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Mechanisms for Review in Sex Offenders Register Systems

1 Introduction

A ruling by UK Supreme Court has established that indeterminate notification requirements in Section 82 of the Sexual Offences Act 2003 are incompatible with Article 8 of the European Convention of Human Rights (ECHR). The Home Secretary, Teresa May has announced more stringent rules in England and Wales including that offenders can apply for consideration of removal after waiting 15 years after release from custody, with no automatic appeal.¹ It has also been suggested in press coverage that the Government is not legally required to “change course”.² This briefing paper provides information on mechanisms for review of notification requirements in sex offender registration schemes in the Republic of Ireland, Canada and France.

¹ Statement to Parliament, 16 February 2011 <http://www.homeoffice.gov.uk/publications/parliamentary-business/oral-statements/sex-offender-statement/>

² The Guardian Newspaper, This is not the way to keep us safe from sex offenders: Cameron's stand against paedophiles is more to do with ditching the Human Rights Act than protecting victims", February 18 2011

2 Republic of Ireland

The current sex offender registration system in the Republic of Ireland was introduced under the provision of the Sexual Offences Act 2001. The legislation makes provision for sex offenders on release from prison to notify the Garda Síochána where they are living and addresses if leaving the state for more than seven days. Sex offenders are subject to the requirements of the legislation for the following periods:³

- (a) An indefinite period if the sentence imposed on the person in respect of the offence concerned is life imprisonment or for a term of more than two years;
- (b) 10 years if the sentence imposed on the person in respect of the offence concerned is one of a term of imprisonment for a term or more than six months but not more than two years;
- (c) 7 years if the sentence imposed on the person in respect of the offence concerned is a term of imprisonment of six months or less;
- (d) 5 years if the term of imprisonment imposed on the person is suspended or is a sentence other than imprisonment.

The legislation also makes provision for persons subject to the legislation for a period of an indefinite duration to apply to the Court for an order “discharging the person from the obligation to comply with the requirements on the ground that the interests of the common good are no longer served by his or her continuing to be subject to them.” The legislation sets out that an application shall not be made before the expiration of the period of 10 years from the date of the applicants release from prison.⁴ At the hearing, a Superintendent or member of the Garda Síochána shall be entitled to appear and be heard at the hearing. In considering an application, the court may require to be adduced evidence, including expert evidence with regard to whether or not the interests of the common good would any longer be served by the applicant continuing to be subject to the notification requirements.⁵

³ Section 8 (3) of the Sex Offenders Act 2001 <http://www.irishstatutebook.ie/2001/en/act/pub/0018/sec0011.html#sec11>

⁴ Section 11 of the Sex Offenders Act 2001 <http://www.irishstatutebook.ie/2001/en/act/pub/0018/sec0011.html#sec11>

⁵ Section 11 of the Sex Offenders Act 2001.

3 Canada

The Criminal Code provides that where a court imposes a sentence for a sex offence, it will make an order requiring a person to comply with the Sex Offender Registration Act 2004. The Code provides that sex offenders are required to remain registered for one of three periods:⁶

- End 10 years after the order was made for summary conviction offences and offences with two and five year maximums
- Ends 20 years after the order was made for offences carrying a 10 or 14 year maximum sentence
- Applies for Life for offences with a maximum life sentence or where an order has been made for life.

The Code provides a mechanism in the form of termination orders. The Code states

“the Court shall make a termination order if it is satisfied that the person has established that the impact on them of continuing the order or orders and any obligation including on their privacy or liberty, would be grossly disproportionate to the public interest in protecting society through the effective investigation of crimes of a sexual nature, to be achieved by the registration of information relating to sex offenders under the Sex Offender Information Registration Act.”⁷

A person subject to an order to comply with the Sex Offender Information Registration Act may apply for a termination order after the following periods of time:⁸

- If five years have elapsed since the order was made in the case of an offence prosecuted summarily or if the maximum term of imprisonment was two or five years;
- If ten years have elapsed since the order was made in the case of offences carrying 10 or 14 year maximum penalties;
- If 20 years have elapsed since the order was made for offences involving life imprisonment or if an order has been made for life.

⁶ Para 490.013 of the Canadian Criminal Code

⁷ Para 490.016 of the Canadian Criminal Code

⁸ Para 490.015 of the Canadian Criminal Code

4 France

In France, the current sex offender's registration system is the National Automated Sex Offenders Register and includes information on the offender's identity and address. The Criminal Code of France makes provision for removal of information from the database on the death of the person concerned or after the following periods of time:⁹

- 30 years in relation to an offence punishable by ten years imprisonment;
- 20 years in all other cases.

According to the Code, neither amnesty, rehabilitation nor regulations leading to the erasure of criminal convictions lead to the erasure of the records.¹⁰

The Criminal Code also makes provision for an appeal in Article 706-53-10. The appeals procedure can be found in **Annex A**. This provision enables a person to request the removal of information or to correct information concerning them on the database. It would appear that the appeal procedure is open ended and depends on a number of factors, if the information is not correct or retention is not necessary for the purposes of the database, including of the nature of the offence, the age of the person at the time it was committed, the length of time that has passed since then, and the current character of the person concerned. A number of actors are also included in the Appeal procedure including: the District Prosecutor, the Liberty and Custody Judge and the President of the Investigating chamber. This is important given that the Home Secretary has said the final decision on whether a sex offender should remain on the register will remain with the police.¹¹

⁹ Note that this is an unofficial translation of the Criminal Code, Article 706-53-4 of the Criminal Code

¹⁰ Article 706-53-4 of the Criminal Code

¹¹ Statement to Parliament, 16 February 2011 <http://www.homeoffice.gov.uk/publications/parliamentary-business/oral-statements/sex-offender-statement/>

Annex A- Article 706-53-10 of the Criminal Code, France

Any person whose identity is registered in the database may request the district prosecutor to correct or order the erasure of information concerning him if this information is not correct or if its retention no longer appears necessary for the purpose of the database, in the light of the nature of the offence, the age of the person at the time it was committed, the length of time that has passed since then, and the current character of the person concerned.

The request for erasure is inadmissible while the records concerned are still current on certificate no.1 of the criminal record of the person concerned, or relate to judicial proceedings that are still current.

If the district prosecutor does not order this correction or erasure, the person may seize the liberty and custody judge to this end, whose decision may be challenged before the president of the investigating chamber.

Before ruling on the correction or erasure request, the district prosecutor, the liberty and custody judge, or the president of the investigating chamber may carry out any checks they consider to be necessary, and in particular may order a medical examination of the person concerned. If the record concerns a felony or a misdemeanour punished by ten years' imprisonment and committed against a minor, the ruling to remove this from the database may not take place without such an examination. In the case provided for by the penultimate paragraph of article 706-53-5, the district prosecutor, the liberty and custody judge, and the president of the investigating chamber, seised in accordance with the provisions of the present article, may also order, at the request of the person concerned, that he need only present himself to the police or gendarmerie departments once a year to confirm his address.