

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Protection from sexual harm and violence

Schedule 5: Amendments to Parts 2 and 3 of the Sexual Offences Act 2003

265. *Paragraph 2* inserts new sections 103A to 103K into Part 2 of the Sexual Offences Act to make provision for the sexual harm prevention order (“SHPO”). This will be a civil preventative order designed to protect the public from sexual harm. The order will be available in England and Wales and replaces the SHPO and the FTO (in England and Wales).
266. New section 103A sets out who may apply and the grounds for an order. A court may make a SHPO when it deals with a person in respect of an offence listed in Schedule 3 or Schedule 5 to the Sexual Offences Act, or, in the case of an offender lacking capacity, deals with that offender in respect of a finding relating to such an offence. A magistrates’ court (or youth court, where the defendant is under 18) may make a SHPO when an application for such an order is made to it by a chief officer of police or the Director General of the NCA in respect of a person. To make an order, the court must be satisfied that:
- the person has been dealt with by a court in respect of an offence listed in Schedule 3¹ (other than at paragraph 60) or at Schedule 5 to the Sexual Offences Act; or has been dealt with by a court abroad in respect of an act which was an offence under the law of that territory and which would, if committed in any part of the United Kingdom, have constituted an offence listed in Schedule 3 (other than at paragraph 60) or at Schedule 5; and
 - the person’s behaviour, since the date on which they were first dealt with in this way, means it is necessary to make the order for the purpose of:
 - protecting the public or any particular members of the public from sexual harm from the defendant (the test for the grant of a SOPO is “serious sexual harm”); or
 - protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom.
267. The order can include any prohibition the court considers necessary for this purpose, including the prevention of foreign travel to the country or countries specified in the order (or to all foreign countries, if that is what the order provides), as set out in new

¹ If a person is convicted, cautioned or subject to certain other findings in respect of an offence listed in Schedule 3, the person becomes subject to the notification requirements of Part 2 of the Sexual Offences Act.

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section 103C. Where the order prevents the person from any travel outside the UK, they must surrender their passport to the police for the duration of this prohibition (new section 103D(4)). Where the person is not a registered sex offender, the order makes them subject to the notification requirements for registered sex offenders (as set out in Part 2 of the Sexual Offences Act) for the duration of the order. If the person is a registered sex offender who would, if not for the order, cease to be subject to the notification requirements, they will remain subject to the requirements for the duration of the order (new section 103G).

268. Where the application is made by the police, the court is required to make an order subjecting the defendant to the notification requirements of Part 2 of the Sexual Offences Act, even if there is no separate application for such an order, if the applicant invites the court to do so and the relevant conditions are met (new section 103G(6)). There is a corresponding provision in the case of an application for an interim sexual harm prevention order, although here the court has a power and not a duty to make a notification order (new section 103G(7)).
269. New section 103C(2) provides that an order will last a minimum of five years and has no maximum period (with the exception of any foreign travel restriction which, if applicable, has a maximum duration of five years but may be renewed, see new section 103D(1) and (3)).
270. New section 103I provides that breach of an order will be a criminal offence with a maximum penalty of five years' imprisonment or an unlimited fine, or both.
271. New section 103F allows the police to apply for an interim sexual harm prevention order where an application has been made for a full order. In appropriate cases, this enables the court to place prohibitions on the person (and results in their becoming subject to the notification requirements) pending the full application for the order being determined.
272. New section 103E provides that a court can vary, renew, or discharge an order upon application from the person in respect of whom the order was made ("the defendant") or the police. An order cannot be discharged before the end of five years from the date the order was made without the consent of the defendant and the police, with the exception of an order only containing foreign travel prohibitions (new section 103E(7) and (8)).
273. The defendant may appeal against the making of an order (new section 103H).
274. New section 103J requires the Secretary of State (in practice, the Home Secretary) to issue guidance to chief officers of police and the Director General of the NCA in relation to their exercise of powers with regard to sexual harm prevention orders.
275. New section 103K provides for rules of court to be made to enable linked applications for orders involving individuals aged under 18 and other individuals aged 18 or over to be heard together in the youth court, where the youth court considers this to be in the interests of justice. It also provides for rules of court to be made in relation to individuals who reach the age of 18 after proceedings have begun, including rules prescribing circumstances in which proceedings may or must remain in the youth court and rules about the transfer of proceedings to the magistrates' court.
276. *Paragraph 4* inserts new sections 122A to 122K into Part 2 of the Sexual Offences Act to make provision for the sexual risk order ("SRO"). This will be a civil preventative order designed to protect the public from sexual harm. The order will be available in England and Wales and replaces the risk of sexual harm order (in England and Wales). The person concerned ("the defendant") may or may not have a conviction for a sexual (or any other) offence.
277. New section 122A sets out who may apply for such an order, the grounds on which it can be made and its effect. The order will be available to the police and NCA on application to a magistrates' court in relation to a defendant who has done an act of a

