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Reinforcing measures against sex offenders

Report[1]
Committee on Legal Affairs and Human Rights
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Summary

Sexual abuse, particularly of children, is an abhorrent crime, which causes lasting damage to its victims – yet it has been found that those who commit this crime once are likely to do so again. For that reason, some member states have set up national "sex offenders registers", which log the personal details and location of convicted offenders, in order to supervise them in a way which minimises the risk to the community. Such registers are essential for any "vetting and barring" system, which stops sex offenders who pose a risk from finding jobs working with children or other vulnerable people.

These methods – when responsibly used as part of a wider programme of management – can play a key role in preventing reoffending, yet many member states do not yet have them in place. Furthermore, some sex offenders deliberately seek to avoid national controls by travelling abroad, counting on the fact that their criminal records will not follow them. To foil such attempts, the report calls on states with registers to share their information internationally – ideally via Interpol, which already has a database for this purpose – so that offender's movements abroad can be overseen. This would be more effective, it believes, than a Europe-wide sex offenders register.

Accurate national information, carefully managed and properly shared internationally, is the key to keeping children and other vulnerable people safe from repeat sex offenders, wherever they are.

1. Reference to committee: Doc 11400, Reference 3382 of 23 November 2007.

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A. Draft resolution[2]

1. The Parliamentary Assembly recognises the gravity of the harm caused to victims of sexual offences. Sexual abuse is unquestionably an abhorrent type of wrongdoing with debilitating effects on its victims. Children and other vulnerable individuals are entitled to special protection in this respect.

2. Sex offenders are thought to be amongst the most frequent recidivists. The Assembly considers that the supervision of sex offenders should be seriously addressed within the member states.

3. Current national systems dealing with sex offenders vary greatly across member states. Whilst some states already have comprehensive management systems to deal with such offenders, including a functioning 'sex offenders register', other states have no such arrangements and do not have a register in place.

4. A 'sex offenders register' is an instrument used in a procedure whereby convicted sex offenders are required to notify the relevant authority of personal information such as their name, address and date of birth, and immediately inform the authority if their personal circumstances change. The record of these notifications is commonly referred to as a 'sex offenders register.' For such registers to be effective, all information stored must be accurate and regularly updated.

5. The Assembly recognises the key role that a register can play in the supervision of offenders, especially when employed as part of a comprehensive sex offenders management programme. The information in the register may be used to assess the risk that the offender poses to the community and therefore manage that risk. If a large amount of relevant and up to date information is stored on the register, it can play a key role in detecting perpetrators of offences rapidly. Registers can also function as administrative tools since they remind relevant authorities of the whereabouts of offenders.

6. The Assembly is particularly concerned by the fact that convicted sex offenders are able to continue working with children and vulnerable persons because of a loophole in the national system or a system abroad. Under certain circumstances, sex offenders thus manage to find employment in fields such as education, the prison service, health service and childcare. The Assembly is concerned that some member states do not have an effective 'vetting and barring' system in place whereby those who have been convicted of certain sexual offences are prohibited from working with children and other vulnerable persons.

7. The Assembly recalls that the 2007 Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (CETS No. 201) obliges states to introduce measures, in conformity with their internal law, to ensure that candidates for professions necessitating regular contact with children have not been convicted of acts of sexual exploitation or sexual abuse of children.

8. To date, only Albania, Denmark and Greece have ratified the Convention, the entry into force of which requires five ratifications. The Assembly calls upon those states which have not yet signed and ratified the treaty to do so.

9. The Assembly emphasises that measures to prevent sexual offences must be based on laws that fully respect human rights and fundamental freedoms, in particular Article 8 of the European Convention on Human Rights, which guarantees the right to respect for private life. In this regard, the Assembly recalls that some of those systems which include a sex offenders register (such as in France and in the United Kingdom) have been deemed to be compliant with Convention rights by the European Court of Human Rights.

10. Sex offenders travel around – including between European countries – to perpetrate offences and to avoid conviction and escape supervision in their home country The Assembly considers that the management of sex offenders therefore requires international co-operation.

11. The Assembly regrets the inadequacy of information and exchange of intelligence on sex offenders between member states. The Assembly therefore urges states to increase the quality, quantity and regularity of information and intelligence sharing on this subject. Such information should be shared in compliance with the provisions of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) which secures for every individual respect for his/her rights and fundamental freedoms, and in particular his/her right to privacy, with regard to automatic processing of personal data relating to him/her.

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2. Draft resolution adopted unanimously by the committee on 16 March 2010.

12. In view of the high degree of freedom of movement and establishment among European states, the Assembly considers it particularly important for states to exchange information on those offenders who are deemed unsuitable for work with children or vulnerable persons. Information contained in national vetting systems should therefore be made available abroad, including in the Schengen information system, to ensure the safety of society's most vulnerable persons.

13. Interpol has the capacity to store in its database information on sex offenders provided by member states. This information is available to law enforcement officials in all member states to facilitate criminal investigations.

14. The Assembly also recognises the need for awareness-raising campaigns in member states to educate people about the risks posed by sex offenders and help them recognise signals of abuse.

15. The Assembly favours an integrated approach at the international level in order to achieve greater effectiveness and coherence in the protection of all individuals against sexual offences.

