

The Sex Offenders Act 1997 - Guidance for Agencies

Section 7 RISK ASSESSMENT AND DISCLOSURE

1. This section of the guidance relates to all sex offenders required to register under the Sex Offenders Act 1997 and to other sex offenders and those suspected of such activities who are considered to present a risk to children or to vulnerable adults.

2. This section covers:

- the action which the police should take on information about convicted sex offenders received under the Sex Offenders Act 1997, and the role of local authority social work and, where relevant, housing services in that process;
- the action which the police, social work services or any other agency should take where they have concerns about a sex offender or suspected sex offender not subject to the registration requirements; and
- the very limited circumstances in which disclosure of information about a sex offender or suspected sex offender may be made to a person or people outside the police, local authority social work and, where relevant, housing services.

Definitions

3. In this section:

Initial risk assessment means the first police review of the immediately available information about an offender or suspected offender. It should be informed by any relevant information held by the local authority social work service, and carried out in consultation with them. Where the offender has been or is to become a council tenant, social work services should also seek any relevant information from the housing service. It is expected that initial risk assessments will be desk exercises only. Initial risk assessments should be carried out in all cases.

Full risk assessment means a rigorous assessment of the risk posed by an offender or suspected offender carried out in collaboration with the local authority social work service and, where relevant, the housing service and any other relevant agencies. It is expected that in most cases, a case conference or discussion would be required.

Low, medium, high risk offenders are categorised as part of the risk assessment process. All forces will use similar criteria when assessing the risk posed by an offender which will include internal (domestic arrangements) and external (outside environment) factors.

Sharing information means the process by which information about a specific offender is passed between nominated officers in the police and local authority social work and, where relevant, housing services so that the police's initial risk assessment is properly informed, and these agencies can contribute effectively to a full collaborative risk assessment. There will be circumstances where social workers or others as part of their normal duties are obliged to disclose to third parties details of an offender's history. For example, if an offender against children develops a new relationship with a mother while serving a custodial

sentence, she may need to be advised of the risks he poses. The guidance does not cover these circumstances but, because of the responsibility of the police in respect of the Sex Offenders Act, they should be consulted prior to any disclosure.

Disclosure means the passing of information in any other circumstance i.e. to allow any other body or person to contribute to a full risk assessment or to inform a person judged after such an assessment to be at specific risk from a particular offender or responsible for those at risk.

Vulnerable adults means both those who are mentally ill, have a learning disability or suffer from acquired brain damage or dementia, and those who are vulnerable in relation to particular offenders. Examples of vulnerable adults might include a member of a victim's family or identified adults targeted by the offender.

Legal Background

4. Annex A to this Section contains information about the legal context for sharing information and for disclosing information for the purpose of public protection. In general, sharing or disclosure of personal information about an individual should be the exception to a policy of confidentiality and should take place only when this is necessary to prevent significant harm to children or vulnerable adults. In almost all cases police and social work services will have to share information

with each other before a risk assessment can be carried out. In some cases, sharing information with the housing service will also be necessary. Disclosure beyond these agencies would have to be justified case by case on the basis of the harm, which it is judged might otherwise result.

OFFENDERS REGISTERED UNDER THE SEX OFFENDERS ACT 1997

Initial risk assessment

5. On receipt of the registration details about an offender, or when reviewing the risk posed by an already registered offender, the police should consider whether he may pose a risk to children or vulnerable adults.

6. The flow charts at Annex B to this Section provide a summary of the procedures which should be followed for the risk assessment process. This process will work best if informed by relevant information. The police should, in the first instance, disclose to a nominated senior officer within the relevant social work service whatever information they have about the offender. On receiving an approach from the police about a particular offender, social work services should collate all available information.

