power to bar a person from employment by a local education authority, school or further education establishment as a teacher or in any other capacity that would involve regular contact with children or young people up to 18 years of age. She may bar people on grounds of misconduct, or on medical grounds. Anyone convicted after 31 October 1995 of a sexual offence against a child under 16 years of age is barred automatically. Barred persons may apply to the Secretary of State to have the bar removed on the basis of new evidence, or evidence of a significant change in circumstance.

67. The Department for Education and Employment maintain a list of barred persons, known as List 99, which employers within the education service must check to ensure that they do not appoint someone who is barred. People are barred by the Secretary of State for a variety of reasons. List 99 is not a list of sex offenders; nor is everyone on the list perceived to be a danger to children.

B. Public notification of the addresses of sex offenders.

In the United States, where, as has already been mentioned, sex offender registration schemes are common and no longer appear to be controversial, a further development has arisen in the form of community notification schemes. In their article in the Autumn 1996 issue of *Criminal Justice Matters* Bill Hebenton and Terry Thomas note that some sex offender registration schemes have been made accessible to the public in certain circumstances and that five states have gone further by pro-actively notifying the public when a sex offender has come to live in their area. They add that notification exists in Louisiana, Alaska, Tennessee, Washington and New Jersey, and that other states are reported to be interested. Notification here involves informing people in a given locality of the whereabouts and details of sex offenders living near them by sending out "flyers" with an offender's photograph and address or using the local press or television channels. In some cases information on these matters is also available on the Internet. Hebenton and Thomas note that:

> Lawyers, and the American Civil Liberties Union have argued that notification is an invasion of privacy and a "cruel and unusual" form of punishment which is therefore unconstitutional. While the matter has not yet been tested at Supreme Court level, at state level both arguments have been lost in favour of the protection of society argument and the argument that

notification is a form of civil "regulation" rather than punishment.

In the consultation document *Sentencing and Supervision of Sex Offenders* the Government made the following remarks about wider public access to information from the criminal records database:[47]

> 62. Although the idea of a requirement to register changes of address so that the criminal records database can be kept more up to date particularly addresses the needs of police, there is a wider interest in this information. Those responsible for working with children may wish to obtain criminal record information about applicants for voluntary or paid positions. The Government would wish to allow access to this information for those who wished to use it for the purpose of protecting children, so far as this is feasible, although the danger of misidentification is such that the criminal records should be accessed only by the police and a very limited number of other agencies. Even on the basis of police providing information about criminal records, we would not wish to see unrestricted availability. Unrestricted availability of criminal records information could have a number of undesirable outcomes: the register could be used by those who wished unlawfully to harass those on it; it could be used to locate victims (there is some evidence of this having occurred in jurisdictions without controls on information about offenders); and it could be used by sex offenders as a means of networking. As a central register held on the Phoenix database of the police national computer, it would not be open directly to any person or organisation other than the police and the bodies with whom access agreements have been made.

The Government is currently consulting with the Association of Chief Police Officers about present police practice concerning the disclosure of information on sex offenders and how such information might be disclosed in future. Civil liberties groups and some commentators have expressed fears about the potential which public notification schemes might have to encourage vigilantism and have pointed to cases in this country in which known sex offenders have been forced to leave their homes after information about them was made available. The murder of one sex offender in Scotland was also reported as having been linked to local knowledge of his record of sex offences.

C. Lord Cullen's recommendations

In his report on *The Public Inquiry into the Shootings at Dunblane Primary School on 13 March 1996*, published in October 1996, Lord Cullen recommended that there should be a system for the accreditation to a national body of clubs and groups voluntarily attended by children and young persons under 16 years of age for their recreation, education or development, the main purpose of which would be to ensure that there were adequate checks on the suitability of the leaders and workers who had substantial unsupervised access to them[48]. In its reply, the Government referred to the changes in arrangements for the disclosure

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[47] Cm 3304 p. 12 para 62
[48] Cm 3386 p. 150 para 27

of criminal records set out in the Scottish Office consultation document *On the Record in Scotland*, which are now set out in the *Police Bill*. The Government added that it would consult immediately with all interested parties in Scotland on the proposals for the establishment of arrangements for a national information and accreditation system and that there would be parallel consultations in England and Wales[49].

Lord Cullen also recommended that consideration be given to the development of a Scottish Vocational Qualification in respect of work with children, including the organisation of clubs and child development and protection[50]. The Government accepted this recommendation and said it was inviting the Scottish Vocational Education Council urgently to bring forward proposals for a qualification as recommended[51].