16. Consequently, the Assembly does not support the introduction of a Europe-wide sex offenders register but calls on member states to take effective national measures to prevent sexual offences and, in particular, to:

16.1. evaluate their respective legal frameworks to assess whether they provide appropriate safeguards against sexual offences and, if necessary, to amend their legislation in order to create a comprehensive system to manage sex offenders;

16.2. introduce, as part of their national system, in accordance with the provisions of the European Convention on Human Rights and in particular in compliance with the principle of proportionality, a sex offenders register which contains accurate and regularly updated information on persons convicted of such offences in order to produce a central file allowing an exchange of information between entitled authorities, as strictly defined by law;

16.3. form a comprehensive package of legal measures aimed at controlling and monitoring movement of sex offenders, particularly travel abroad;

16.4. introduce a system of 'vetting and barring' for employment purposes to ensure that those who pose a risk cannot work with children or vulnerable persons;

16.5. ensure any legislation introduced fully respects individual rights, in particular the right to private life, and therefore restricts access to the sex offenders register only to duly entitled officials and excludes access by the general public to the sex offenders register;

16.6. any disclosure of information to a particular member of the public considered necessary to protect a particular child or children should be strictly regulated and accompanied by adequate technical or other safeguards to protect against unauthorised access or misuse;

16.7. introduce a coordinated and efficient child abduction alert system;

16.8. sign and ratify the Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse without delay, and implement it fully;

16.9. establish awareness-raising campaigns concerning detection of sexual abuse and ways to address this problem.

17. In order to be effective, the monitoring of sex offenders must include increased co-operation between states. The Assembly therefore urges member states to:

17.1. increase the quality, quantity and regularity of the information they share with other member states on sex offenders in order to effectively oversee the movement of offenders who travel around;

17.2. improve the information exchange with other member states on persons convicted of sex offences so that unsuitable persons are not able to gain employment abroad to work with children or other vulnerable persons;

17.3. increase the quantity and regularity of the information on sex offenders which they feed into the Interpol database.

B. Explanatory memorandum by Ms de Pourbaix-Lundin, rapporteur

1. Introduction

1. On 23 November 2007, the Parliamentary Assembly decided to refer to the Committee on Legal Affairs and Human Rights, for report, the motion for a resolution "For a Europe-wide sex offenders register" (Doc. 11400, Reference 3382). At its meeting in January 2008, the committee appointed me rapporteur.

2. I would begin by stating that the issue of sexual offences is a topic which gives rise to strong feelings. Equally, the question of introducing a European sex offenders register is bound to engender conflicting responses due to varying opinions on the efficacy of such a register.

3. Some countries have already introduced a sex offenders register, including Canada, France, Ireland, the United Kingdom and the United States. Depending on the country, these registers may be made available solely to the relevant authorities or to a wider public.

4. A 1993 study conducted in the United States showed that out of 621 child abductions ending in homicide, 44% of the children were murdered in the first hour, 74% in the first three hours and 91% in the first twenty-four hours after being abducted.[3] As such, victims' safety and even survival may depend on the speed and scale of the efforts made to locate them as soon as their abduction is reported to the authorities. Sex offenders are amongst the most consistent reoffenders and they travel around to avoid conviction, including between European countries.

5. The main reason for introducing a Europe-wide sex offenders register would be to afford the public greater protection against sexual assaults. While any recidivism is of public concern, the prevention of sexual violence is particularly important, given the often irreparable damage that these offences cause victims and the fear they engender in communities. Increased co-operation between European countries in order to manage sex offenders more effectively is therefore essential.

6. For the preparation of this report, I visited, in September 2009, various relevant bodies in the United Kingdom, where a comprehensive sex offenders management programme (including a sex offenders register) is currently in place. I also carried out a fact-finding visit to the headquarters of Interpol in Lyon on 4 December 2009.

7. In addition, a questionnaire was sent to all national delegations to the Parliamentary Assembly and the representatives of observer states to the Assembly.[4]

8. This report will firstly outline the issues involved in introducing a sex offenders register. The compatibility of such registers with the rights enshrined in the European Convention on Human Rights ("the Convention", "ECHR"), according to the European Court of Human Rights ("the Court"), will then be summarised, with particular emphasis on cases concerning the United Kingdom.

2. Issues

9. The possible introduction of a Europe-wide sex offenders register may give rise to some controversy. Although the seriousness of this type of crime can scarcely be denied, certain concerns may arise, particularly as regards the justification for introducing such a register. Valid reasons would also have to be given for setting up a register confined exclusively to sex offences.

10. The question also arises as to the effectiveness of this type of register. Some registers are in fact based on the voluntary provision of information by sex offenders. It is unlikely that all sex offenders, especially those most inclined to reoffend, provide this information.

11. In addition, consideration must be given to the reliability of such a register. In order to be reliable, the register would have to be updated regularly to ensure that it contains accurate information.

12. Lastly, the introduction of a Europe-wide sex offenders register must comply with the principle of proportionality. Inclusion in such a register naturally has certain repercussions on the sex offenders' privacy and reintegration into society. As will be shown in the next section, a system such as the United Kingdom's

3. www.alerte-enlevement.gouv.fr/art_pix/convention0206.pdf
4. See document AS/Jur (2008) 51 for an analysis of replies: http://assembly.coe.int/CommitteeDocs/2010/20081104_ajdoc51.pdf

has been deemed to be compliant with the Convention for the purposes of Article 8 on the right to respect for private life. Indeed, the Court has stated that "the requirements placed upon [sex offenders] were proportionate to the aims pursued by the legislation in view of the gravity of harm which may be caused to victims of sexual offences and the earlier statement of the Court that states have a duty under the Convention to take certain measures to protect individuals from such grave forms of interference".[5]

3. European Court of Human Rights – Relevant case law

13. The following cases have been decided by the European Court of Human Rights as regards the United Kingdom system:

13.1. *Adamson v. the United Kingdom*[6] (an admissibility decision) – The applicant had committed a single offence of indecent assault and was required to notify the police of his details under the Sex Offenders Act 1997. He complained that this amounted to a breach of Article 8 of the ECHR. The Court held that, whilst there was an interference with the applicant's Article 8 rights, that interference was necessary and proportionate "to the prevention of crime and the protection of the rights and freedoms of others." Indeed, it was stated that the complaint was "manifestly ill-founded". The applicant also argued that the notification requirements breached his rights under Article 7 because the provisions were not in place when he committed the offence and Article 3 because he said branding him a sex offender for life was inhumane and degrading and might put his family at risk. Both these arguments were dismissed. The Court found that the measures were preventative rather than an additional penalty under Article 7 and that the requirements did not meet the minimum level of severity required for a breach of Article 3.