7. This should involve checking the Child Protection Register to find out whether any child is associated with the offender or living at his address. Social work services may wish to check whether he is known to other local criminal justice services, is under the supervision of a social worker, and whether there is any information held by any other social work service with whom he may have been in contact. If the offender suffers from a mental illness or disability he may be receiving community care services; if he has been convicted of an offence against his own or other local children or he has been a party in previous child protection

inquiries, the local authority may have access to additional information about him held by children and families' social workers.

8. Social work services should obtain the views of the prison social work unit and psychological service where the offender has served a custodial sentence in the last 12 months. Where the offender has been detained in hospital, the Responsible Medical Officer should be given the opportunity to contribute views if they consider this appropriate.

9. Where the offender is, has been, or is to become a council tenant, social work services should also obtain any relevant information held by the housing service. They should also ensure that the housing service is aware that a risk assessment is being carried out so that final decisions on allocating a tenancy can be informed by the outcome of the risk assessment.

10. Once the available information has been collected, the police should then, in consultation with the social work service, consider the level of risk the offender may pose.

11. Where it is decided that the offender poses a low risk, no further immediate action is required to be taken. The police should, however, monitor the offender's registration details, on at least an annual basis, to ensure that they are kept up to date. The police may need to reconsider the risk involved, in consultation with social work services, where there are any significant changes in the offender's circumstances.

Full Risk Assessment

12. Where the police consider that the offender is likely to pose a medium or high risk, a full assessment and consideration of how the risk should be managed should be carried out in collaboration with social work services. This may require a case conference or discussion involving the social work service, the housing service where relevant, and other agencies relevant for the particular case.

13. In considering what action may be necessary, it should be noted that by attempting to reduce the risk an offender poses in one area, people in another area may be put at greater risk. The agencies involved should, therefore, consider the sum of the potential effects of any decisions they may take, before choosing a particular course of action.

14. In the most serious cases, a possible outcome of an assessment might be an application for a sex offender order, under Section 20 of the Crime and Disorder Act 1998. Separate guidance on sex offender orders has been issued (Police Circular No 13/1998). It should be noted that an application for an order can only be made if the person has acted since the commencement of Section 20 on 1 December 1998, or since the conviction for the sex offence if this is later, in such a way as to give reasonable cause to believe that an order is necessary to protect the public from serious harm from that person.

15. Assessment of risk should be a collaborative effort. It is desirable that the police and social work services should reach a shared assessment of the risk and how it should be managed, and each service should ensure that any proposed course of action is made known and agreed in terms of the overall strategy. The final decision on the police response is, however, for the police themselves. Equally, it is for social work services to determine their own response in the light of all the information available.

16. The police should ensure that the results of any risk assessment are passed on to the relevant police force should the offender move elsewhere in the UK. (If a local authority housing service is asked for a reference by another authority and is aware that a risk assessment was carried out under these arrangements on the person in question, the housing service should check that the police are aware that the person is about to move.)

17. It may be helpful if local agreements could cover who should act as a liaison point for the media and public about any concerns about offenders or suspected offenders in the community, to ensure that consistent information is provided.

Protection of Information

18. In all cases, a record should be made at the time of the circumstances and grounds for any decision to share or disclose information about an offender.

19. In particular cases, officers in other departments or agencies may have to receive at least some of the information about the offender held by the police and social work service in order to participate appropriately in the risk assessment and management process. The decision on whether police information should be so disclosed is for the police alone to take. The disclosure of other information is a matter for the holder of that information, subject to the relevant legislation and other guidance.

20. Local agreements should be established between the police, social work services and other agencies for the handling of shared and disclosed information. All such information should be kept securely. Information should be checked wherever possible for accuracy and currency, and the agreements should identify who is responsible for its upkeep. Every agency involved should be aware of the need to amend any reference to an offender being subject to the notification requirements of the Act when that requirement ceases.

