

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Protection from sexual harm and violence

Section 113: Sexual harm protection orders and risk of sexual harm orders, etc

263. *Subsection (1)* introduces Schedule 5. This makes amendments to Part 2 of the Sexual Offences Act 2003, which provides for the use of civil orders to prevent sexual harm.
264. *Subsection (2)* amends section 142 of the Sexual Offences Act, which sets out the extent of the provisions of that Act. The effect is that:
- sexual offences prevention orders and foreign travel orders, which cease to be part of the law of England and Wales, continue to be part of the law of Scotland and Northern Ireland;
 - risk of sexual harm orders, which likewise cease to be part of the law of England and Wales, continue to be part of the law of Northern Ireland (there is corresponding legislation for Scotland in the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005);
 - the new orders are part of the law of England and Wales;
 - the courts in Northern Ireland may vary a sexual harm prevention order or sexual risk order made in England and Wales, where the individual subject to the order now resides in or is intending to come to Northern Ireland (see also [paragraph 6](#) of Schedule 5).

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:

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- 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 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)).

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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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 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.

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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. 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)*).

Section 114: Saving and transitional provisions

289. *Subsection (1)* defines a SOPO, FTO, or RoSHO as an “existing order”, sexual harm prevention order or sexual risk order as a “new order” and a restraining order or a sex offender order as an “old order”. The “old orders” are ones made under legislation repealed by the Sexual Offences Act.
290. *Subsection (2)* provides that the repeal or amendments by this Act do not apply to an existing order made, an application for an existing order or anything done in connection with such an order before the commencement of the provisions in this Act for the new orders.
291. The effect of *subsection (3)* is to allow any “old orders” that are still in effect to be varied, renewed or discharged, and to allow a breach of any such order to be prosecuted. This is necessary because of the repeal by the Act of provisions of the Sexual Offences Act that have that effect.
292. *Subsection (4)* prevents the variation of SOPOs, FTOs, RoSHOs and old orders to extend their duration on or after the date the new orders come into force.

293. *Subsection (5)* provides that five years after the new orders come into force, the provisions in any SOPO or RoSHO which continues to have effect will be treated as if they were provisions in a new order.

Section 115: Closure powers in respect of premises used for child sexual exploitation

294. *Subsection (1)* introduces Schedule 6, which makes amendments to Part 2A of the Sexual Offences Act to extend the closure powers it contains so that these are available in respect of a wider range of child sex offences.
295. *Subsection (2)* ensures that that the closure powers, as amended, can be used in respect of offences committed before, on or after the section coming into force.

Schedule 6: Amendments to Part 2A of the Sexual Offences Act 2003

296. *Schedule 6* makes amendments that extend existing powers in Part 2A of the Sexual Offences Act to provide for the temporary closure of premises used for child sexual exploitation. The existing closure power in Part 2A relates to prostitution and child pornography offences only. Schedule 6 makes them available in relation to premises which are used for activities related to other specified child sex offences.
297. *Paragraph 2* amends section 136A of the Sexual Offences Act to specify child sex offences for the purpose of the closure powers. A specified child sex offence is defined by reference to the offences in the Sexual Offences Act. These include specific child sex offences in sections 5 to 13 of that Act, offences relating to indecent images of children under the Protection of Children Act 1978 and other sexual offences in which the victim is aged under 18 (including rape, sexual assault, abuse of position of trust and pornography).
298. *Paragraph 2(6)* inserts a new subsection (5A) into section 136A of the 2003 Act, which provides that the closure powers can be used at any time that the premises are being used to commit a specified offence or for activities intended to arrange or facilitate the commission of a specified offence.
299. *Paragraph 4* inserts new section 136BA into the Sexual Offences Act, which sets out the conditions that need to be met for the use of closure powers in respect of premises used for child sexual exploitation.
300. New section 136BA enables a police officer of at least the rank of superintendent to authorise the issue of a closure notice where three conditions are met:
- i. the officer has reasonable grounds for believing that in the past three months the premises were used for activities related to a specified child sex offence, or the premises are likely to be used for such activities;
 - ii. the officer has reasonable grounds for believing that the making of a closure order is necessary to prevent the premises being used for such activities; and
 - iii. the officer is satisfied that reasonable efforts have been made to consult the local authority for the area in which the premises are situated, and to establish the identity of any residents or persons who have control of or responsibility for or an interest in the premises. In cases of urgency, where it is not possible to consult the local authority before a closure notice is issued, the authority must be consulted as soon as possible after the closure notice has been issued.
301. Subsections (8) to (10) of new section 136BA set out further matters relating to the issue of a notice; these include that it can be given orally or in writing and that the Secretary of State may by regulations specify premises or descriptions of premises to which this section does not apply.