13.2. *Massey v. the United Kingdom*[7] – The applicant was convicted on a number of counts of indecent assault and sentenced to six years in prison. He was subject to the notification requirements indefinitely. Referring to the Adamson case as authority on the matter, the Court found that the interference with the offender's private life under Article 8 was necessary and proportionate for the prevention of crime.

13.3. *Ibbotson v. the United Kingdom*[8] – This case was brought by one of the first convicted sex offenders required to register under the Sex Offenders Act 1997. The offender claimed that being on the register was an additional punishment being imposed after he had been sentenced for the offence and that the provisions therefore breached Article 7 of the ECHR. However, the European Commission of Human Rights declared the application inadmissible. It was found that the requirements were preventative rather than punitive, in the sense that inclusion on the register might help to dissuade an individual from reoffending.

More recently, the following cases were decided as regards the French sex offenders register:

13.4. *Bouchuart v. France,Gardel v. France, M.B. v. France*[9] – The applicants were three French nationals who lived in France. All three were sentenced (in 1996, 2003 and 2001) to terms of imprisonment for rape of 15-year-old minors by a person in a position of authority. On 9 March 2004, Law No. 2004-204 created a national judicial database of sex offenders, and all three applicants were included in the database. They complained that being put on the register breached their Article 7 and Article 8 rights. The Court stated that inclusion in the national Sex Offender Database and the corresponding obligations for those concerned did not constitute a "penalty" within the meaning of Article 7, paragraph 1, of the Convention and that they had to be regarded as a preventive measure to which the principle of non-retrospective legislation, as provided for in that article, did not apply. Indeed, the Court could not call into question the prevention-related objectives of the database. Sexual offences were clearly a particularly reprehensible form of criminal activity from which children and other vulnerable people had the right to be protected effectively by the state. As for Article 8, the Court concluded that the system of inclusion in the database of sex offenders had struck a fair balance between the competing private and public interests at stake, and there was therefore no violation of Article 8.

5. *Massey v. the United Kingdom*, Application No. 14399/02, 8 April 2003.
6. Application No. 42293/98, 26 January 1999.
7. Application No. 14399/02, 8 April 2003.
8. Application No. 40146/98, 21 October 1998.
9. Respectively Applications Nos. 5335/06, 16428/0517 and 22115/06, 17 December 2009.

4. Case study: management of sex offenders in the United Kingdom

14. In the United Kingdom, certain sex offenders are required to notify to the police annually personal information such as their name, address and date of birth, and to update the police whenever their personal circumstances change. The police record of these notifications is commonly referred to as the "sex offenders register." The United Kingdom system has, as illustrated above, been held by the European Court of Human Rights to be compliant with the Convention.

4.1. United Kingdom legislation

15. The Sex Offenders Act 1997[10] served as the basis for introducing a requirement that certain persons having committed offences of a sexual nature register with the police for a set length of time. Following a review of the 1997 act, it was repealed and replaced by the Sexual Offences Act 2003,[11] which aimed to modernise the law on sexual offences as well as to deter and manage sex offenders. The Violent Crime Reduction Act 2006[12] further expanded notification requirements to include offenders convicted of a wider range of crimes with sexual motives.

16. The following table summarises the provisions of the Sexual Offences Act 2003 regarding notification requirements for sex offenders.

Question and relevant section	Answer according to the 2003 act
Who must notify as a "relevant offender"? (Section 80 and Schedule 3)	persons convicted of certain sexual offences listed in Schedule 3 of the 2003 act (including rape, certain child sex offences committed by adults and certain indecent assault offences) persons found not guilty of a Schedule 3 offence by reason of insanity persons found to be under a disability and to have committed the act charged against him/her in respect of a Schedule 3 offence in England, Wales and Northern Ireland: persons cautioned in respect of a Schedule 3 offence
What information has to be notified? (Section 83)	date of birth national insurance number name (and other previous names) address (and address on the date that the notification was given) address of any other premises in the United Kingdom where he/she regularly stays in Scotland, certain information on the offender's bank account, credit and debit cards
When must the offender notify? (Sections 84 and 85)	within three days of the "relevant date"; normally the date of the conviction for the relevant offence reconfirm the information given to the police every twelve months notify any changes to the information within three days of the change notify within three days if released from custody, imprisonment or detention in a hospital.