OTHER SEX OFFENDERS: RISK ASSESSMENT

21. Where the police have concerns about a sex offender who is not subject to the registration requirements or about a person who is suspected of such activities, they may wish to carry out a full risk assessment as indicated above, contacting social work services and any other relevant agencies as appropriate to ensure that all available information is taken into account. It should be noted that social work services may have no relevant information about such an offender or suspected offender, and may not consider that a particular child or children is at risk: in such circumstances, social work services would not be involved in the assessment process unless they wished to be. Where they did have relevant information, however, they should be involved as indicated above. In the most serious cases, and where there has been a previous conviction for a sex offence, a possible outcome of the assessment might be an application for a sex offender order under Section 20 of the Crime and Disorder Act 1998.

22. Where social work services or any other service, such as a housing authority, education authority or voluntary organisation, is concerned that an individual plans to or is about to commit a crime, they should always report this to the police who will take any action necessary to prevent crime. Where professionals have concerns about an individual which are less specific, they should consider the need for an inter-agency assessment of risk. Local authorities and the police should agree arrangements for undertaking such inter-agency assessments,

including the kinds of circumstances in which these would be useful, and the arrangements for involving other agencies and professionals as required.

DISCLOSURE TO INDIVIDUALS AT RISK, OR RESPONSIBLE FOR THOSE AT RISK

23. Following a risk assessment, there are circumstances in which the police may consider that the need to protect children and vulnerable adults will not be fulfilled by sharing or disclosing the information to the social work service or other agencies alone. Any decision to disclose further should be made carefully on a case by case basis, in consultation with the social work service and with any other relevant agencies, and taking into account a wide range of factors. These should include:

23.1 the nature and pattern of previous offending;

23.2 compliance with previous sentences or court orders;

23.3 any predatory behaviour which may indicate a likelihood of re-offending;

23.4 the probability that a further offence will be committed;

23.5 the harm such behaviour would cause;

23.6 the potential objects of the harm (and whether they are children or otherwise especially vulnerable);

23.7 the potential consequences of disclosure to the offender and their family and the need to consider whether the offender is particularly vulnerable e.g. because of mental disorder; and

23.8 the effect of further disclosure by a third party on the level of risk posed by the offender, and the potential consequences for other aspects of law and order.

24. The police will consider all alternatives to disclosure to an individual before making a decision to do so. They may consider giving the offender a warning about areas to avoid, for example if he has been observed loitering near a school. When an offender is subject to statutory supervision, because he is serving a community sentence such as a probation order, or has been released from prison or detention in hospital, the police should also discuss with the local authority whether they might use any powers they have to reduce the risk posed by the offender and therefore prevent the need to disclose information to a third party. The supervising officer may talk to the offender about ways of reducing any perceived risk. If an offender appears to be behaving in a way which increases the likelihood that he may re-offend, the supervising officer may consider the use of breach proceedings or recommend revocation of licence. The social work service may be required to exercise statutory responsibilities to support or protect children and vulnerable adults and this may also affect any decision by the police to disclose information.

25. Disclosure should be seen as part of an overall plan for managing the risk posed by an individual offender and the need to protect a child, a group of children or other vulnerable persons. There will always be a risk of legal action by an offender against the police relating to disclosure. In some circumstances it may be appropriate

to warn an offender that disclosure is to be made and hence give the offender an opportunity to take action to avoid the necessity for this. Such decisions should be based on an assessment of the seriousness of the risk posed by the offender, of displacing the offending should the offender move away, of the risk that the offender may attempt to evade registration or supervision by disappearing and any other operational considerations in respect of the management of the risk posed by the offender.

26. Some cases will require additional care in handling, for example where the offender is young or is mentally disordered. In these cases, it will be particularly important to ensure that the appropriate agencies responsible for supporting and/or supervising more vulnerable people who have committed a sex offence are consulted before action is taken.

