Dear Colleague

Purpose of the circular

1. To provide information about the provisions of the Sexual Offences Act 2003 as they apply to Scotland. The Act will be brought into force simultaneously in England & Wales, Scotland and Northern Ireland on 1 May 2004. The Scottish provisions will be commenced by order of the Scottish Ministers on 1st May 2004.

The link to the Sexual Offences Act 2003 is:


Action

2. Recipients of this circular are asked to make it available to their operational colleagues immediately upon receipt.

Background

3. Part 2 (except for sections 93 and 123 to 129 and Schedule 4) and sections 138, 141, 143, and 142 of and Schedules 3, 5, 6, and 7 to the Sexual Offences Act 2003 apply to Scotland. Part 2 of the Sexual
Offences Act replaces Part 1 of the Sex Offenders Act 1997 as amended by the Criminal Justice and Courts Services Act 2000. Part 2 of the 2003 Act also replaces the provisions relating to sex offender orders in the Crime and Disorder Act 1998 as amended by the Police Reform Act 2002. This letter provides a brief explanation of some of the key provisions of the new legislation. Further detailed guidance will be prepared jointly with the ACPOS sub-group on sex offending and will be issued to all relevant agencies covering a complete package of measures for dealing with sex offenders under the 2003 Act following consultation with those needing to comply with the requirements of the new legislation.

4. The notification requirements on sex offenders (or “sex offender registration” as the requirements are sometimes known) were introduced in Part 1 of the Sex Offenders Act 1997. The 1997 Act established that offenders convicted of certain sexual offences (listed in Schedule 1 to that Act) would have to notify several details to the police and notify any changes to these details. The Sex Offenders Act was implemented on 1 September 1997. The Crime and Disorder Act 1998 introduced sex offender orders (SOOs) and interim SOOs. These were civil preventative orders which could be imposed by the courts on convicted sex offenders on application of a chief constable. Sex offender orders could prohibit an offender from doing anything specified in the order, so long as it was necessary to protect the public from serious harm from the person in respect of whom the order was sought or had effect and made the offender subject to the notification requirements of the 1997 Act.

5. In 2000 several changes were made to the Sex Offenders Act 1997 through the Criminal Justice and Court Services Act (CJCSA 2000) to strengthen the requirements on convicted sex offenders. The maximum penalty for a breach of the notification requirements was increased to 5 years imprisonment and sex offenders had to make their initial notification within 3 days (rather than 14 days) of their conviction, finding etc for a relevant sexual offence. In addition, the CJCSA 2000 introduced a requirement for registered sex offenders to notify the police if they intended to travel overseas for 8 days or more. The Police Reform Act 2002 introduced amendments to sex offender orders that enabled the mutual recognition of such orders throughout the UK.

Summary of main provisions

6. The Sexual Offences Act 2003 is repealing all of the above legislation and re-introducing the provisions with modifications and new powers which strengthen and tighten the existing regime. Below are listed the key changes that have been made to the notification requirements:

- By virtue of paragraph 60 of Schedule 3, an offender is subject to the notification requirements if the court, in imposing sentence or otherwise disposing of a case, determines that there is a significant sexual aspect to the offender’s behaviour in committing the offence. This measure implements recommendation 41 arising from the report of the Expert Panel on Sex Offending, “Reducing the Risk”, chaired by Lady Cosgrove. Recommendations 13, 15, 55 and 56 provide the basis on which improved information is to be provided to report writers and Judges in sexual offence cases and cases where there is a sexual element or motivation. A link to the report is attached for your information [www.scotland.gov.uk/library3/justice/roso-00.asp](http://www.scotland.gov.uk/library3/justice/roso-00.asp);

- Offenders will have to notify a change to the notified details (such as name or address) within 3 days of the change taking place (the current period is 14 days);

- Offenders will have to notify any address at which they reside for 7 days or more, whether that is 7 days consecutive or 7 days within 12 months (the current period is 14 days);

- All offenders will have to re-confirm that their notified details are correct annually (“periodic notification”);
• All notifications will have to be made in person and the police may take fingerprints and photographs at initial notification, whenever an offender notifies any changes to his details and at periodic notification;

• Offenders will have to notify their National Insurance numbers at initial notification. Those currently subject to the notification requirements will have to provide such information when they first notify a change to their details after commencement of the 2003 Act or at their first periodic notification (whichever occurs first);

• It will be possible to notify a change of details in advance of the change taking place; and

• Schedule 3, which lists the offences which trigger the notification requirements of Part 2 of the Sexual Offences Act 2003, includes most of the sexual offences contained in Part 1 of the 1997 Act. However it should be noted that as well as requiring registration for any offence where a court determines that the offender’s behaviour indicates there is a significant sexual aspect, the list now recognises that the homosexual age of consent is 16. Accordingly no one will be placed on the sex offenders register as a result of consensual sexual activity.