10. www.opsi.gov.uk/acts/acts1997/ukpga_19970051_en_1
11. www.opsi.gov.uk/Acts/acts2003/ukpga_20030042_en_1
12. www.opsi.gov.uk/Acts/acts2006/ukpga_20060038_en_1

Question and relevant section	Answer according to the 2003 act
How to notify? (Section 87)	by attending a prescribed police station by giving oral notification to any police officer or other person authorised for that purpose by the officer in charge of the station police may take the offender's fingerprints and photograph any part of him/her upon notification notifications must be acknowledged in writing by police
For how long is the offender required to notify? (Section 82)	depends on the sentence received for sexual offence for more than thirty months imprisonment, indefinite notification period for six to thirty months imprisonment, ten years notification for six months or less imprisonment, seven years notification if cautioned for Schedule 3 offence, two years notification notification periods halved for under 18s
What happens if the offender wants to travel abroad? (Section 86 and the Sexual Offences Act 2003 [Travel Notification Requirements] Regulations 2004)	if offender to leave United Kingdom for three or more days, must notify police at least seven days in advance if reasonable excuse for not informing in advance, offender can notify up to twenty-four hours before departure notification must include: departure date, destination country or countries, point(s) of arrival, identity of carrier(s), first night accommodation details, return date, point of return in United Kingdom
What happens if the offender is under 18 or under 16 in Scotland? (Section 89)	court can direct obligation to comply with notification requirements onto parents parents ensure young offender attends police station with them when notification being given
What happens if the offender fails to notify or provides false information? (Section 91)	this is a criminal offence under the act penalties range from a fine of up to £5 000 to imprisonment for up to five years

4.2. A wider package of measures

17. During her visit to the United Kingdom, it was continually relayed to the rapporteur that the notification requirements under the 2003 act form only one component of a comprehensive package of measures used in the management of sex offenders in the United Kingdom. The 2003 act introduced further orders:

– Sexual Offences Prevention Orders (SOPO):[13] these are made by the court to restrict the behaviour of offenders. SOPOs are not limited to Schedule 3 offenders, and may also be imposed upon offenders who have been convicted of violent offences listed in Schedule 5 of the act. Such offences include murder, robbery and kidnapping. Despite this, under section 104, the court may only impose a SOPO if it is needed to protect the public (or any particular members of the public) from serious sexual harm. The effect of a SOPO is to prohibit the individual from doing anything described in the SOPO, such as entering public spaces, entering specific localities like schools, or making contact with particular individuals or groups.

13. Sections 104-113, 2003 act.

– Risk of Sexual Harm Orders (RSHOs):[14] were specifically designed to combat "grooming" of children by paedophiles (often on the Internet). They impose prohibitions on adults who have engaged in a course of sexual conduct towards a child and where the police have reasonable cause to believe that the order is necessary to protect children generally or a particular child. The effect of RSHO is to prohibit the individual from doing anything described in the order, for example prohibition from contacting a particular child. These orders last for a fixed period of at least two years or until a further order is made.

18. A breach of a SOPO or RSHO is a criminal offence and can incur a fine of up to £5 000 or imprisonment for up to five years. Both the police and the individual may apply to vary, renew or discharge SOPOs and RSHOs, and the individual can appeal the making of either order in the first place.

19. The Child Exploitation and Online Protection Centre emphasised to the rapporteur that the vast majority of missing sex offenders are abroad. The 2003 act introduced measures in an attempt to deal with these travelling offenders:

– Notification orders (sections 97-103, 2003 act): these require sex offenders who have been convicted outside the United Kingdom to register with the police to make them subject to notification requirements. Applications for these orders are heard by the court and can only be made by police chief constables in respect of an individual residing (or intending to reside) in that chief constable's police area. According to Home Office guidance, "a decision to apply for the order will be made on intelligence that an individual with a conviction, caution for a sexual offence overseas is in, or is intending to come, to the United Kingdom and is likely to remain resident".[15] Such intelligence could come from a variety of sources, for example if a British citizen is being repatriated to a United Kingdom prison to serve a sentence for a sexual offence overseas; or if the offender is being released from custody overseas after conviction for a sexual offence and the diplomatic service is organising his/her return to the United Kingdom. The length of the notification period and the consequences for breaches are the same as if the offence had been committed in the United Kingdom. The offender can appeal to the Crown Court against the making of a notification order.

– Foreign Travel Orders (sections 114-122, 2003 act): FTOs prevent offenders with convictions for sexual offences against children from travelling abroad where the offender has been convicted of a Schedule 3 offence and has acted in such a way as to give reasonable belief that it is necessary to make the order to protect children from serious sexual harm from the offender outside the United Kingdom. FTOs are made by a magistrate on the application of a chief officer of police. An FTO can prevent the offender from travelling to a specified country or any travel outside the United Kingdom. An FTO will last for a maximum fixed period as specified in the order. The maximum fixed period used to be six months; however, this was recently extended to a five-year maximum period under section 24 of the Policing and Crime Act 2009, which received Royal Assent on 12 November 2009. The maximum period was increased following reports that, by August 2008, only five FTOs had been made, mainly because the police would not make applications as six months was too short a period. Breach of an FTO is a criminal offence. Offenders subject to a FTO must also comply with the travel notification requirements provided for in section 86 of the 2003 act, meaning the person must notify the police in advance if he/she intends to travel abroad for three days or more.

20. In the practical application of these measures for managing travelling offenders, serious difficulties in the cross-border information-sharing process were reported to the rapporteur during her visit to the United Kingdom. The importance of sharing actual intelligence on travelling offenders rather than just general information on their travel was underlined to the rapporteur.