27. When, after careful consideration, it is decided that an individual (or individuals) is at specific risk from a particular offender, disclosure may be made to that individual or to an individual with responsibility for the individual(s) judged to be at risk. Notification information should be given only to an identified individual, or individuals directly affected by the risk of harm, such as a previous victim or victim's family, an offender's new partner, or someone with responsibilities towards others for the prevention of harm, such as a headteacher or playgroup leader. Prior to any disclosure of information to a headteacher or playgroup leader, the police should liaise with a senior person within the appropriate agency with responsibility for managing such provision e.g. the Director of Education in the local authority. Not everyone to whom disclosure might be made will be managed in this way.

28. Disclosure should be made in person by a police officer and should be limited to the information necessary to minimise the risk. The police should keep a record of the circumstances and grounds for this decision and the disclosure should be supported in writing.

29. When disclosing information, the police should be prepared to give advice and guidance on how the individual should respond to the information in order to protect themselves or others and in particular whether any further action - such as guidance to parents on helping children to keep themselves safe, say no to strangers etc. - is necessary. It must also be made clear whether the information can be further disclosed - to, for example, the deputy headteacher - or not. The

individual should be encouraged to discuss the information further with the police to consider how the risk should be managed. It is essential that the police identify a contact person for the individual to provide further guidance and advice where necessary. Advice and assistance from other professional agencies should also be made available if necessary. The police should offer to put the individual in touch with Victim Support, if the individual so wishes.

30. Disclosure to an individual considered to be at risk, or responsible for those considered to be at risk, will very much be the exception to the rule and will remain a matter for the professional judgement of the police.

PROVISION OF ASSESSMENTS TO PROCURATOR FISCAL, COURTS AND CHILDREN'S REPORTER

31. Written records of the results of risk assessments carried out for any reason may be of assistance to Procurators Fiscal in considering whether to bring proceedings against an offender for non-compliance with the Sex Offenders Act,

in considering police reports submitted against offenders and in making decisions about proceedings and/or attitude to bail. Such information may also be of assistance to the court in considering bail applications as well as at the sentencing stage. When submitting a report to the Procurator Fiscal, the police should include a copy or refer to the content of any assessment of the offender which suggests that he may present a medium or high risk. Equally, where social work services have access to information about risk, they should refer to this when providing the court with pre-sentence or other reports. Social work services should also provide such information about risk to the Children's Reporter to assist his or her decision about disposal of child protection referrals, and to assist decision making by the children's hearing or the court in proof hearings.

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ANNEX A LEGAL BACKGROUND

1. The legal context within which disclosure decisions have to be taken is continually evolving. It is for the courts to give an authoritative statement of the law. This annex sets out the position as currently understood. Future judgements may throw new light on the balance between the public interest in protecting the public, particularly children and vulnerable adults, from sex offenders and in maintaining law and order, and the protection of the offender's legal rights and any duty of care to them and their families.

2. There are various areas of the law which are relevant to disclosure decisions, including:

a) the common law duty of care on the way in which agencies exercise their functions;

b) the law relating to confidentiality of information;

c) the law on data protection;

d) the European Convention on Human Rights, especially the right to the protection of private and family life; and

e) the law on defamation.

3. The police can disclose information under their common law duty of preventing or detecting crime. There has been some recent case law in England and Wales which support this. A summary of 4 cases, *Regina v Devon County Council Ex Parte L*; *Elliot v Chief Constable of Wiltshire*; *Hellewell v Chief Constable of Derbyshire*; and *Regina v North Wales Police Ex Parte AB and CD* is attached at Appendix 1. The issues which arose in these cases have not been directly considered by Scottish courts but, whilst it cannot be certain to what extent the decisions in these cases would be followed in Scotland, it is likely that Scottish courts would approach the issues on a similar basis.

4. Local authorities have general responsibilities to safeguard and promote the welfare of children in need in their areas under the Children (Scotland) Act 1995,

and to promote social welfare under the Social Work (Scotland) Act 1968. Children in need include children whose health or development has been or might be impaired without help from the local authority and this encompasses children who may be at risk from a sex offender. Inter-agency guidance on child protection sets out the responsibilities of local authorities, through social work services, to make inquiries, to take action to protect children who may be at risk of suffering harm or in need of compulsory measures of supervision, and to provide help and services to safeguard and promote their welfare.