302. *Paragraph 6* makes consequential amendments to sections 136D of Part 2A of the Sexual Offences Act. *Paragraph 6(3)* inserts new subsection (7A) into Section 136D of the Sexual Offences Act, which provides that the magistrates' court will be able to make a closure order in respect of premises in relation to which a closure notice has been issued if, amongst other things, it is satisfied that during the preceding three months the premises were used for activities related to a specified child sex offence, or that the premises are likely to be used for such activities.
303. *Paragraphs 7 to 10* make consequential amendments to sections 136H to 136J and section 136O of the Sexual Offences Act.
304. Whilst section 184(3)(b) of the Act provides for section 115 and Schedule 6 to extend to England, Wales and Northern Ireland, the effect of *paragraph 11*, which amends section 136R of the Sexual Offences Act, is to narrow the application of the revised closures powers to premises in England and Wales.

Section 116: Information about guests at hotels believed to be used for child sexual exploitation

305. *Subsection (1)* confers a power on a police officer, of at least the rank of inspector, to serve a notice on the owner, operator or manager of a hotel that the officer reasonably believes has been or will be used for the purposes of child sexual exploitation or conduct preparatory to or connected with it. For the purposes of section 116, "child sexual exploitation" is defined with reference to a range of offences set out in *subsection (8)*, for example, rape, abuse of children through prostitution and pornography and abuse of a position of trust.
306. *Subsection (2)* specifies the matters which must be contained in the notice. These include an explanation of the information that a constable may require the person issued with a notice to provide, avenues of appeal against a notice, and the consequences of failure to comply. The notice must also specify the period for which it has effect, which, under *subsection (3)*, must be no more than six months.
307. *Subsection (4)* provides that a constable may require a recipient of the notice to provide the information described in *subsection (5)*. This is restricted to the names and addresses of guests and other prescribed information that can be obtained readily from guests themselves. The other prescribed information may be specified in regulations made by the Secretary of State (subject to the affirmative resolution procedure). *Subsection (6)* provides that any such requirement must be in writing and specify both the time period to which it relates and when the information is to be provided.

Section 117: Appeals

308. *Subsection (1)* confers a right of appeal to the magistrates' court on a person issued with a notice. Any appeal must be brought within 21 days of the date of issue of a notice (*subsection (2)*).
309. *Subsection (3)* has the effect that any requirement imposed by the notice does not have effect while the appeal is outstanding.
310. *Subsection (4)* prescribes that the court may quash the notice, modify the notice or dismiss the appeal on hearing an appeal.

Section 118: Offences

311. *Subsections (1) and (2)* make it an offence to fail without reasonable excuse to comply with a requirement in notice, which includes providing in response to a notice incorrect information which the defendant either (i) fails to take reasonable steps to verify or (ii) knows to be incorrect. However, *subsection (3)* provides that an offence is not committed if there were no steps that the person could reasonably have taken to verify the information or to have it verified.

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312. *Subsection (4)* provides that a person guilty of an offence under this section is liable on summary conviction to a maximum penalty of a level 4 fine (currently up to £2,500).

Section 119: Violent offender orders

313. *Subsection (3)* inserts into section 99 of the Criminal Justice and Immigration Act 2008 the offence of murder overseas as an offence which may form the basis on which a VOO may be sought.
314. *Subsection (1)* inserts into section 98 of the Criminal Justice and Immigration Act 2008 the power for the Secretary of State to prescribe specified offences by order (subject to the affirmative resolution procedure (*subsection (2)*)).