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Sexual Offences Act 2003

2003 CHAPTER 42

PART 1

SEXUAL OFFENCES

Rape

1 Rape

(1) A person (A) commits an offence if—
- (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,
- (b) B does not consent to the penetration, and
- (c) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Assault

2 Assault by penetration

(1) A person (A) commits an offence if—
- (a) he intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else,
- (b) the penetration is sexual,
- (c) B does not consent to the penetration, and
- (d) A does not reasonably believe that B consents.

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(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

3 Sexual assault

(1) A person (A) commits an offence if—
- (a) he intentionally touches another person (B),
- (b) the touching is sexual,
- (c) B does not consent to the touching, and
- (d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) 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 10 years.

Causing sexual activity without consent

4 Causing a person to engage in sexual activity without consent

(1) A person (A) commits an offence if—
- (a) he intentionally causes another person (B) to engage in an activity,
- (b) the activity is sexual,
- (c) B does not consent to engaging in the activity, and
- (d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section, if the activity caused involved—
- (a) penetration of B's anus or vagina,
- (b) penetration of B's mouth with a person's penis,
- (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or
- (d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(5) Unless subsection (4) applies, a person guilty of an offence under this section is liable—

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(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;
(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Rape and other offences against children under 13

5 Rape of a child under 13

(1) A person commits an offence if—
(a) he intentionally penetrates the vagina, anus or mouth of another person with his penis, and
(b) the other person is under 13.

(2) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

6 Assault of a child under 13 by penetration

(1) A person commits an offence if—
(a) he intentionally penetrates the vagina or anus of another person with a part of his body or anything else,
(b) the penetration is sexual, and
(c) the other person is under 13.

(2) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

7 Sexual assault of a child under 13

(1) A person commits an offence if—
(a) he intentionally touches another person,
(b) the touching is sexual, and
(c) the other person is under 13.

(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 14 years.

8 Causing or inciting a child under 13 to engage in sexual activity

(1) A person commits an offence if—
(a) he intentionally causes or incites another person (B) to engage in an activity,
(b) the activity is sexual, and
(c) B is under 13.

(2) A person guilty of an offence under this section, if the activity caused or incited involved—

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(a) penetration of B's anus or vagina,
(b) penetration of B's mouth with a person's penis,
(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or
(d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(3) Unless subsection (2) applies, 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 to a fine not exceeding the statutory maximum or both;
(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

Child sex offences

9 Sexual activity with a child

(1) A person aged 18 or over (A) commits an offence if—
(a) he intentionally touches another person (B),
(b) the touching is sexual, and
(c) either—
(i) B is under 16 and A does not reasonably believe that B is 16 or over, or
(ii) B is under 13.

(2) A person guilty of an offence under this section, if the touching involved—
(a) penetration of B's anus or vagina with a part of A's body or anything else,
(b) penetration of B's mouth with A's penis,
(c) penetration of A's anus or vagina with a part of B's body, or
(d) penetration of A's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(3) Unless subsection (2) applies, 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 to a fine not exceeding the statutory maximum or both;
(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

10 Causing or inciting a child to engage in sexual activity

(1) A person aged 18 or over (A) commits an offence if—
(a) he intentionally causes or incites another person (B) to engage in an activity,
(b) the activity is sexual, and
(c) either—
(i) B is under 16 and A does not reasonably believe that B is 16 or over, or
(ii) B is under 13.

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(2) A person guilty of an offence under this section, if the activity caused or incited involved—
  (a) penetration of B's anus or vagina,
  (b) penetration of B's mouth with a person's penis,
  (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or
  (d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(3) Unless subsection (2) applies, 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 to a fine not exceeding the statutory maximum or both;
  (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

11 Engaging in sexual activity in the presence of a child

(1) A person aged 18 or over (A) commits an offence if—
  (a) he intentionally engages in an activity,
  (b) the activity is sexual,
  (c) for the purpose of obtaining sexual gratification, he engages in it—
    (i) when another person (B) is present or is in a place from which A can be observed, and
    (ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it, and
  (d) either—
    (i) B is under 16 and A does not reasonably believe that B is 16 or over, or
    (ii) B is under 13.

(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 10 years.

12 Causing a child to watch a sexual act

(1) A person aged 18 or over (A) commits an offence if—
  (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,
  (b) the activity is sexual, and
  (c) either—
    (i) B is under 16 and A does not reasonably believe that B is 16 or over, or
    (ii) B is under 13.

(2) A person guilty of an offence under this section is liable—

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(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 10 years.

13 Child sex offences committed by children or young persons

(1) A person under 18 commits an offence if he does anything which would be an offence under any of sections 9 to 12 if he were aged 18.

(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.

14 Arranging or facilitating commission of a child sex offence

(1) A person commits an offence if—
(a) he intentionally arranges or facilitates something that he intends to do, intends another person to do, or believes that another person will do, in any part of the world, and
(b) doing it will involve the commission of an offence under any of sections 9 to 13.

(2) A person does not commit an offence under this section if—
(a) he arranges or facilitates something that he believes another person will do, but that he does not intend to do or intend another person to do, and
(b) any offence within subsection (1)(b) would be an offence against a child for whose protection he acts.

(3) For the purposes of subsection (2), a person acts for the protection of a child if he acts for the purpose of—
(a) protecting the child from sexually transmitted infection,
(b) protecting the physical safety of the child,
(c) preventing the child from becoming pregnant, or
(d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence within subsection (1)(b) or the child's participation in it.

(4) 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 14 years.

15 Meeting a child following sexual grooming etc.

(1) A person aged 18 or over (A) commits an offence if—

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(a) having met or communicated with another person (B) on at least two earlier occasions, he—
  (i) intentionally meets B, or
  (ii) travels with the intention of meeting B in any part of the world,
(b) at the time, he intends to do anything to or in respect of B, during or after the meeting and in any part of the world, which if done will involve the commission by A of a relevant offence,
(c) B is under 16, and
(d) A does not reasonably believe that B is 16 or over.

(2) In subsection (1)—
(a) the reference to A having met or communicated with B is a reference to A having met B in any part of the world or having communicated with B by any means from, to or in any part of the world;
(b) "relevant offence" means—
  (i) an offence under this Part,
  (ii) an offence within any of paragraphs 61 to 92 of Schedule 3, or
  (iii) anything done outside England and Wales and Northern Ireland which is not an offence within sub-paragraph (i) or (ii) but would be an offence within sub-paragraph (i) if done in England and Wales.