21. In 2001, the Multi-Agency Public Protection Arrangements (MAPPA) were set up under the Criminal and Court Services Act 2000 to support the assessment and management of the most serious sexual and violent offenders. MAPPA bring together the police, the probation and the prison services, which together are known as the "MAPPA Responsible Authority." Other agencies are under a duty to co-operate with the responsible authority, including social care, health, housing and education services. The overall aim of MAPPA is to draw up a risk management plan for the most serious offenders, amalgamating the information, skills and resources provided by the individual agencies being co-ordinated through MAPPA. MAPPA promotes information sharing between all the agencies, for example police will share intelligence information with offenders' managers on offenders' behaviour. MAPPA assesses the risk posed by offenders and

14. Sections 123-129, 2003 act.
15. Home Office, "Guidance on Part 2 of the Sexual Offences Act 2003", April 2004, p. 33, paragraph 15.

manages the risk posed by classifying the offenders into one of three levels of "management intervention". Those who pose the highest risk of serious harm are placed at Level Three, requiring multi-agency co-operation and oversight at a senior level with the authority to commit exceptional resources.

22. Furthermore, section 28 of the Offender Management Act 2007 has enabled the ministry of justice to pilot mandatory polygraph tests for sex offenders in the community, subject to license release from prison. The polygraph will be used alongside other processes in place to manage sex offenders to determine whether it can be used as an additional tool in the management of sex offenders.

23. During the rapporteur's visit to the United Kingdom, all her interlocutors agreed that the simple fact of having a sex offenders register would be more or less useless without the management tools described above. The importance of the risk assessment procedure was particularly emphasised.

4.3. Access to the register

4.3.1. United Kingdom

24. Under the Violent Crime Reduction Act 2006, the National Violent and Sex Offender Register (ViSOR) was introduced to support MAPPA. ViSOR comprises a database of records of those required to register with the police under the Sexual Offences Act 2003, those jailed for more than twelve months for violent offences, and unconvicted people thought to be at risk of offending. The register can be accessed by: the Police; HM Prison Service personnel; the Serious Crime Analysis Section; the Child Exploitation and Online Protection Centre; the Joint Border Operations Centre; the British Transport Police; HM Forces Service Police Crime Bureau; Probation Service areas in England and Wales; and the Scottish Criminal Justice Social Work Organisations. The register is managed by the National Policing Improvement Agency of the Home Office, and is rated at "Confidential" level in the Government Protective Marking Scheme, making it a secure system.

25. Section 140 of the Criminal Justice and Immigration Act 2008 amended the Criminal Justice Act 2003 by inserting new sections 327A and 327B into this act. These new sections place a statutory duty on MAPPA responsible authorities to consider, in every case, disclosure to members of the public of information in its possession relating to the convictions of any child sex offender being managed by it. This implements Action 3 of the Government's "Review of the Protection of Children from Sex Offenders." MAPPA responsible authorities need to be aware that under new sections 327A(2) and (3) of the Criminal Justice Act 2003, there will be a presumption that information will be disclosed where the MAPPA responsible authority has reasonable cause to believe that a child sex offender poses a risk of serious harm to any particular child or children, and the disclosure of information to a particular member of the public is necessary for the purpose of protecting the particular child or children from serious harm caused by that offender.

26. In September 2008, the Home Office began pilot schemes to increase the amount of information about particular child sex offenders that is shared with the public. Under the pilot scheme, parents, carers or guardians could request information on individuals who have contact with their children regarding previous convictions or suspicions of abuse. These pilots took place in four police areas and ended in September 2009. In the first six months of the trial alone, more than 150 parents made inquiries. Of those, 10 were given relevant information. The pilots are now being independently evaluated, and as Alan Campbell, Home Office Minister, stated: "if this concludes the pilot has been a success, the Government will consider rolling out the scheme nationally."[16] Shadow Home Secretary Chris Grayling was also supportive of the scheme, stating: "If those pilots have shown that actually it makes a difference, that it doesn't lead to vigilante-style justice, then I'd be very sympathetic and supportive of the idea that it could be extended."[17] The United Kingdom system could thus see a review of levels of public access to offenders' information once the evaluation is complete.

4.3.2. Full disclosure – United States

27. In the United States, the Congress has passed several laws that require states to implement sex offender and crimes against children registers.[18] "Megan's Law," as it is commonly known, is an amendment to a previous act, and it introduced compulsory "community notification" by providing public access to

16. National Probation Service press release, "MAPPA: beacon of best practice in public protection".
17. BBC News, "'Sarah's Law' sex offender alert scheme may be expanded", reported on 24 January 2010, http://news.bbc.co.uk/2/hi/uk_news/8477310.stm.
18. The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act 1994, the Pam Lychner Sexual Offender Tracking and Identification Act 1996, and Megan's Law 1996, all at: www.ojp.usdoj.gov/smart/legislation.htm.

information about convicted sex offenders. All US states now use sex offender registry websites to notify the public of sex offenders living in their area. However, there remain variations in the rules across states, for example in the methods of disclosure used and the type of information published. As yet, there is little to no empirical evaluation to support any assumptions that exist about the impact of Megan's Law on reoffending rates or on the number of assaults against children.

28. Representatives from both leading children's charities in the United Kingdom (Barnardo's and the NSPCC) expressed their strong reluctance towards making the register public. Indeed, they expressed a fear that this gives parents a false sense of security and may drive offenders "underground", meaning they do not register at all. Furthermore, there are reports that some offenders simply resort to inter- and intra-state movement in order to gain easier access to children in communities where they are not known. In any case, were an equivalent law introduced in a Council of Europe member state, there is a risk that the Court might find it in breach of Article 8 EHCR, as being a disproportionate interference with the right to respect for private life.