7. The 2003 Act is also introducing new civil orders:

Notification orders:

• Sections 97 to 103 make provision for a new order which can be taken out, on application by a chief constable, in respect of persons who have been convicted abroad of sexual offences equivalent to the sexual offences listed in Schedule 3 to the 2003 Act (other than a non-sexual offence with a significant sexual aspect). The effect of the order is to make such offenders subject to the notification requirements of Part 2 of the 2003 Act as if they had been convicted in the UK of a relevant offence.

Sexual offences prevention orders (SOPOs)

• Sections 104 to 113 make provision for Sexual Offences Prevention Orders. This order replaces the sex offender order. Accordingly, a SOPO can be made on application by a chief constable in respect of a convicted sex offender. A SOPO can also be made in respect of an offender who has been convicted on or after 1st May of a non-sexual offence where the court has determined that there was a significant sexual aspect. Before 1st May, an order can be applied for if the offender has been convicted of a non-sexual offence and the chief constable considers that had he been convicted after 1st May, it is likely that the court would have made a determination that the offence had a significant sexual aspect. It will also be possible to make a SOPO in respect of an offender convicted of certain violent offences in England and Wales, Northern Ireland or service offences listed in Schedule 5. Importantly it should be noted that the test for applying for a SOPO is that the order is necessary to protect the public from serious sexual harm whereas the test for a sexual offender order was that the order was necessary to protect the public from serious harm. The 2003 Act has various transitional provisions which mean that offenders who are subject to sex offender orders continue to require to register but application for various and renewal of the sex offender order would be dealt with under the 2003 Act SOPO regime. Also that it continues to be an offence under the 2003 Act to breach a sex offender order.

Foreign travel orders

• Sections 114 to 122 make provision for a new order that will enable the courts in certain circumstances, and on application of a chief constable, to prohibit those convicted of sexual
offences against children aged under 16 from travelling overseas where there is evidence that they intend to cause serious sexual harm to children in a foreign country.

Other provisions

8. Part 2 of the Sexual Offences Act 2003 also contains other important provisions:
   - Sections 86 and 87 re-enact the power under the 1997 Act to make foreign travel regulations and regulations designating police stations where notification must take place. The foreign travel regulations will detail the notification requirements which will apply to registered sex offenders who leave the UK, requiring them to provide information before leaving the UK and upon return. These will come into force on 1 May 2004. The designated police stations regulations will list the Scottish police stations as the only ones at which registration of sex offenders can take place on leaving the court after sentence or being released from prison. These Regulations will replace the existing foreign travel and prescribed police Regulations, namely the Sex Offenders (Notification Requirements) (Foreign Travel) (Scotland) Regulations 2001 and the Sex Offenders (Notification Requirements) (Prescribed Police Stations) (Scotland) (No. 2) Regulations 2001.
   - Sections 94 and 95 provide a power for the police (and national policing organisations) to verify that the details offenders have notified to the police are correct. This is done by comparing these details against the information offenders may have supplied to the various agencies which carry out social security functions on behalf of the Department for Work and Pensions, the UK Passport Service and the Driver and Vehicle Licensing Agency.
   - Section 96 provides the Scottish Ministers with the power to regulate the flow of information to the police both from and between institutions detaining sex offenders. The Report of the Expert Panel on Sex Offending noted that there was no duty on hospital managers or the Scottish Prison Service to give notification to the police of the release or transfer of patients or prisoners subject to the notification requirements of the 1997 Act, although they were encouraged to do so by virtue of Scottish Executive Guidance for Agencies on the 1997 Act. Currently the onus is on offenders when liberated from either prison or hospital to notify their details with the police. An affirmative statutory instrument will prescribe the detailed arrangements for the sharing of information. These regulations may also define the person responsible for the offender and the person who must be informed about release or transfer. It is envisaged that these regulations will also come into force on 1 May 2004.

9. The operational guidance on the new Act referred to in paragraph 3 will be issued to all relevant agencies in due course. As well as the procedures to be followed under the terms of the Act, appropriate notices explaining notification and forms of certificates for the purposes of Part 2 of the Act (as provided by way of an Act of Adjournal or sheriff court rules) will also be reproduced.

Yours sincerely

Ian Fleming
Police Division