(3) In this section as it applies to Northern Ireland—
(a) subsection (1) has effect with the substitution of " 17 " for "16" in both places;
(b) subsection (2)(b)(iii) has effect with the substitution of " sub-paragraph (ii) if done in Northern Ireland " for "sub-paragraph (i) if done in England and Wales".

(4) 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 10 years.

Abuse of position of trust

16 Abuse of position of trust: sexual activity with a child

(1) A person aged 18 or over (A) commits an offence if—
(a) he intentionally touches another person (B),
(b) the touching is sexual,
(c) A is in a position of trust in relation to B,
(d) where subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and
(e) either—
  (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
  (ii) B is under 13.

(2) This subsection applies where A—

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(a) is in a position of trust in relation to B by virtue of circumstances within section 21(2), (3), (4) or (5), and
(b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) Where in proceedings for an offence under this section—
(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(2), (3), (4) or (5), and
(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) 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.

17 Abuse of position of trust: causing or inciting a child to engage in sexual activity

(1) A person aged 18 or over (A) commits an offence if—
(a) he intentionally causes or incites another person (B) to engage in an activity,
(b) the activity is sexual,
(c) A is in a position of trust in relation to B,
(d) where subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and
(e) either—
(i) B is under 18 and A does not reasonably believe that B is 18 or over, or
(ii) B is under 13.

(2) This subsection applies where A—
(a) is in a position of trust in relation to B by virtue of circumstances within section 21(2), (3), (4) or (5), and
(b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) Where in proceedings for an offence under this section—
(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(2), (3), (4) or (5), and

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(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) 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.

18 Abuse of position of trust: sexual activity in the presence of a child

(1) A person aged 18 or over (A) commits an offence if—

(a) he intentionally engages in an activity,

(b) the activity is sexual,

(c) for the purpose of obtaining sexual gratification, he engages in it—

(i) when another person (B) is present or is in a place from which A can be observed, and

(ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,

(d) A is in a position of trust in relation to B,

(e) where subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and

(f) either—

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) This subsection applies where A—

(a) is in a position of trust in relation to B by virtue of circumstances within section 21(2), (3), (4) or (5), and

(b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) Where in proceedings for an offence under this section—

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(2), (3), (4) or (5), and

(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

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(5) 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.

19 Abuse of position of trust: causing a child to watch a sexual act

(1) A person aged 18 or over (A) commits an offence if—

(a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,

(b) the activity is sexual,

(c) A is in a position of trust in relation to B,

(d) where subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and

(e) either—

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) This subsection applies where A—

(a) is in a position of trust in relation to B by virtue of circumstances within section 21(2), (3), (4) or (5), and

(b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) Where in proceedings for an offence under this section—

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(2), (3), (4) or (5), and

(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) 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.

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20 Abuse of position of trust: acts done in Scotland

Anything which, if done in England and Wales or Northern Ireland, would constitute an offence under any of sections 16 to 19 also constitutes that offence if done in Scotland.

21 Positions of trust

(1) For the purposes of sections 16 to 19, a person (A) is in a position of trust in relation to another person (B) if—
  (a) any of the following subsections applies, or
  (b) any condition specified in an order made by the Secretary of State is met.

(2) This subsection applies if A looks after persons under 18 who are detained in an institution by virtue of a court order or under an enactment, and B is so detained in that institution.

(3) This subsection applies if A looks after persons under 18 who are resident in a home or other place in which—
  (a) accommodation and maintenance are provided by an authority under section 23(2) of the Children Act 1989 (c. 41) or Article 27(2) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)), or
  (b) accommodation is provided by a voluntary organisation under section 59(1) of that Act or Article 75(1) of that Order,

  and B is resident, and is so provided with accommodation and maintenance or accommodation, in that place.

(4) This subsection applies if A looks after persons under 18 who are accommodated and cared for in one of the following institutions—
  (a) a hospital,
  (b) an independent clinic,
  (c) a care home, residential care home or private hospital,
  (d) a community home, voluntary home or children's home,
  (e) a home provided under section 82(5) of the Children Act 1989, or
  (f) a residential family centre,

  and B is accommodated and cared for in that institution.

(5) This subsection applies if A looks after persons under 18 who are receiving education at an educational institution and B is receiving, and A is not receiving, education at that institution.

(6) This subsection applies if A is appointed to be the guardian of B under Article 159 or 160 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)).

(7) This subsection applies if A is engaged in the provision of services under, or pursuant to anything done under—
  (a) sections 8 to 10 of the Employment and Training Act 1973 (c. 50), or
  (b) section 114 of the Learning and Skills Act 2000 (c. 21),

  and, in that capacity, looks after B on an individual basis.

(8) This subsection applies if A regularly has unsupervised contact with B (whether face to face or by any other means)—

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(a) in the exercise of functions of a local authority under section 20 or 21 of the Children Act 1989 (c. 41), or

(b) in the exercise of functions of an authority under Article 21 or 23 of the Children (Northern Ireland) Order 1995.

(9) This subsection applies if A, as a person who is to report to the court under section 7 of the Children Act 1989 or Article 4 of the Children (Northern Ireland) Order 1995 on matters relating to the welfare of B, regularly has unsupervised contact with B (whether face to face or by any other means).

(10) This subsection applies if A is a personal adviser appointed for B under—

(a) section 23B(2) of, or paragraph 19C of Schedule 2 to, the Children Act 1989, or

(b) Article 34A(10) or 34C(2) of the Children (Northern Ireland) Order 1995,

and, in that capacity, looks after B on an individual basis.

(11) This subsection applies if—

(a) B is subject to a care order, a supervision order or an education supervision order, and

(b) in the exercise of functions conferred by virtue of the order on an authorised person or the authority designated by the order, A looks after B on an individual basis.

(12) This subsection applies if A—

(a) is an officer of the Service **[**[F1]or Welsh family proceedings officer (within the meaning given by section 35 of the Children Act 2004)**]** appointed for B under section 41(1) of the Children Act 1989,

(b) is appointed a children's guardian of B under rule 6 or rule 18 of the Adoption Rules 1984 (S.I. 1984/265), or

(c) is appointed to be the guardian ad litem of B under rule 9.5 of the Family Proceedings Rules 1991 (S. I. 1991/1247) or under Article 60(1) of the Children (Northern Ireland) Order 1995,

and, in that capacity, regularly has unsupervised contact with B (whether face to face or by any other means).