4.4. Preventing offenders from working with children and vulnerable adults

29. In the United Kingdom, the Independent Safeguarding Authority (ISA) was set up in January 2009 to help prevent unsuitable people from working with children and vulnerable adults. The ISA board of appointees assesses every person who wants to work or volunteer with vulnerable people using data gathered by the Criminal Records Bureau, including relevant criminal convictions, cautions, police intelligence and other appropriate sources. Using this information, they decide on a case-by-case basis whether each person is suited to this work. Potential employees and volunteers will need to apply to register with the ISA and their status for employers will be securely stored. Only applicants who are judged not to pose a risk to vulnerable people can be ISA-registered. Once the scheme has been fully rolled out, employers who work with vulnerable people will only be allowed to recruit people who are ISA-registered. Since October 2009, a new vetting and barring scheme has been in operation, covering all those working directly with children and vulnerable adults. There are two lists – one of staff barred from working with children and the other of those prohibited from working with vulnerable adults. It is now a criminal offence for individuals barred by the ISA to work or apply to work with children or vulnerable adults in a wide range of posts – including most National Health Service jobs and jobs in the Prison Service, education and childcare. Employers also face criminal sanctions for knowingly employing a barred individual.

4.5. Pending issues – Compatibility with the Convention

30. Regarding the particular issue of there being no review mechanism for offenders subject to an indefinite notification period, the case *R (on the application of F and Another) v. Secretary of State for the Home Department, [2009] EWCA Civ 792; [2009] WLR (D) 253* is of significance. In this Court of Appeal case, the offenders were subject to an indefinite notification period under section 82 of the 2003 act and had no mechanism for review. The first, F, was 11 when he committed various sexual offences against a small child, including rape and sexual assault. He was sentenced to thirty months' imprisonment. The second was convicted of indecent assault and was sentenced to four years in prison.

31. In July 2009, the Court of Appeal ruled that although the sex offender notification requirements serve a legitimate aim, the fact that an offender subject to the requirements indefinitely cannot have the question of whether the requirements continue to serve a legitimate purpose reviewed is incompatible with Article 8 ECHR on proportionality grounds. It was stated that this argument was even stronger in the case of young offenders than in the case of adult offenders. The Secretary of State appealed the decision in the Supreme Court of the United Kingdom on 3and 4February 2010.[19]

32. The judgment has not yet been handed down, but if the Secretary of State loses the appeal, the United Kingdom Government will have to consider implementing a review mechanism for both adults and children. If this were to occur, the rest of the system would not have to be changed. Indeed, a representative from Barnardo's (a leading United Kingdom children's charity) reported concerns to the rapporteur about the possibility of children appearing indefinitely on the register from the age of ten, and expressed the charity's belief that a mechanism for review be introduced for child offenders.

19. The title the case holds in the Supreme Court is *R (on the application of JF (by his litigation friend OF)) and Another (Respondents) v. Secretary of State for the Home Department (Appellant)*.

4.6. Effectiveness of the United Kingdom register

33. In the year ending March 2008, police recorded 53 540 sexual offences in England and Wales, representing a 7% drop over 2006-07 figures.[20] The total number of MAPPA Registered Sexual Offenders has gradually increased over the past four years, with the 2008-09 figure being 32 336, representing an increase of 3% on the previous year. The number of those who reoffend seriously has remained at around 0.5% for the past four years, and most recently in 2008-09 was 0.37% for Level 2 offences.[21]

34. The first of these figures represents a reduction in the overall number of sexual offences, which may suggest that the register is having a positive impact. However, not all of these offences attract a registration requirement and not all offences for which there is a registration requirement come within the definition of a sexual offence in these statistics. On the other hand, the small percentage of those on the register who are convicted of reoffending seriously is perhaps more indicative of the register's positive effect. Equally, the relevance of this statistic is difficult to gauge given that it will never be known whether or not the person would have reoffended at all.

35. In any event, it must be recalled that the register does not work on its own – notification requirements are just one tool in a comprehensive package of measures designed to manage sex offenders in the United Kingdom; so any statistics are not solely a reflection of the register. The Association of Chief Police Officers (ACPO) and the United Kingdom Government Home Office both emphasised to the rapporteur that the United Kingdom system was successful because of the abundance of tools that surround the register.

36. Setting aside crime statistics, the notification requirements also play an important role as an administrative tool in supervising sex offenders through storing and sharing information and intelligence on these offenders. The ACPO reported to the rapporteur that the register functions as a reminder of the whereabouts and activities of offenders and if an offender does not notify, they are well aware of this. The information stored can be used to assess the risk that the offender poses to the community and therefore manage that risk. The large amount of information stored on the register also plays a key role in helping to detect perpetrators of offences rapidly. Furthermore, compulsory registration with the ISA ensures a vetting process for those who wish to work with vulnerable persons.

37. As has already been acknowledged by the European Court, the purpose of the registration requirement "is to contribute towards a lower rate of reoffending in sex offenders, since a person's knowledge that he is registered with the police may dissuade him/her from committing further offences and since, with the help of the register, the police may be enabled to trace suspected reoffenders faster".[22]

38. Lastly, it must be noted that sex offenders registers and management systems do not replace the need for wide awareness-raising campaigns so that parents are aware of the risks and know how to recognise the signs of sexual abuse. This was emphasised to the rapporteur by a Barnardo's representative, who said that there was a need for a large public awareness campaign and increased working with parents to make them more aware of risks posed by offenders.

5. Sharing of information at European level

5.1. Justification for a Europe-wide register and associated difficulties

39. What is clear is that sex offenders sometimes continue offending and that they travel around. It was reported to the rapporteur by the Child Exploitation and Online Protection Centre that the vast majority of missing sex offenders are believed to be abroad. There are offenders who have never been prosecuted for their offences and remain in countries that, due to economic realities or cultural differences, offer the possibility of engaging in child sexual abuse. There is also some indication that United Kingdom citizens are residing in one overseas country and travelling from that country to offend in another overseas country, perhaps as a further layering of their protection from United Kingdom authorities or to isolate their offending activity from their day-to-day life. Increased co-operation between European countries is therefore imperative to prevent sex offenders from travelling from one country to another with ease.