5. Information acquired by the police under the Sex Offenders Act 1997 was intended by Parliament to be used to assist in the performance of their duties, in particular the prevention of crime as well as for the purposes of protecting children and vulnerable adults. In these circumstances, the police are not under an absolute obligation of confidentiality in relation to the information so acquired. This would apply also to information obtained by social work services and other agencies in the course of their duties. This would permit limited disclosure where it is necessary to do so in the public interest for a proper purpose.

6. Other agencies who may wish to disclose information to the police or the social work service should first establish their general legal position, including the purpose for which they hold information and whether there are any statutory or other restrictions on its disclosure. Agencies will also wish to determine whether there are any existing precedents for taking such action. Where there is any doubt, legal advice should be sought.

7. The Data Protection Act 1984 applies to computerised personal data. It requires, amongst other things, a description of the purposes for which the data are to be held and the categories of people or organisations to which the data will or may be disclosed to be registered with the Data Protection Registrar. Disclosure of data outside the terms of the register entry can be a criminal offence. A data user must also comply with a set of data protection principles in handling and disclosing data. There are some exceptions: these apply only on a case by case basis, however, and the particular circumstances must be shown to justify the action taken.

8. The Data Protection Act 1998 is not yet fully in force. The Act will extend data protection law to cover certain categories of non-computerised data. It will also extend the law by bringing statements of intentions about individuals within its scope. Registration will no longer be a control on use and disclosure (although there will be separate obligations to notify details to the Data Protection Registrar.) All disclosure of personal data will have to comply with the new set of data protection

principles unless covered by an exemption. The crime exemption in the 1984 Act is largely replicated in the Act.

9. Article 8 of the European Convention on Human Rights states-

- Everyone has the right to respect for his private and family life, his home and his correspondence.
- There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Disclosure of information about an individual to a third party without his consent is potentially a breach of Article 8 and therefore agencies must ensure that such disclosure is in accordance with the law by identifying the statutory or other power which authorises the disclosure. They must also be satisfied that disclosure is necessary for one of the reasons set out above. Disclosure of information about potential offenders will usually be for the prevention of disorder or crime or the protection of the freedoms and rights of others, but the agency will need to be able to establish that the disclosure was appropriate for that purpose and that the disclosure was only to the extent necessary to achieve the purpose.

10. The Human Rights Act 1998, which will come into force later this year, will give further effect in our domestic law to the rights and freedoms contained in the Convention (including Article 8).

11. Communicating information about another person which is untrue and likely to damage the reputation of that person is defamatory and may lead to a claim in damages. It is therefore important that the accuracy of the information about a potential offender is established before it is shared with other agencies or communicated to a third party. Particular concern needs to be taken where "soft" information is to be communicated as it is not always possible to confirm the accuracy of information based on another person's opinion. In such cases, it should be made clear when the disclosure is

made that the information is opinion and not fact. Where a person communicates information in order to discharge a duty, or in the public interest, they may be able to claim qualified privilege which is a defence to a claim of defamation. The disclosure must not, however, be an unreasonable use of the privileged occasion and the statement must not be made with malice. Where information is potentially defamatory and a person intends to rely on qualified privilege, it is essential that they take appropriate legal advice.

12. The Rehabilitation of Offenders Act 1974 provides that after varying periods of time ex-offenders become rehabilitated and their convictions (other than those over two and a half years imprisonment) spent. When a conviction becomes spent, it does not have to be disclosed other than in specified circumstances.

13. The Act seeks to restrict the disclosure of the details of spent convictions. There are both civil and criminal sanctions against the unlawful dissemination of spent convictions. A malicious reference to a spent conviction can give rise to an action for damages and it is a criminal offence to disclose a spent conviction otherwise than in the course of official duties. However, a police officer, local authority social worker or court official would not commit an offence by disclosing spent convictions in the ordinary course of their work to persons who clearly have a lawful or proper use for them.