(13) This subsection applies if—

(a) B is subject to requirements imposed by or under an enactment on his release from detention for a criminal offence, or is subject to requirements imposed by a court order made in criminal proceedings, and

(b) A looks after B on an individual basis in pursuance of the requirements.

Textual Amendments

F1 Words in s. 21(12)(a) inserted (E.W.) (1.4.2005) by Children Act 2004 (c. 31), ss. 40, 67, **Sch. 3 para. 18**; S.I. 2005/700, **art. 2(2)**

22 Positions of trust: interpretation

(1) The following provisions apply for the purposes of section 21.

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(2) Subject to subsection (3), a person looks after persons under 18 if he is regularly involved in caring for, training, supervising or being in sole charge of such persons.

(3) A person (A) looks after another person (B) on an individual basis if—

(a) A is regularly involved in caring for, training or supervising B, and

(b) in the course of his involvement, A regularly has unsupervised contact with B (whether face to face or by any other means).

(4) A person receives education at an educational institution if—

(a) he is registered or otherwise enrolled as a pupil or student at the institution, or

(b) he receives education at the institution under arrangements with another educational institution at which he is so registered or otherwise enrolled.

(5) In section 21—

"authority"—

(a) in relation to England and Wales, means a local authority;

(b) in relation to Northern Ireland, has the meaning given by Article 2(2) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2));

"care home" means an establishment which is a care home for the purposes of the Care Standards Act 2000 (c. 14);

"care order" has—

(a) in relation to England and Wales, the same meaning as in the Children Act 1989 (c. 41), and

(b) in relation to Northern Ireland, the same meaning as in the Children (Northern Ireland) Order 1995;

"children's home" has—

(a) in relation to England and Wales, the meaning given by section 1 of the Care Standards Act 2000, and

(b) in relation to Northern Ireland, the meaning that would be given by Article 9 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9)) ("the 2003 Order") if in paragraph (4) of that Article sub-paragraphs (d), (f) and (g) were omitted;

"community home" has the meaning given by section 53 of the Children Act 1989;

"education supervision order" has—

(a) in relation to England and Wales, the meaning given by section 36 of the Children Act 1989, and

(b) in relation to Northern Ireland, the meaning given by Article 49(1) of the Children (Northern Ireland) Order 1995;

"hospital"—

(a) in relation to England and Wales, means a hospital within the meaning given by **[**[F2]section 275(1) of the National Health Service Act 2006 or section 206(1) of the National Health Service Act 2006**]**(c. 49), or any other establishment which is a hospital within the meaning given by section 2(3) of the Care Standards Act 2000 (c. 14);

(b) in relation to Northern Ireland, means a hospital within the meaning given by Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)), or any other establishment

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which is a hospital within the meaning given by Article 2(2) of the 2003 Order;

"independent clinic" has—

(a) in relation to England and Wales, the meaning given by section 2 of the Care Standards Act 2000;

(b) in relation to Northern Ireland, the meaning given by Article 2(2) of the 2003 Order;

"private hospital" has the meaning given by Article 90(2) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));

"residential care home" means an establishment which is a residential care home for the purposes of the 2003 Order;

"residential family centre" has the meaning given by section 22 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3);

"supervision order" has—

(a) in relation to England and Wales, the meaning given by section 31(11) of the Children Act 1989 (c. 41), and

(b) in relation to Northern Ireland, the meaning given by Article 49(1) of the Children (Northern Ireland) Order 1995 (S.I. 1995/ 755 (N.I. 2));

"voluntary home" has—

(a) in relation to England and Wales, the meaning given by section 60(3) of the Children Act 1989, and

(b) in relation to Northern Ireland, the meaning given by Article 74(1) of the Children (Northern Ireland) Order 1995.

Textual Amendments

F2 Words in s. 22(5) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 5, 8, **Sch. 1 para. 238** (with Sch. 3 Pt. 1)

23 Sections 16 to 19: [F3exception for spouses and civil partners]

(1) Conduct by a person (A) which would otherwise be an offence under any of sections 16 to 19 against another person (B) is not an offence under that section if at the time —

(a) B is 16 or over, and

(b) A and B are lawfully married **[**F4or civil partners of each other**]**.

(2) In proceedings for such an offence it is for the defendant to prove that A and B **[**F5were at the time lawfully married or civil partners of each other**]**.

Textual Amendments

F3 S. 23: words in heading substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 173(4)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

F4 Words in s. 23(1)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 173(2)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

F5 Words in s. 23(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 173(3)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

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24 Sections 16 to 19: sexual relationships which pre-date position of trust

(1) Conduct by a person (A) which would otherwise be an offence under any of sections 16 to 19 against another person (B) is not an offence under that section if, immediately before the position of trust arose, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under any of sections 16 to 19 it is for the defendant to prove that such a relationship existed at that time.

Familial child sex offences

25 Sexual activity with a child family member

(1) A person (A) commits an offence if—
- (a) he intentionally touches another person (B),
- (b) the touching is sexual,
- (c) the relation of A to B is within section 27,
- (d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that section, and
- (e) either—
  - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
  - (ii) B is under 13.

(2) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(3) Where in proceedings for an offence under this section it is proved that the relation of the defendant to the other person was of a description falling within section 27, it is to be taken that the defendant knew or could reasonably have been expected to know that his relation to the other person was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.

(4) A person guilty of an offence under this section, if aged 18 or over at the time of the offence, is liable—
- (a) where subsection (6) applies, on conviction on indictment to imprisonment for a term not exceeding 14 years;
- (b) in any other case—
  - (i) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(5) Unless subsection (4) applies, 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;

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(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

(6) This subsection applies where the touching involved—

(a) penetration of B's anus or vagina with a part of A's body or anything else,

(b) penetration of B's mouth with A's penis,

(c) penetration of A's anus or vagina with a part of B's body, or

(d) penetration of A's mouth with B's penis.

26 Inciting a child family member to engage in sexual activity

(1) A person (A) commits an offence if—

(a) he intentionally incites another person (B) to touch, or allow himself to be touched by, A,

(b) the touching is sexual,

(c) the relation of A to B is within section 27,

(d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that section, and

(e) either—

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(3) Where in proceedings for an offence under this section it is proved that the relation of the defendant to the other person was of a description falling within section 27, it is to be taken that the defendant knew or could reasonably have been expected to know that his relation to the other person was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.