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20. Source: Crime in England and Wales 2007-08, www.homeoffice.gov.uk/crime-victims/reducing-crime/sexual-offences/.
21. National Statistics for Multi-Agency Public Protection Arrangements Annual Reports 2008-09, www.probation.homeoffice.gov.uk/output/Page434.asp.
22. *Adamson v. the United Kingdom*, *supra*.

40. When considering the idea of a Europe-wide register, the difficulties associated with this must be addressed. The most obvious obstacle is the difference between criminal law systems in the member states. The rapporteur sent a questionnaire to national delegations as part of her inquiry in order to gain a better perspective of these disparities. The analysis of the 31 replies to the questionnaire found that different states may, for example, have different definitions relating to the same sexual offence, or to what constitutes a "sex offender" in the first place. Indeed, some countries may not even use that term. An additional concern is that the legal age of sexual consent differs according to the country, ranging from ages 13 to 18 across the states. This means, for example, that sexual intercourse with a person aged 16 is legal in the United Kingdom, but would be illegal in Ireland, where the age of sexual consent is 17. There would therefore have to be significant harmonisation of penal law across states for a Europe-wide sex offenders register to be implemented.

41. A European sex offenders register would also have to be compatible with the national legislation currently in force in each country and, in this regard, domestic laws on personal data protection may prove to be a significant hindrance (considering the fact that there are different degrees of protection).

5.2. Recommended developments

5.2.1. Information sharing

42. Overall, it is advanced that the differing systems used to manage sex offenders and, above all, the disparities in criminal laws would constitute a substantial impediment to the establishment of a Europe-wide sex offenders register. It is therefore necessary that the rapporteur consider other, more workable solutions to the issue. Firstly, the rapporteur would strongly recommend that each of the member states establish a comprehensive system to manage sex offenders in their own country. A national sex offenders register such as the United Kingdom's should be introduced (if not already in place) to form part of a wider, efficient range of measures for the management and control of sex offenders. Any such system would of course have to be in accordance with Convention rights, and proportionate and necessary for child protection or public protection. In this regard, European Court of Human Rights case law has to date consistently declared the United Kingdom system Convention compliant.

43. As well as establishing national management systems, greater and more frequent sharing of information between states is crucial to control the movement of travelling offenders. All parties who met with the rapporteur in the United Kingdom expressed some concern about the difficulty and inefficiency involved in exchanging information with other states. The rapporteur underlines that such information should be shared in compliance with the provisions of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), which secures for every individual respect for his/her rights and fundamental freedoms, and in particular his/her right to privacy, with regard to automatic processing of personal data relating to him/her.

5.2.2. Interpol

44. The rapporteur met with an Interpol representative in Lyon in December 2009 to discuss the issue of information sharing between states. During this visit, Interpol emphasised the capacity it has to store countries' information on sex offenders. Interpol also conveyed that states seemed reluctant to share information on sex offenders. Indeed, it was reported that countries are more willing to share information on drug-related crime than on sex offenders.

45. Interpol's "I-24/7" global police communications network allows all member countries' law enforcement authorities to send and receive information to any or all members via a secure Internet link. Interpol hosts a database which contains information on offenders, including known sex offenders, that has been forwarded to the General Secretariat by its member countries. Using "I-24/7", the National Central Bureau can search and cross-check data in a matter of seconds, with direct access to databases containing information on wanted persons, fingerprints, DNA profiles, etc. This information is available to law-enforcement officials in all member countries, providing the means to share crucial information on criminals and facilitate criminal investigations.

46. Interpol has three different types of notice which relate to identifying sex offenders and protecting children from such offenders:

– Green notices: these provide warnings and criminal intelligence about persons who have committed criminal offences and are likely to repeat these crimes in other countries. They are issued by Interpol when persons involved in the sexual abuse of children or the trafficking of child pornography at an international level are identified. On receiving information concerning these criminals, countries are then free to choose the appropriate course of action should they identify a person who is the subject of a

green notice wishing to enter their territory. When a green notice is sent out in respect of a paedophile or sex offender, the message is clear: if this person wants to enter the country, it is possible that he will commit sexual offences against children.

– Yellow notices: these are issued when a child is reported missing from their usual place of residence. These are only issued at the request of a member state, so it is important that the member state requests the notice if they think a missing child has been taken abroad.

– Red notices: these are issued in respect of criminals whose arrest is requested by a country with a view to extradition. They contain full details of the arrest warrant and of the offence committed.

47. All these notices can be issued on a worldwide basis in Arabic, English, French and Spanish.

48. Another of Interpol's intelligence tools is the International Child Sexual Exploitation (ICSE) image database, which allows specialised investigators to share data with colleagues across the world. Introduced in March 2009 as part of "I-24/7", the ICSE uses sophisticated image comparison software to make connections between victims and places. It enables authorised users in member countries to access the database directly and in real time, thereby providing immediate responses to queries.

49. According to Interpol, countries have a duty to their own children and to children in other countries to increase the amount and frequency of information they feed into the Interpol database. The rapporteur recommends that states make much greater use of Interpol's tools by sharing information on sex offenders via Interpol.