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[49] Cm 3392 October 1996 p.7
[50] Cm 3386 p.150 para 28
[51] Cm 3392 p.7

Appendix I

Offences to which the notification requirement will apply

Sex Offenders Bill Schedule 1

Offences in England and Wales

1.-(1) This Part of this Act applies to the following sexual offences under the law of England and Wales, namely-

(a)offences under the following provisions of the Sexual Offences Act 1956-

(i) section I (rape);
(ii) section 5 (intercourse with a girl under 13);
(iii) section 6 (intercourse with a girl between 13 and 16);
(iv) section 10 (incest by a man);
(v) section 12 (buggery);
(vi) section 13 (indecency between men);
(vii) section 14 (indecent assault on a woman);
(viii) section 15 (indecent assault on a man);
(ix) section 16 (assault with intent to commit buggery);
(x) section 28 (causing or encouraging prostitution of, intercourse with, or indecent assault on, girl under 16);

(b) an offence under section 1(1) of the Indecency with Children Act 1960 (indecent conduct towards young child);
(c) an offence under section 54 of the Criminal Law Act 1977 (inciting girl under 16 to have incestuous sexual intercourse);
(d) an offence under section I of the Protection of Children Act 1978 (indecent photographs of children); and
(e) an offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photographs of children).

(2) In sub-paragraph (1) above-

(a) paragraph (a)(iii), (v) and (vi) does not apply where the offender was under 20; and
(b) subject to sub-paragraph (3) below, paragraph (a)(iv) to (ix) does not apply where the victim of or, as the case may be. the other party to the offence was 18 or over.

(3) Sub-paragraph (2)(b) above does not prevent the application of sub-paragraph (1)(a)(vii) or (viii) above in any case where, in respect of the offence or finding, the offender-

(a) is or has been sentenced to imprisonment for a term of 30 months or more; or
(b) is or has been admitted to a hospital subject to a restriction order.

Offences in Scotland

2.-(1) This Part of this Act applies to the following sexual offences under the law of Scotland, namely-

(a) the following offences-

(i) rape;

(ii) clandestine injury to women;

(iii) abduction of a woman or girl with intent to rape;

(iv) assault with intent to rape or ravish;

(v) indecent assault;

(vi) lewd, indecent or libidinous behaviour or practices;

(vii) shameless indecency; and

(viii) sodomy;

(b) offences under-

(i) section 52 of the Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children); and

(ii) section 52A of that Act (possession of indecent images of children);

(c) offences under the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995-

(i) section I (incest);

(ii) section 2 (intercourse with a step-child);

(iii) section 3 (intercourse with child under 16 by person in position of trust);

(iv) section 5 (unlawful intercourse with girl under 16);

(v) section 6 (indecent behaviour towards girl between 12 and 16);

(vi) subsection (1) of section 7 (procuring);

(vii) subsection (2) of that section;

(viii) section 8 (abduction of girl under 18 for purposes of unlawful intercourse);

(ix) section 10 (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16); and

(x) section 13 (homosexual offences).

(2)In sub-paragraph (1) above-

(a) subject to sub-paragraph (3) below, paragraphs (a)(iii) to (v) and (vii) and (c)(i) and (vi) do not apply where every person involved in the offence other than the offender was 18 or over;

(b) paragraphs (a)(viii) and (c)(x) do not apply where the offender was under 20 and every other person involved in the offence was a willing participant; and

(c) paragraph (c)(iv) does not apply where the offender was under 20.

(3) Sub-paragraph (2)(a) above does not prevent the application of sub-paragraph (1)(a)(iii) to (v) above in any case where, in respect of the offence or finding, the offender-

(a) is or has been sentenced to imprisonment for a term of 30 months or more; or

(b) is or has been admitted to a hospital subject to a restriction order.

Offences in Northern Ireland

3.-1) This Part of this Act applies to the following sexual offences under the law of Northern Ireland, namely-

(a) an offence of rape;

(b) offences under-

(i) section 52 of the Offences against the Person Act 1861 (indecent assault upon a female person);

(ii) section 61 of that Act (buggery); and

(iii) section 62 of that Act (assault with intent to commit buggery or indecent assault upon a male person);

(c) offences under-

(i) section 4 of the Criminal Law Amendment Act 1885 of unlawful carnal knowledge of a girl under 14; and

(ii) section 5 of that Act of unlawful carnal knowledge of a girl under 17;

(d) an offence under section 11 of that Act (committing, or being party to the commission of, or procuring or attempting to procure the commission of, any act of gross indecency with another male);

(e) an offence under section 1 of the Punishment of Incest Act 1908 (incest by males);

(f) offences under-

(i)section 21 of the Children and Young Persons Act (Northern Ireland) 1968 (causing or encouraging seduction or prostitution of a girl under 17); and

(ii) section 22 of that Act (indecent conduct towards a child);

(g) an offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs of children);

(h) an offence under Article 9 of the Criminal Justice (Northern Ireland) Order1980 (inciting girl under 16 to have incestuous sexual intercourse); and

(i) an offence under Article 15 of the Criminal Justice (Evidence, etc.) (Northern Ireland) Order 1988 (possession of indecent photographs of children).

(2) In sub-paragraph (1) above-

(a) paragraphs (b)(ii), (c)(ii) and (d) do not apply where the offender was under 20; and

(b) subject to sub-paragraph (3) below, paragraphs (h), (d) and (e) do not apply where the victim of or, as the case may be, the other party to the offence was 18 or over.