(4) A person guilty of an offence under this section, if he was aged 18 or over at the time of the offence, is liable—

(a) where subsection (6) applies, on conviction on indictment to imprisonment for a term not exceeding 14 years;

(b) in any other case—

(i) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(5) Unless subsection (4) applies, 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.

(6) This subsection applies where the touching to which the incitement related involved—

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(a) penetration of B's anus or vagina with a part of A's body or anything else,
(b) penetration of B's mouth with A's penis,
(c) penetration of A's anus or vagina with a part of B's body, or
(d) penetration of A's mouth with B's penis.

27 Family relationships

(1) The relation of one person (A) to another (B) is within this section if—
(a) it is within any of subsections (2) to (4), or
(b) it would be within one of those subsections but for section 67 of the Adoption and Children Act 2002 (c. 38) (status conferred by adoption).

(2) The relation of A to B is within this subsection if—
(a) one of them is the other's parent, grandparent, brother, sister, half-brother, half-sister, aunt or uncle, or
(b) A is or has been B's foster parent.

(3) The relation of A to B is within this subsection if A and B live or have lived in the same household, or A is or has been regularly involved in caring for, training, supervising or being in sole charge of B, and—
(a) one of them is or has been the other's step-parent,
(b) A and B are cousins,
(c) one of them is or has been the other's stepbrother or stepsister, or
(d) the parent or present or former foster parent of one of them is or has been the other's foster parent.

(4) The relation of A to B is within this subsection if—
(a) A and B live in the same household, and
(b) A is regularly involved in caring for, training, supervising or being in sole charge of B.

(5) For the purposes of this section—
(a) "aunt" means the sister or half-sister of a person's parent, and "uncle" has a corresponding meaning;
(b) "cousin" means the child of an aunt or uncle;
(c) a person is a child's foster parent if—
(i) he is a person with whom the child has been placed under section 23(2)(a) or 59(1)(a) of the Children Act 1989 (c. 41) (fostering for local authority or voluntary organisation), or
(ii) he fosters the child privately, within the meaning given by section 66(1)(b) of that Act;
(d) a person is another's partner (whether they are of different sexes or the same sex) if they live together as partners in an enduring family relationship;
(e) "step-parent" includes a parent's partner and "stepbrother" and "stepsister" include the child of a parent's partner.

28 Sections 25 and 26: [F6exception for spouses and civil partners]

(1) Conduct by a person (A) which would otherwise be an offence under section 25 or 26 against another person (B) is not an offence under that section if at the time—

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(a) B is 16 or over, and
(b) A and B are lawfully married **[**[F7]or civil partners of each other**]**.

(2) In proceedings for such an offence it is for the defendant to prove that A and B **[**[F8]were at the time lawfully married or civil partners of each other**]**.

Textual Amendments

F6 S. 28: words in heading substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 174(4)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

F7 Words in s. 28(1)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 174(2)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

F8 Words in s. 28(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 174(3)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

29 Sections 25 and 26: sexual relationships which pre-date family relationships

(1) Conduct by a person (A) which would otherwise be an offence under section 25 or 26 against another person (B) is not an offence under that section if—
(a) the relation of A to B is not within subsection (2) of section 27,
(b) it would not be within that subsection if section 67 of the Adoption and Children Act 2002 (c. 38) did not apply, and
(c) immediately before the relation of A to B first became such as to fall within section 27, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at the time referred to in subsection (1)(c) sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under section 25 or 26 it is for the defendant to prove the matters mentioned in subsection (1)(a) to (c).

Offences against persons with a mental disorder impeding choice

30 Sexual activity with a person with a mental disorder impeding choice

(1) A person (A) commits an offence if—
(a) he intentionally touches another person (B),
(b) the touching is sexual,
(c) B is unable to refuse because of or for a reason related to a mental disorder, and
(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if—
(a) he lacks the capacity to choose whether to agree to the touching (whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason), or
(b) he is unable to communicate such a choice to A.

(3) A person guilty of an offence under this section, if the touching involved—
(a) penetration of B's anus or vagina with a part of A's body or anything else,

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(b) penetration of B's mouth with A's penis,
(c) penetration of A's anus or vagina with a part of B's body, or
(d) penetration of A's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(4) Unless subsection (3) applies, 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 to a fine not exceeding the statutory maximum or both;
(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

31 Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity

(1) A person (A) commits an offence if—
(a) he intentionally causes or incites another person (B) to engage in an activity,
(b) the activity is sexual,
(c) B is unable to refuse because of or for a reason related to a mental disorder, and
(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if—
(a) he lacks the capacity to choose whether to agree to engaging in the activity caused or incited (whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of the activity, or for any other reason), or
(b) he is unable to communicate such a choice to A.

(3) A person guilty of an offence under this section, if the activity caused or incited involved—
(a) penetration of B's anus or vagina,
(b) penetration of B's mouth with a person's penis,
(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or
(d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(4) Unless subsection (3) applies, 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 to a fine not exceeding the statutory maximum or both;
(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

32 Engaging in sexual activity in the presence of a person with a mental disorder impeding choice

(1) A person (A) commits an offence if—

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(a) he intentionally engages in an activity,
(b) the activity is sexual,
(c) for the purpose of obtaining sexual gratification, he engages in it—
(i) when another person (B) is present or is in a place from which A can be observed, and
(ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,
(d) B is unable to refuse because of or for a reason related to a mental disorder, and
(e) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if—
(a) he lacks the capacity to choose whether to agree to being present (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason), or
(b) he is unable to communicate such a choice to A.

(3) 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 10 years.

33 Causing a person, with a mental disorder impeding choice, to watch a sexual act

(1) A person (A) commits an offence if—
(a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,
(b) the activity is sexual,
(c) B is unable to refuse because of or for a reason related to a mental disorder, and
(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if—
(a) he lacks the capacity to choose whether to agree to watching or looking (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason), or
(b) he is unable to communicate such a choice to A.

(3) 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 10 years.

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Inducements etc. to persons with a mental disorder

34 Inducement, threat or deception to procure sexual activity with a person with a mental disorder

(1) A person (A) commits an offence if—
- (a) with the agreement of another person (B) he intentionally touches that person,
- (b) the touching is sexual,
- (c) A obtains B's agreement by means of an inducement offered or given, a threat made or a deception practised by A for that purpose,
- (d) B has a mental disorder, and
- (e) A knows or could reasonably be expected to know that B has a mental disorder.

