

## SEXUAL OFFENCES ACT 2003

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### EXPLANATORY NOTES

#### COMMENTARY ON SECTIONS

#### **Part 2: Notification and Orders**

#### *Section 116: Section 114: qualifying offenders*

240. *Section 116* defines “qualifying offenders” for the purposes of a foreign travel order. *Subsection (1)* states that a “qualifying offender” is a person convicted of an offence listed at *subsection (2)*, or found not guilty of it by reason of insanity, or found to be under a disability and to have done the act charged in respect of it, or cautioned in respect of it..
241. *Subsection (2)(a)* lists a number of offences from Schedule 3 that deal with taking, making and distributing indecent photographs, or pseudo-photographs, of children under 16. *Subsection (2)(b)* refers to the offence of trespassing with intent to commit a sexual offence, where the intended offence was against a person under 16. *Subsection (2)(c)* refers to service offences which correspond to certain civilian sexual offences listed in Schedule 3. *Subsection (2)(d)* refers to an offence within any other paragraph of Schedule 3, where the victim was under 16.
242. *Subsection (3)* provides that a person also becomes a ‘qualifying offender’ if he is convicted of a ‘relevant offence’ committed outside the UK, or found not guilty of such an offence by reason of insanity, or found to have been under a disability and to have done the act charged in respect of such an offence, or cautioned in respect of such an offence. Whether he was so dealt with before or after the commencement of this Part of this Act is irrelevant.
243. A ‘relevant offence’ in this context is defined in *subsection (4)* as an act that was an offence in the country where it was committed, and which would have fallen within *subsection (2)* had it been committed in any part of the United Kingdom.
244. *Subsection (5)* provides that if the law of the foreign country in which an act is committed provides that it is to be punishable, then that act is an offence under the law of that country, however it is described in that law.
245. *Subsection (6)* and *subsection (7)* relate to the procedures to be adopted in satisfying the court that an act committed in a country other than the UK would have constituted an offence within *subsection (2)* if it had been done in any part of the UK. *Subsection (6)* provides that, unless the defendant serves a notice on the prosecution, (in the manner specified), requesting that the prosecution proves this to be the case, it will be assumed that the act would have constituted an offence within *subsection (2)* if done in any part of the UK. *Subsection (7)* permits the court to allow the defendant to require such proof from the prosecution even if he has failed to serve a notice as required by *subsection (6)*.