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sexual nature and, as a result, the police or NCA have reasonable cause to believe that an order is necessary to:

- protect the public or any particular members of the public from harm from the defendant; or
- protect children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the defendant outside the United Kingdom.

278. The court may make an order if it is satisfied that the defendant has done an act of a sexual nature as a result of which it is necessary to make the order for one or both of these purposes. The SRO differs from the existing RoSHO in that it can be made after the defendant has committed one such act, whereas a RoSHO may only be made following two acts.
279. The order can include any prohibition the court considers necessary for this purpose, including the prevention of foreign travel to the country or countries specified in the order, as set out in new section 122C. Where the order prevents the defendant from any travel outside the UK, they must surrender their passport to the police for the duration of this prohibition (new section 122C(4)).
280. New section 122F provides that a defendant subject to an order or an interim order is required to notify to the police, within three days, their name and address (including any subsequent changes to this information).
281. New section 122A(7)(b) provides that an order will last a minimum of two years and has no maximum period (with the exception of any foreign travel restriction which expires after a maximum of five years, unless renewed). Breach of an order will be a criminal offence with a maximum penalty of five years' imprisonment or an unlimited fine, or both (new section 122H). Breach of an order also results in the defendant becoming subject to the notification requirements for registered sex offenders (as set out in the Sexual Offences Act) for the remaining duration of the order (new section 122I).
282. New section 122E allows the police or NCA to apply for an interim sexual harm prevention order where an application has been made for a full order. This enables prohibitions to be placed on the defendant's behaviour and to ensure that they will be subject to the notification requirements pending the full order being determined.
283. New section 122D provides that a court can vary, renew or discharge an order upon the application of the defendant or the police. An order cannot be discharged before the end of two years from the date the order was made without the consent of the defendant and the police, with the exception of an order containing only foreign travel prohibitions.
284. The defendant may appeal against the making of an order (section 122G).
285. New section 122J requires the Secretary of State to issue guidance to chief officers of police and the Director General of the NCA in relation to their exercise of powers with regard to sexual risk orders.
286. New section 122K provides for rules of court to be made to enable linked applications for orders involving individuals aged under 18 and other individuals aged 18 or over to be heard together in the youth court, where the youth court considers this to be in the interests of justice. It also provides for rules of court to be made in relation to individuals who attain the age of 18 after proceedings have begun, including rules prescribing circumstances in which proceedings may or must remain in the youth court and rules about the transfer of proceedings to the magistrates' court.
287. The two new orders will extend to England and Wales, where the existing SOPO, RoSHO and FTO will be repealed (*paragraphs 3 and 5*). *Paragraph 6* inserts new sections 136ZA to 136ZD into Part 2 of the 2003 Act. Any prohibitions imposed by one of the new orders will by virtue of new section 136ZA be enforceable by prosecution throughout the United Kingdom, unless it is expressly confined to a specific locality.

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The effect of new section 136ZB is that an order made in one part of the United Kingdom will revoke a corresponding order made in a different part of the United Kingdom, except where the court orders otherwise. New sections 136ZC and ZD enable a court in Northern Ireland to vary a SHPO or SRO made in England and Wales, where the individual subject to the order now resides in or is intending to come to Northern Ireland.

288. *Paragraph 7* amends section 137 of the Sexual Offences Act. At present, service courts have powers in respect of the sexual offences prevention order, which is replaced by the SHPO. Section 137 is amended so as to make provision for a service court to make a sexual harm prevention order in respect of an individual who has been dealt with by that court. A service court may not make an order if it did not deal with the related conviction nor may it make an order on the application of the police or NCA. A service court may, on the application of a provost martial or the person in respect of whom the order was made, vary, renew, or discharge a SHPO if the defendant is subject to service law or service discipline at the time of the application (*paragraph 7(3)*).