(2) A person guilty of an offence under this section, if the touching involved—
- (a) penetration of B's anus or vagina with a part of A's body or anything else,
- (b) penetration of B's mouth with A's penis,
- (c) penetration of A's anus or vagina with a part of B's body, or
- (d) penetration of A's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(3) Unless subsection (2) applies, 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 14 years.

35 Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception

(1) A person (A) commits an offence if—
- (a) by means of an inducement offered or given, a threat made or a deception practised by him for this purpose, he intentionally causes another person (B) to engage in, or to agree to engage in, an activity,
- (b) the activity is sexual,
- (c) B has a mental disorder, and
- (d) A knows or could reasonably be expected to know that B has a mental disorder.

(2) A person guilty of an offence under this section, if the activity caused or agreed to involved—
- (a) penetration of B's anus or vagina,
- (b) penetration of B's mouth with a person's penis,
- (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or
- (d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

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(3) Unless subsection (2) applies, 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 14 years.

36 Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder

(1) A person (A) commits an offence if—

(a) he intentionally engages in an activity,

(b) the activity is sexual,

(c) for the purpose of obtaining sexual gratification, he engages in it—

(i) when another person (B) is present or is in a place from which A can be observed, and

(ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,

(d) B agrees to be present or in the place referred to in paragraph (c)(i) because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement,

(e) B has a mental disorder, and

(f) A knows or could reasonably be expected to know that B has a mental disorder.

(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 10 years.

37 Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception

(1) A person (A) commits an offence if—

(a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,

(b) the activity is sexual,

(c) B agrees to watch or look because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement,

(d) B has a mental disorder, and

(e) A knows or could reasonably be expected to know that B has a mental disorder.

(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;

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(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Care workers for persons with a mental disorder

38 Care workers: sexual activity with a person with a mental disorder

(1) A person (A) commits an offence if—
- (a) he intentionally touches another person (B),
- (b) the touching is sexual,
- (c) B has a mental disorder,
- (d) A knows or could reasonably be expected to know that B has a mental disorder, and
- (e) A is involved in B's care in a way that falls within section 42.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person guilty of an offence under this section, if the touching involved—
- (a) penetration of B's anus or vagina with a part of A's body or anything else,
- (b) penetration of B's mouth with A's penis,
- (c) penetration of A's anus or vagina with a part of B's body, or
- (d) penetration of A's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(4) Unless subsection (3) applies, 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 10 years.

39 Care workers: causing or inciting sexual activity

(1) A person (A) commits an offence if—
- (a) he intentionally causes or incites another person (B) to engage in an activity,
- (b) the activity is sexual,
- (c) B has a mental disorder,
- (d) A knows or could reasonably be expected to know that B has a mental disorder, and
- (e) A is involved in B's care in a way that falls within section 42.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient

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evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person guilty of an offence under this section, if the activity caused or incited involved—

(a) penetration of B's anus or vagina,

(b) penetration of B's mouth with a person's penis,

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or

(d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(4) Unless subsection (3) applies, 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 10 years.

40 Care workers: sexual activity in the presence of a person with a mental disorder

(1) A person (A) commits an offence if—

(a) he intentionally engages in an activity,

(b) the activity is sexual,

(c) for the purpose of obtaining sexual gratification, he engages in it—

(i) when another person (B) is present or is in a place from which A can be observed, and

(ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,

(d) B has a mental disorder,

(e) A knows or could reasonably be expected to know that B has a mental disorder, and

(f) A is involved in B's care in a way that falls within section 42.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) 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 7 years.

41 Care workers: causing a person with a mental disorder to watch a sexual act

(1) A person (A) commits an offence if—

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(a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,
(b) the activity is sexual,
(c) B has a mental disorder,
(d) A knows or could reasonably be expected to know that B has a mental disorder, and
(e) A is involved in B's care in a way that falls within section 42.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) 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 7 years.

42 Care workers: interpretation

(1) For the purposes of sections 38 to 41, a person (A) is involved in the care of another person (B) in a way that falls within this section if any of subsections (2) to (4) applies.

(2) This subsection applies if—
(a) B is accommodated and cared for in a care home, community home, voluntary home or children's home, and
(b) A has functions to perform in the home in the course of employment which have brought him or are likely to bring him into regular face to face contact with B.

(3) This subsection applies if B is a patient for whom services are provided—
(a) by a National Health Service body or an independent medical agency, or
(b) in an independent clinic or an independent hospital,

and A has functions to perform for the body or agency or in the clinic or hospital in the course of employment which have brought him or are likely to bring him into regular face to face contact with B.

(4) This subsection applies if A—
(a) is, whether or not in the course of employment, a provider of care, assistance or services to B in connection with B's mental disorder, and
(b) as such, has had or is likely to have regular face to face contact with B.

(5) In this section—

"care home" means an establishment which is a care home for the purposes of the Care Standards Act 2000 (c. 14);

"children's home" has the meaning given by section 1 of that Act;

"community home" has the meaning given by section 53 of the Children Act 1989 (c. 41);

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"employment" means any employment, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract;

"independent clinic", "independent hospital" and "independent medical agency" have the meaning given by section 2 of the Care Standards Act 2000;

"National Health Service body" means—

(a) a Health Authority,

(b) a National Health Service trust,

(c) a Primary Care Trust, or

(d) a Special Health Authority;

"voluntary home" has the meaning given by section 60(3) of the Children Act 1989.

43 Sections 38 to 41: [F9exception for spouses and civil partners]

(1) Conduct by a person (A) which would otherwise be an offence under any of sections 38 to 41 against another person (B) is not an offence under that section if at the time—

(a) B is 16 or over, and

(b) A and B are lawfully married **[**F10or civil partners of each other**]**.

(2) In proceedings for such an offence it is for the defendant to prove that A and B **[**F11were at the time lawfully married or civil partners of each other**]**.

Textual Amendments

F9 S. 43: words in heading substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 175(4)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

F10 Words in s. 43(1)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 175(2)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

F11 Words in s. 43(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 175(3)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

44 Sections 38 to 41: sexual relationships which pre-date care relationships

(1) Conduct by a person (A) which would otherwise be an offence under any of sections 38 to 41 against another person (B) is not an offence under that section if, immediately before A became involved in B's care in a way that falls within section 42, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under any of sections 38 to 41 it is for the defendant to prove that such a relationship existed at that time.