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APPENDIX I TO ANNEX A

RELEVANT LEGAL JUDGEMENTS

Hellewell v Chief Constable of Derbyshire. The police had circulated a photograph taken in custody of a recidivist shoplifter to shopkeepers in its area. The Court

found that whilst a breach of confidence might be claimed in relation to photographs taken at police stations without consent, the police would be able to plead a public interest defence where the photograph had been used reasonably to prevent or detect crime, investigate alleged offences, apprehend suspects, etc. In this case, the police were found to have acted in good faith for the prevention/detection of crime and had only given the photograph a limited circulation; namely to those who had a reasonable need to make use of it.

R v North Wales Police ex parte AB & CD. The applicants, a married couple with convictions for serious sexual offences, challenged the decision of North Wales Police to inform the owner of a caravan site of their residence. The Court held that although there is a general assumption that the police should not disclose information about offenders to third parties, they could do so in order to prevent crime or to alert members of the public to an apprehended danger; in these circumstances it was right for the police to make such limited disclosure as was judged necessary to achieve this purpose. However, the judgement said that blanket disclosure policies are objectionable and that any decision to disclose must depend upon a careful consideration of the facts of the case, the nature of previous offending and the risk of further such behaviour. The Court also considered that disclosure would not contravene Article 8 of the European Convention on Human Rights (ECHR) (right to respect for privacy and family life) where disclosure was made in good faith in the exercise of professional judgement and limited to what was reasonably necessary. It is worth noting that the Court did not suggest that a statutory framework was necessary to govern disclosure; its findings were not restricted to the handling of disclosure by the police; and the principles put forward in evidence by the Home Office were endorsed. These were: that there is a general presumption that information should not be disclosed, such a presumption being based on a recognition of (a) the potentially serious effect on the ability of convicted people to lead a normal life, (b) the risk of violence to such people, and (c) the risk that disclosure might drive them underground. However, there is a strong public interest in ensuring that the police are able to disclose information about offenders where that is necessary for the prevention or detection of crime, or for the protection of young or other vulnerable people. Each case should be considered carefully on its particular facts, assessing the risk posed by the individual offender the vulnerability of those who may be at risk and the impact of disclosure on the offender. In making such assessment, the police should normally consult other relevant agencies (such as social work and/or the Probation Service). Clearance at the highest level should be obtained before disclosure is made. An appeal to the Court of Appeal (*R v North Wales Police, Home Secretary, and NACRO ex parte AB & CD*), confirmed that the police can disclose information about sex offenders to third parties where they consider them to be a risk to children or others. However, the appeal judgement accepted that where practical, those on whom the disclosure is being considered should have the opportunity to challenge the information on which the decision was based. Wherever possible, this should be done as part of the assessment of the accuracy and currency of the risk assessment. The effect that knowledge that disclosure was being considered should also be taken into account during the risk assessment process.

