Sexual Offences Act 2003

2003 CHAPTER 42

PART 2

NOTIFICATION AND ORDERS

Risk of sexual harm orders

123 Risk of sexual harm orders: applications, grounds and effect

(1) A chief officer of police may by complaint to a magistrates' court apply for an order under this section (a "risk of sexual harm order") in respect of a person aged 18 or over ("the defendant") who resides in his police area or who the chief officer believes is in, or is intending to come to, his police area if it appears to the chief officer that—

(a) the defendant has on at least two occasions, whether before or after the commencement of this Part, done an act within subsection (3), and

(b) as a result of those acts, there is reasonable cause to believe that it is necessary for such an order to be made.

(2) An application under subsection (1) may be made to any magistrates' court whose commission area includes—

(a) any part of the applicant's police area, or

(b) any place where it is alleged that the defendant acted in a way mentioned in subsection (1)(a).

(3) The acts are—

(a) engaging in sexual activity involving a child or in the presence of a child;

(b) causing or inciting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual;

(c) giving a child anything that relates to sexual activity or contains a reference to such activity;

(d) communicating with a child, where any part of the communication is sexual.

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(4) On the application, the court may make a risk of sexual harm order if it is satisfied that—
  (a) the defendant has on at least two occasions, whether before or after the commencement of this section, done an act within subsection (3); and
  (b) it is necessary to make such an order, for the purpose of protecting children generally or any child from harm from the defendant.

(5) Such an order—
  (a) prohibits the defendant from doing anything described in the order;
  (b) has effect for a fixed period (not less than 2 years) specified in the order or until further order.

(6) The only prohibitions that may be imposed are those necessary for the purpose of protecting children generally or any child from harm from the defendant.

(7) Where a court makes a risk of sexual harm order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

124 Section 123: interpretation

(1) Subsections (2) to (7) apply for the purposes of section 123.

(2) "Protecting children generally or any child from harm from the defendant" means protecting children generally or any child from physical or psychological harm, caused by the defendant doing acts within section 123(3).

(3) "Child" means a person under 16.

(4) "Image" means an image produced by any means, whether of a real or imaginary subject.

(5) "Sexual activity" means an activity that a reasonable person would, in all the circumstances but regardless of any person's purpose, consider to be sexual.

(6) A communication is sexual if—
  (a) any part of it relates to sexual activity, or
  (b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider that any part of the communication is sexual.

(7) An image is sexual if—
  (a) any part of it relates to sexual activity, or
  (b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider that any part of the image is sexual.

(8) In this section, as it applies to Northern Ireland, subsection (3) has effect with the substitution of " 17 " for "16".

125 RSHOs: variations, renewals and discharges

(1) A person within subsection (2) may by complaint to the appropriate court apply for an order varying, renewing or discharging a risk of sexual harm order.

(2) The persons are—

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(a) the defendant;
(b) the chief officer of police on whose application the risk of sexual harm order was made;
(c) the chief officer of police for the area in which the defendant resides;
(d) a chief officer of police who believes that the defendant is in, or is intending to come to, his police area.

(3) Subject to subsections (4) and (5), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the risk of sexual harm order, that the court considers appropriate.

(4) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting children generally or any child from harm from the defendant (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).

(5) The court must not discharge an order before the end of 2 years beginning with the day on which the order was made, without the consent of the defendant and—
(a) where the application is made by a chief officer of police, that chief officer, or
(b) in any other case, the chief officer of police for the area in which the defendant resides.

(6) Section 124(2) applies for the purposes of this section.

(7) In this section "the appropriate court" means—
(a) the court which made the risk of sexual harm order;
(b) a magistrates' court for the area in which the defendant resides; or
(c) where the application is made by a chief officer of police, any magistrates' court whose commission area includes any part of his police area.

126 Interim RSHOs

(1) This section applies where an application for a risk of sexual harm order ("the main application") has not been determined.

(2) An application for an order under this section ("an interim risk of sexual harm order") —
(a) may be made by the complaint by which the main application is made, or
(b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.

(3) The court may, if it considers it just to do so, make an interim risk of sexual harm order, prohibiting the defendant from doing anything described in the order.

(4) Such an order—
(a) has effect only for a fixed period, specified in the order;
(b) ceases to have effect, if it has not already done so, on the determination of the main application.

(5) The applicant or the defendant may by complaint apply to the court that made the interim risk of sexual harm order for the order to be varied, renewed or discharged.

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127 RSHOs and interim RSHOs: appeals

(1) A defendant may appeal to the Crown Court—
- (a) against the making of a risk of sexual harm order;
- (b) against the making of an interim risk of sexual harm order; or
- (c) against the making of an order under section 125, or the refusal to make such an order.

(2) On any such appeal, the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.

(3) Any order made by the Crown Court on an appeal under subsection (1)(a) or (b) (other than an order directing that an application be re-heard by a magistrates' court) is for the purpose of section 125(7) or 126(5) (respectively) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court).

128 Offence: breach of RSHO or interim RSHO

(1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by—
- (a) a risk of sexual harm order; or
- (b) an interim risk of sexual harm order.

(2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

(3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge.

129 Effect of conviction etc. of an offence under section 128

(1) This section applies to a person (“the defendant”) who—
- (a) is convicted of an offence under section 128;
- (b) is found not guilty of such an offence by reason of insanity;
- (c) is found to be under a disability and to have done the act charged against him in respect of such an offence; or
- (d) is cautioned in respect of such an offence.

(2) Where —
- (a) a defendant was a relevant offender immediately before this section applied to him, and
- (b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the relevant order (as renewed from time to time) has effect,

the defendant remains subject to the notification requirements.

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(3) Where the defendant was not a relevant offender immediately before this section applied to him—

(a) this section causes the defendant to become subject to the notification requirements of this Part from the time the section first applies to him until the relevant order (as renewed from time to time) ceases to have effect, and

(b) this Part applies to the defendant, subject to the modification set out in subsection (4).

(4) The "relevant date" is the date on which this section first applies to the defendant.

(5) In this section "relevant order" means—

(a) where the conviction, finding or caution within subsection (1) is in respect of a breach of a risk of sexual harm order, that order;

(b) where the conviction, finding or caution within subsection (1) is in respect of a breach of an interim risk of sexual harm order, any risk of sexual harm order made on the hearing of the application to which the interim risk of sexual harm order relates or, if no such order is made, the interim risk of sexual harm order.

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