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Indecent photographs of children

45 Indecent photographs of persons aged 16 or 17

(1) The Protection of Children Act 1978 (c. 37) (which makes provision about indecent photographs of persons under 16) is amended as follows.

(2) In section 2(3) (evidence) and section 7(6) (meaning of "child"), for "16" substitute " 18 ".

(3) After section 1 insert—

"**1A Marriage and other relationships**

(1) This section applies where, in proceedings for an offence under section 1(1)(a) of taking or making an indecent photograph of a child, or for an offence under section 1(1)(b) or (c) relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time of the offence charged the child and he—
   (a) were married, or
   (b) lived together as partners in an enduring family relationship.

(2) Subsections (5) and (6) also apply where, in proceedings for an offence under section 1(1)(b) or (c) relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time when he obtained it the child and he—
   (a) were married, or
   (b) lived together as partners in an enduring family relationship.

(3) This section applies whether the photograph showed the child alone or with the defendant, but not if it showed any other person.

(4) In the case of an offence under section 1(1)(a), if sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph being taken or made, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did not so consent and that the defendant did not reasonably believe that the child so consented.

(5) In the case of an offence under section 1(1)(b), the defendant is not guilty of the offence unless it is proved that the showing or distributing was to a person other than the child.

(6) In the case of an offence under section 1(1)(c), if sufficient evidence is adduced to raise an issue both—
   (a) as to whether the child consented to the photograph being in the defendant's possession, or as to whether the defendant reasonably believed that the child so consented, and
   (b) as to whether the defendant had the photograph in his possession with a view to its being distributed or shown to anyone other than the child,

   the defendant is not guilty of the offence unless it is proved either that the child did not so consent and that the defendant did not reasonably believe that the child so consented, or that the defendant had the photograph in his possession with a view to its being distributed or shown to a person other than the child."

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(4) After section 160 of the Criminal Justice Act 1988 (c. 33) (possession of indecent photograph of child) insert—

"**160A Marriage and other relationships**

(1) This section applies where, in proceedings for an offence under section 160 relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time of the offence charged the child and he—
   (a) were married, or
   (b) lived together as partners in an enduring family relationship.

(2) This section also applies where, in proceedings for an offence under section 160 relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time when he obtained it the child and he—
   (a) were married, or
   (b) lived together as partners in an enduring family relationship.

(3) This section applies whether the photograph showed the child alone or with the defendant, but not if it showed any other person.

(4) If sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph being in the defendant's possession, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did not so consent and that the defendant did not reasonably believe that the child so consented."

46 Criminal proceedings, investigations etc.

(1) After section 1A of the Protection of Children Act 1978 (c. 37) insert—

"**1B Exception for criminal proceedings, investigations etc.**

(1) In proceedings for an offence under section 1(1)(a) of making an indecent photograph or pseudo-photograph of a child, the defendant is not guilty of the offence if he proves that—
   (a) it was necessary for him to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world,
   (b) at the time of the offence charged he was a member of the Security Service, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of the Service, or
   (c) at the time of the offence charged he was a member of GCHQ, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of GCHQ.

(2) In this section "GCHQ" has the same meaning as in the Intelligence Services Act 1994."

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(2) After Article 3 of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) insert—

"3A **Exception for criminal proceedings, investigations etc.**

(1) In proceedings for an offence under Article 3(1)(a) of making an indecent photograph or pseudo-photograph of a child, the defendant is not guilty of the offence if he proves that—

(a) it was necessary for him to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world,

(b) at the time of the offence charged he was a member of the Security Service, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of the Service, or

(c) at the time of the offence charged he was a member of GCHQ, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of GCHQ.

(2) In this Article "GCHQ" has the same meaning as in the Intelligence Services Act 1994."

Abuse of children through prostitution and pornography

47 Paying for sexual services of a child

(1) A person (A) commits an offence if—

(a) he intentionally obtains for himself the sexual services of another person (B),

(b) before obtaining those services, he has made or promised payment for those services to B or a third person, or knows that another person has made or promised such a payment, and

(c) either—

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) In this section, "payment" means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

(3) A person guilty of an offence under this section against a person under 13, where subsection (6) applies, is liable on conviction on indictment to imprisonment for life.

(4) Unless subsection (3) applies, a person guilty of an offence under this section against a person under 16 is liable—

(a) where subsection (6) applies, on conviction on indictment, to imprisonment for a term not exceeding 14 years;

(b) in any other case—

(i) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

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(ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(5) Unless subsection (3) or (4) applies, 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 7 years.

(6) This subsection applies where the offence involved—

(a) penetration of B's anus or vagina with a part of A's body or anything else,

(b) penetration of B's mouth with A's penis,

(c) penetration of A's anus or vagina with a part of B's body or by B with anything else, or

(d) penetration of A's mouth with B's penis.

(7) In the application of this section to Northern Ireland, subsection (4) has effect with the substitution of " 17 " for "16".

48 Causing or inciting child prostitution or pornography

(1) A person (A) commits an offence if—

(a) he intentionally causes or incites another person (B) to become a prostitute, or to be involved in pornography, in any part of the world, and

(b) either—

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(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 14 years.

49 Controlling a child prostitute or a child involved in pornography

(1) A person (A) commits an offence if—

(a) he intentionally controls any of the activities of another person (B) relating to B's prostitution or involvement in pornography in any part of the world, and

(b) either—

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(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 14 years.

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50 Arranging or facilitating child prostitution or pornography

(1) A person (A) commits an offence if—

(a) he intentionally arranges or facilitates the prostitution or involvement in pornography in any part of the world of another person (B), and

(b) either—

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(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 14 years.

51 Sections 48 to 50: interpretation

(1) For the purposes of sections 48 to 50, a person is involved in pornography if an indecent image of that person is recorded; and similar expressions, and "pornography", are to be interpreted accordingly.

(2) In those sections "prostitute" means a person (A) who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to A or a third person; and "prostitution" is to be interpreted accordingly.

(3) In subsection (2), "payment" means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

Exploitation of prostitution

VALID FROM 01/04/2010

[F12 51A Soliciting

(1) It is an offence for a person in a street or public place to solicit another (B) for the purpose of obtaining B's sexual services as a prostitute.