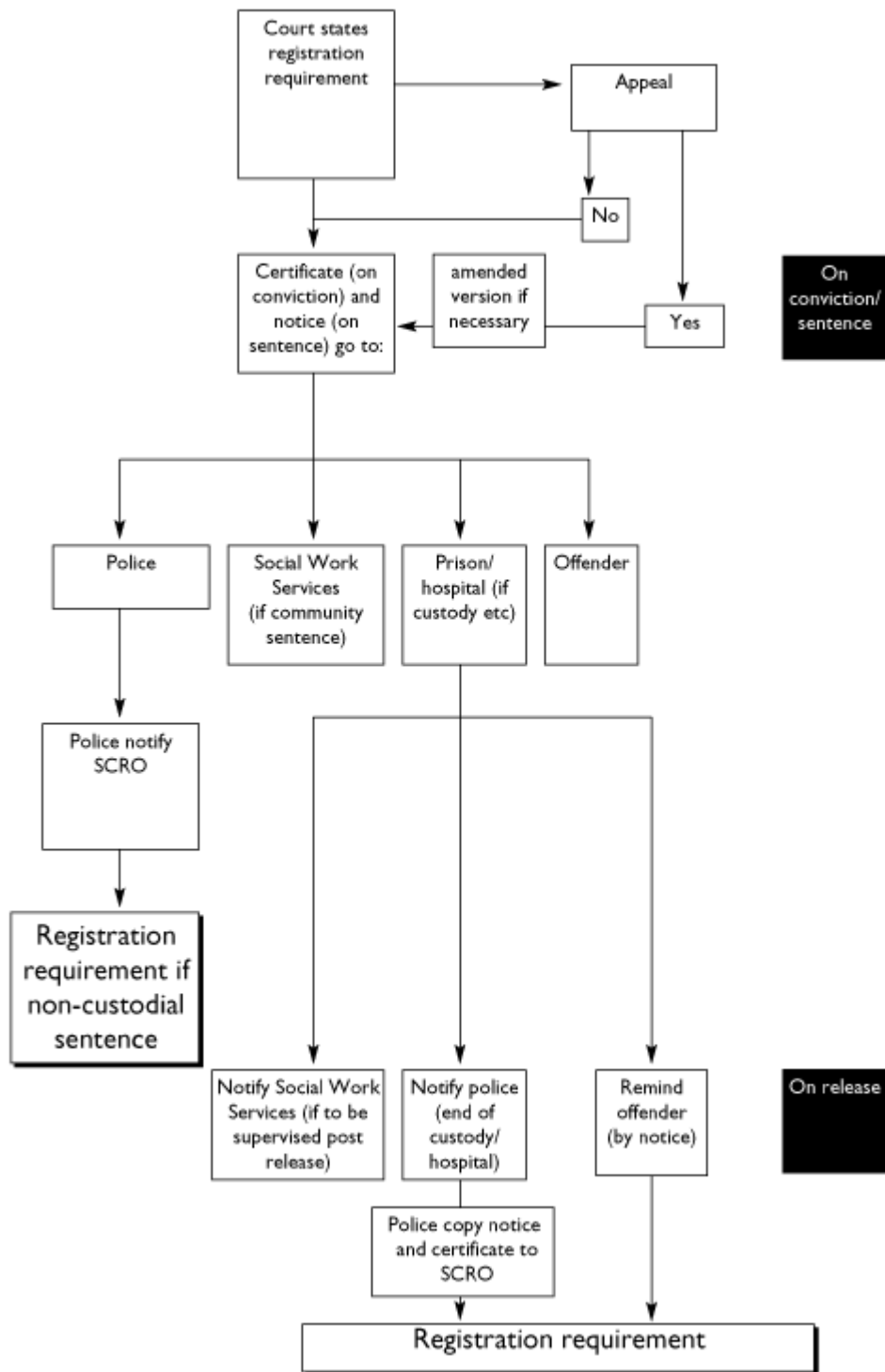
R v Devon County Council ex parte L. Social workers passed on allegations that a man had sexually abused a child in one household to two subsequent households with children into which he moved. As a result, the alleged abuser had to keep moving. He took the Council to judicial review as employers of the social workers. The Court held that the social workers' overriding duty was the protection of children. Although the alleged abuser had not been prosecuted, they honestly believed on reasonable grounds that he had abused a child and was likely to do so again. In those circumstances they were right to inform other families

vulnerable to abuse of their suspicions. The Court concluded that in balancing adequate protection for the child and fairness to an adult, the interests of the adult may have to be placed second to the needs of the child. The case did not directly concern police officers and turned to some degree on social workers' statutory duty to protect children.