50. Lastly, those states who are also members of the European Union[23] can also benefit from the European Law Enforcement Agency (Europol), which is capable of storing information on sex offenders. Europol staff work closely with law enforcement agencies in all European Union member states as well as other European partner states: Albania, Bosnia and Herzegovina, Croatia, Iceland, Moldova, Norway, Switzerland, "the former Yugoslav Republic of Macedonia" and Turkey. Europol gathers, analyses and disseminates large quantities of personal data. Their partners use this input to prevent, detect and investigate offences, and to track down and prosecute those who commit them. Europol is a high-security operational centre which also functions twenty-four hours a day, seven days a week, dealing with more than 9 000 cases a year. It has been especially engaged in investigations to prevent child abuse, including child pornography on the Internet.

5.2.3. Vetting and barring in employment

51. Citizens of European countries can move relatively easily between the states both to live and work, making it particularly easy for sex offenders to move country to take up employment with access to children and vulnerable persons. In a context where information is not being effectively exchanged between countries to prevent sex offenders from gaining employment with children, this puts children at risk and undermines our ability to protect them from abuse. It was reported to the rapporteur during her visit to the United Kingdom that there is a loophole in the national vetting system: background checks carried out by the Independent Safeguarding Authority will not pick up all criminal offences committed abroad because of poor information-sharing between countries. Furthermore, an example was given to the rapporteur that it is possible for a United Kingdom convicted sex offender to move to France and work with children as an English teacher, for instance. Therefore, as one element of safe recruitment procedures, employers need to be able to access information about prospective employees, including criminal records information, to ensure that they have not been convicted of offences against children or previously barred from working with children.

52. The Council of Europe has already been active on this issue as regards children. In July 2007, it adopted its Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse,[24] which recognised the importance of ensuring that people who have committed past offences against children are not hired to work with children. In particular, Article 5, paragraph 3, provides that: "Each Party shall take the necessary legislative or other measures, in conformity with its internal law, to ensure that the conditions to accede to those professions whose exercise implies regular contacts with children ensure that the candidates to these professions have not been convicted of acts of sexual exploitation or sexual abuse of children."

23. In this context, the rapporteur also refers to the proposed directive of the European Parliament and of the Council on the European Protection Order which aim is to facilitate and enhance the protection granted to victims of crime, or possible victims of crime, who move between member states of the European Union.

24. http://conventions.coe.int/Treaty/EN/treaties/Html/201.htm, CETS No. 201.

Preventive measures outlined in the Convention include the screening, recruitment and training of people working in contact with children, making children aware of the risks and teaching them to protect themselves, as well as monitoring measures for offenders and potential offenders.

53. Despite this, some countries still do not have a formal system of disqualification from working with children or vulnerable persons at all, which states may argue would make it difficult for them to enforce disqualifications from other countries. Accordingly, it is crucial that all states introduce national vetting and barring systems akin to that operating in the United Kingdom. These should ensure that those who are deemed unsuitable for work with children and vulnerable persons cannot gain access to them through their work, in either a paid or voluntary capacity, for example as teachers, sports coaches or in care institutions. The system should make it a criminal offence for convicted sex offenders barred by the relevant authority to work or apply to work with children or vulnerable adults. Or, any person who applies for a job with children or vulnerable adults should be asked to provide a document from the police (or other relevant authority) stating that they have not been convicted of sexual offences. Such a requirement already exists in Sweden.

54. There is a pressing need to improve the exchange of information between Council of Europe member states concerning people convicted of sexual offences, in order that unsuitable people are not able to gain employment abroad with children or other vulnerable persons. Information contained in national vetting systems on sex offenders should therefore be made available abroad to ensure the safety of children and vulnerable persons. While respecting data protection, member states must pay particular attention to ensuring that any such information exchanged may be used for purposes of employment vetting for work with children and that the types of information exchanged are adequate to fulfil this purpose.

6. Conclusions

55. On the whole, there are significant shortcomings in the current European approach towards sharing information on sex offenders. Decisive action needs to be taken to ensure the effective control of sex offenders and the corresponding protection of the public.

56. Looking at the relevant case law of the European Court of Human Rights, it is clear that some of the existing systems to manage sex offenders, including a register, would appear to be compatible with the European Convention on Human Rights. At the same time, the United Kingdom experience makes it clear that a sex offenders register does not necessarily produce clear results on its own, rather it needs to be employed as part of a comprehensive package of measures to manage sex offenders.

57. Relevant United Kingdom bodies expressed a concern that a lack of co-ordination and information sharing between European states allowed certain offenders to “slip through the net”, and to cross into other countries, only to commit further offences.

58. When considering the introduction of a Europe-wide register, one must consider the practical impediments associated with the proposal. The most apparent of these is the diverging criminal laws in force from state to state; this means that reaching agreement on who is to be included in the register could prove impracticable.

59. It is therefore proposed that instead of a Europe-wide register, each state develop an efficient and comprehensive national system to manage sex offenders. The systems should include a sex offenders register, which should be supplemented by other measures such as those designed to prevent offenders travelling freely and a vetting and barring system to prevent offenders from working with children and other vulnerable people.

60. As well as developing more thorough national systems, states should also increase the quantity, the quality and regularity of key information they share on sex offenders with other countries. A way of doing this would be to feed more information on sex offenders to Interpol, who have indicated to the rapporteur that they have the capacity to act as a central database on sex offenders for European states. In this context, data protection laws have to be carefully respected.

61. Furthermore, states should share the information collected in national vetting and barring systems to ensure that sex offenders are prevented from working with children and vulnerable persons across Europe.

62. Council of Europe member states have the duty to address the danger sex offenders pose in all states and to take action to combat this threat. As was poignantly stated to the rapporteur during her visit to the United Kingdom: if, in the end, only one child is prevented from being harmed, improved co-operation between the states has been a success.