(2) The reference to a person in a street or public place includes a person in a vehicle in a street or public place.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) In this section "street" has the meaning given by section 1(4) of the Street Offences Act 1959.]

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Textual Amendments

F12 S. 51A inserted (1.4.2010) by Policing and Crime Act 2009, {ss. 19}, 116(1); S.I. 2010/507, **art. 5(f)** (with art. 6)

52 Causing or inciting prostitution for gain

(1) A person commits an offence if—

(a) he intentionally causes or incites another person to become a prostitute in any part of the world, and

(b) he does so for or in the expectation of gain for himself or a third person.

(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 7 years.

53 Controlling prostitution for gain

(1) A person commits an offence if—

(a) he intentionally controls any of the activities of another person relating to that person's prostitution in any part of the world, and

(b) he does so for or in the expectation of gain for himself or a third person.

(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 7 years.

VALID FROM 01/04/2010

[F13 53A Paying for sexual services of a prostitute subjected to force etc.

(1) A person (A) commits an offence if—

(a) A makes or promises payment for the sexual services of a prostitute (B),

(b) a third person (C) has engaged in exploitative conduct of a kind likely to induce or encourage B to provide the sexual services for which A has made or promised payment, and

(c) C engaged in that conduct for or in the expectation of gain for C or another person (apart from A or B).

(2) The following are irrelevant—

(a) where in the world the sexual services are to be provided and whether those services are provided,

(b) whether A is, or ought to be, aware that C has engaged in exploitative conduct.

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(3) C engages in exploitative conduct if—

(a) C uses force, threats (whether or not relating to violence) or any other form of coercion, or

(b) C practises any form of deception.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.**]**

Textual Amendments

F13 S. 53A inserted (1.4.2010) by Policing and Crime Act 2009, {ss. 14}, 116(1); S.I. 2010/507, **art. 5(a)** (subject to art. 6)

54 Sections 52 and 53: interpretation

(1) In sections 52 and 53, "gain" means—

(a) any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount; or

(b) the goodwill of any person which is or appears likely, in time, to bring financial advantage.

(2) In those sections "prostitute" and "prostitution" have the meaning given by section 51(2).

Amendments relating to prostitution

55 Penalties for keeping a brothel used for prostitution

(1) The Sexual Offences Act 1956 (c. 69) is amended as follows.

(2) After section 33 insert—

"**33A Keeping a brothel used for prostitution**

(1) It is an offence for a person to keep, or to manage, or act or assist in the management of, a brothel to which people resort for practices involving prostitution (whether or not also for other practices).

(2) In this section "prostitution" has the meaning given by section 51(2) of the Sexual Offences Act 2003."

(3) In Schedule 2 (mode of prosecution, punishment etc.), after paragraph 33 insert (as a paragraph with no entry in the fourth column)—

"33A	Keeping a brothel used for prostitution (section 33A).	(i) on indictment (ii) summarily	Seven years Six months, or the statutory maximum, or both."

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56 Extension of gender-specific prostitution offences

Schedule 1 (extension of gender-specific prostitution offences) has effect.

Trafficking

57 Trafficking into the UK for sexual exploitation

(1) A person commits an offence if he intentionally arranges or facilitates the arrival in the United Kingdom of another person (B) and either—
- (a) he intends to do anything to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence, or
- (b) he believes that another person is likely to do something to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence.

(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 14 years.

58 Trafficking within the UK for sexual exploitation

(1) A person commits an offence if he intentionally arranges or facilitates travel within the United Kingdom by another person (B) and either—
- (a) he intends to do anything to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence, or
- (b) he believes that another person is likely to do something to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence.

(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 14 years.

59 Trafficking out of the UK for sexual exploitation

(1) A person commits an offence if he intentionally arranges or facilitates the departure from the United Kingdom of another person (B) and either—
- (a) he intends to do anything to or in respect of B, after B's departure but in any part of the world, which if done will involve the commission of a relevant offence, or
- (b) he believes that another person is likely to do something to or in respect of B, after B's departure but in any part of the world, which if done will involve the commission of a relevant offence.

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(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 14 years.

60 Sections 57 to 59: interpretation and jurisdiction

(1) In sections 57 to 59, "relevant offence" means—
- (a) an offence under this Part,
- (b) an offence under section 1(1)(a) of the Protection of Children Act 1978 (c. 37),
- (c) an offence listed in Schedule 1 to the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)),
- (d) an offence under Article 3(1)(a) of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)), or
- (e) anything done outside England and Wales and Northern Ireland which is not an offence within any of paragraphs (a) to (d) but would be if done in England and Wales or Northern Ireland.

(2) Sections 57 to 59 apply to anything done—
- (a) in the United Kingdom, or
- (b) outside the United Kingdom, by a body incorporated under the law of a part of the United Kingdom or by an individual to whom subsection (3) applies.

(3) This subsection applies to—
- (a) a British citizen,
- (b) a British overseas territories citizen,
- (c) a British National (Overseas),
- (d) a British Overseas citizen,
- (e) a person who is a British subject under the British Nationality Act 1981 (c. 61),
- (f) a British protected person within the meaning given by section 50(1) of that Act.

[[F14]60A Forfeiture of land vehicle, ship or aircraft

(1) This section applies if a person is convicted on indictment of an offence under sections 57 to 59.

(2) The court may order the forfeiture of a land vehicle used or intended to be used in connection with the offence if the convicted person—
- (a) owned the vehicle at the time the offence was committed;
- (b) was at that time a director, secretary or manager of a company which owned the vehicle;
- (c) was at that time in possession of the vehicle under a hire-purchase agreement;
- (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement; or
- (e) was driving the vehicle in the course of the commission of the offence.

(3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person—

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(a) owned the ship or aircraft at the time the offence was committed;
(b) was at that time a director, secretary or manager of a company which owned the ship or aircraft;
(c) was at that time in possession of the ship or aircraft under a hire-purchase agreement;
(d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement;
(e) was at that time a charterer of the ship or aircraft; or
(f) committed the offence while acting as captain of the ship or aircraft.

(4) But in a case to which subsection (3)(a) or (b) does not apply, forfeiture may be ordered only—
(a) in the case of a ship, if subsection (5) or (6) applies;
(b) in the case of an aircraft, if subsection (5) or (7) applies.