Elliot v Chief Constable of Wiltshire. A police officer, for dubious motives, disclosed information about the criminal convictions of a journalist (some of which was true and some false) to the editor of the journalist's paper. The Court held that there was no general duty of confidentiality attaching to convictions which had been pronounced in open court. Subject to the provisions of the Data Protection and Rehabilitation of Offenders Acts, the police owed no duty of confidentiality to offenders, although on the facts of the particular case the police officer could be liable in tort for misfeasance in a public office.

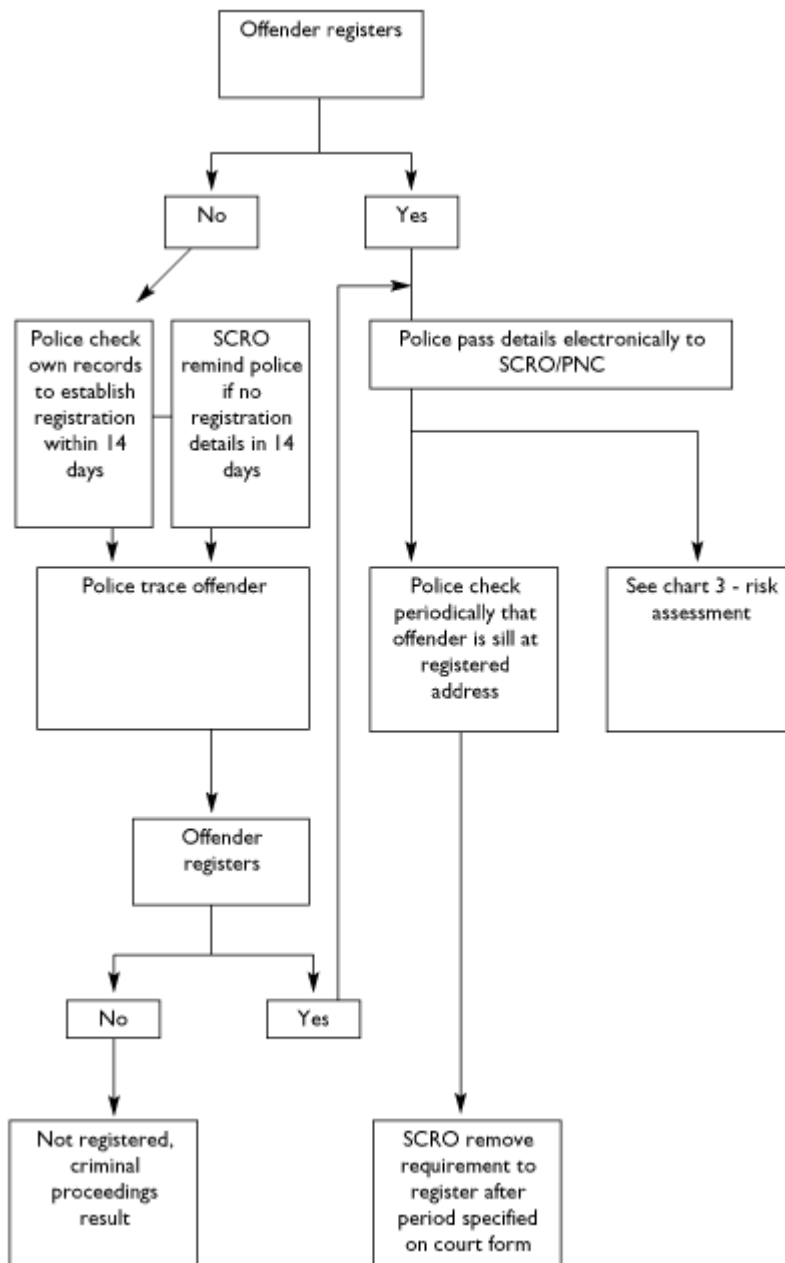
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ANNEX B Flow Chart 1 - pre-registration (for those convicted after 1 September 1997)



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Flow Chart 2 - Registration



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Flow Chart 3 - Risk Assessment