(3) Sub-paragraph (2)(b) above does not prevent the application of sub-paragraph (1)(b)(i), or sub-paragraph (b)(iii) above so far as relating to indecent assault on a male person, in any case where, in respect of the offence or finding, the offender-

(a) is or has been sentenced to imprisonment for a term of 30 months or more; or

(b) is or has been admitted to a hospital subject to a restriction order.

Offences under service law

4. This Part of this Act applies to an offence under-

(a) section 70 of the Army Act 1955;
(b) section 70 of the Air Force Act 1955; or
(c) section 42 of the Naval Discipline Act 1957,

of which the corresponding civil offence (within the meaning of that Act) is a sexual offence to which this Part of this Act applies by virtue of paragraph 1 above.

General

5.-1) Any reference in paragraph 1(1), 2(1), 3(1) or 4 above to an offence includes-

(a) a reference to any attempt, conspiracy or incitement to commit that offence; and

(b) except in the case of a reference in paragraph 2(1)(a) above, a reference to aiding and abetting, counselling or procuring the commission of that offence.

(2) Any reference in paragraph 1(2), 2(2) or 3(2) above to a person's age is a reference to his age at the time of the offence.

Appendix II

Offences in respect of which there is to be extra-territorial jurisdiction

The offences in respect of which it is intended that the courts should have extra-territorial jurisdiction under Part II of the Bill, are the following:

England and Wales

Rape (which includes male rape), except where the victim was 16 or over at the time of the offence;

Intercourse with a girl under 13;

Intercourse with a girl between 13 and 16;

Buggery, except where the victim was 16 or over at the time of the offence;

Indecent assault on a female, except where the victim was 16 or over at the time of the offence:

Indecent assault on a male, except where the victim was 16 or over at the time of the offence;

Gross indecency with or towards a child under the age of 14 or incitement of a child under that age to such an act;

Offences involving indecent photographs of children;

Attempts, conspiracies or incitements to commit any of these offences or aiding,abetting, counselling or procuring their commission;

Northern Ireland

Rape, except where the victim was 16 or over at the time of the offence;

Indecent assault upon a female person, except where the victim was 16 or over at the time of the offence;

Buggery, except where the victim was 16 or over at the time of the offence;

Indecent assault on a male person, except where the victim was 16 or over at the time of the offence;

Unlawful carnal knowledge of a girl under 14;

Unlawful carnal knowledge of a girl under 17, except where the victim was 16 or over at the time of the offence;

Gross indecency with or towards a child under the age of 14 or incitement of a child under that age to such an act;

Offences involving indecent photographs of children;

Attempts, conspiracies or incitements to commit any of these offences or aiding, abetting, counselling or procuring their commission;

Scotland

Rape of a girl under the age of 16;

Indecent assault of a person under the age of 16;

Lewd, indecent or libidinous behaviour or practices;

Shamelessly indecent conduct involving a person under the age of 16;

Sodomy with or against a boy under the age of 16;

Unlawful sexual intercourse with a girl under the age of 13;

Unlawful sexual intercourse with a girl under the age of 16;

Indecent behaviour towards a girl between the age of 12 and 16;

An unlawful homosexual act involving a person under the age of 16;

Taking and distributing indecent images of children;

Aiding, abetting, counselling, procuring or inciting the commission of the last 5 of these offences;

Conspiracies or incitements to commit any of these offences.

Appendix III

Statistics

Few statistics of recorded crime identify the age of the victim and it is only possible for a few offences to say how many sexual offences against children are recorded by the police. The table below shows the number of notifiable sexual offences recorded by the police in England and Wales in recent years. In only the first three of these is the age of the victim specific; the other figures cover victims of all ages.

	1993	1994	1995
Unlawful sexual intercourse with girl under 13	268	275	178
Unlawful sexual intercourse with girl under 16	1,443	1,446	1,260
Gross indecency with a child	1,280	1,512	1,287
Buggery	1,279	1,258	818
Indecent assault on a male	3,340	3,205	3,150
Indecency between males	671	683	727
Rape of a female	4,589	5,032	4,986
Rape of a male	..	..	150
Indecent assault on a female	17,350	17,579	16,876
Incest	484	316	185
Procuration	136	196	207
Abduction	354	388	364
Bigamy	90	81	86
All sexual offences	**31,284**	**31,971**	**30,274**

Source: Criminal Statistics England and Wales 1995 (Cm 3421) Table 2.16

More detail on sexual offences where the victims were aged under 16 is available from statistics of prosecutions and cautions. These were summarised, for the whole of the United Kingdom, in a recent written answer[52].

[52] HL Deb 21 January 1997 c WA 52-56

Recent Research Papers on related subjects include:

96/99	The Crime (Sentences) Bill [Bill 3 of 1996-97]	01.11.96
96/100	The Crime (Sentences) Bill and the Crime and Punishment (Scotland) Bill: provisions for mentally disordered offenders	31.10.96