(5) This subsection applies where a person who, at the time the offence was committed, owned the ship or aircraft or was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it in the course of the commission of an offence under sections 57 to 59.

(6) This subsection applies where a ship's gross tonnage is less than 500 tons.

(7) This subsection applies where the maximum weight at which an aircraft (which is not a hovercraft) may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.

(8) Where a person who claims to have an interest in a land vehicle, ship or aircraft applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the vehicle, ship or aircraft unless the person has been given an opportunity to make representations.

Textual Amendments

F14 Ss. 60A-60C inserted (E.W.N.I.) (12.2.2007) by Violent Crime Reduction Act 2006 (c. 38), ss. 54, 66(2), **Sch. 4 para. 2**; S.I. 2007/74, **art. 2(b)**

60B Detention of land vehicle, ship or aircraft

(1) If a person has been arrested for an offence under sections 57 to 59, a constable or a senior immigration officer may detain a relevant vehicle, ship or aircraft—
(a) until a decision is taken as to whether or not to charge the arrested person with that offence;
(b) if the arrested person has been charged, until he is acquitted, the charge against him is dismissed or the proceedings are discontinued; or
(c) if he has been charged and convicted, until the court decides whether or not to order forfeiture of the vehicle, ship or aircraft.

(2) A vehicle, ship or aircraft is a relevant vehicle, ship or aircraft, in relation to an arrested person if it is a land vehicle, ship or aircraft which the constable or officer concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture made under section 60A.

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(3) A person (other than the arrested person) may apply to the court for the release of a land vehicle, ship or aircraft on the grounds that—
- (a) he owns the vehicle, ship or aircraft;
- (b) he was, immediately before the detention of the vehicle, ship or aircraft, in possession of it under a hire-purchase agreement; or
- (c) he is a charterer of the ship or aircraft.

(4) The court to which an application is made under subsection (3) may, on such security or surety being tendered as it considers satisfactory, release the vehicle, ship or aircraft on condition that it is made available to the court if—
- (a) the arrested person is convicted; and
- (b) an order for its forfeiture is made under section 60A.

(5) In this section, "court" means—
- (a) in relation to England and Wales—
  - (i) if the arrested person has not been charged, or he has been charged but proceedings for the offence have not begun to be heard, a magistrates' court;
  - (ii) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings;
- (b) in relation to Northern Ireland—
  - (i) if the arrested person has not been charged, a magistrates' court for the county court division in which he was arrested;
  - (ii) if he has been charged but proceedings for the offence have not begun to be heard, a magistrates' court for the county court division in which he was charged;
  - (iii) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings.

(6) In this section, "senior immigration officer" means an immigration officer (appointed or employed as such under the Immigration Act 1971) not below the rank of chief immigration officer.

Textual Amendments

F14 Ss. 60A-60C inserted (E.W.N.I.) (12.2.2007) by Violent Crime Reduction Act 2006 (c. 38), ss. 54, 66(2), **Sch. 4 para. 2**; S.I. 2007/74, **art. 2(b)**

60C Sections 60A and 60B: interpretation

(1) In this section and sections 60A and 60B, unless the contrary intention appears—

"aircraft" includes hovercraft;

"captain" means master (of a ship) or commander (of an aircraft);

"land vehicle" means any vehicle other than a ship or aircraft;

"ship" includes every description of vessel used in navigation.

(2) In sections 60A and 60B, a reference to being an owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.**]**

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Textual Amendments

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Preparatory offences

61 Administering a substance with intent

(1) A person commits an offence if he intentionally administers a substance to, or causes a substance to be taken by, another person (B)—

(a) knowing that B does not consent, and

(b) with the intention of stupefying or overpowering B, so as to enable any person to engage in a sexual activity that involves B.

(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 10 years.

62 Committing an offence with intent to commit a sexual offence

(1) A person commits an offence under this section if he commits any offence with the intention of committing a relevant sexual offence.

(2) In this section, "relevant sexual offence" means any offence under this Part (including an offence of aiding, abetting, counselling or procuring such an offence).

(3) A person guilty of an offence under this section is liable on conviction on indictment, where the offence is committed by kidnapping or false imprisonment, to imprisonment for life.

(4) Unless subsection (3) applies, 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 10 years.

63 Trespass with intent to commit a sexual offence

(1) A person commits an offence if—

(a) he is a trespasser on any premises,

(b) he intends to commit a relevant sexual offence on the premises, and

(c) he knows that, or is reckless as to whether, he is a trespasser.

(2) In this section—

"premises" includes a structure or part of a structure;

"relevant sexual offence" has the same meaning as in section 62;

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"structure" includes a tent, vehicle or vessel or other temporary or movable structure.

(3) 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 10 years.

Sex with an adult relative

64 Sex with an adult relative: penetration

(1) A person aged 16 or over (A) commits an offence if—
- (a) he intentionally penetrates another person's vagina or anus with a part of his body or anything else, or penetrates another person's mouth with his penis,
- (b) the penetration is sexual,
- (c) the other person (B) is aged 18 or over,
- (d) A is related to B in a way mentioned in subsection (2), and
- (e) A knows or could reasonably be expected to know that he is related to B in that way.

(2) The ways that A may be related to B are as parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

(3) In subsection (2)—
- (a) "uncle" means the brother of a person's parent, and "aunt" has a corresponding meaning;
- (b) "nephew" means the child of a person's brother or sister, and "niece" has a corresponding meaning.

(4) Where in proceedings for an offence under this section it is proved that the defendant was related to the other person in any of those ways, it is to be taken that the defendant knew or could reasonably have been expected to know that he was related in that way unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that he was.

(5) 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 2 years.

65 Sex with an adult relative: consenting to penetration

(1) A person aged 16 or over (A) commits an offence if—
- (a) another person (B) penetrates A's vagina or anus with a part of B's body or anything else, or penetrates A's mouth with B's penis,
- (b) A consents to the penetration,
- (c) the penetration is sexual,
- (d) B is aged 18 or over,

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(e) A is related to B in a way mentioned in subsection (2), and

(f) A knows or could reasonably be expected to know that he is related to B in that way.

(2) The ways that A may be related to B are as parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

(3) In subsection (2)—

(a) "uncle" means the brother of a person's parent, and "aunt" has a corresponding meaning;

(b) "nephew" means the child of a person's brother or sister, and "niece" has a corresponding meaning.

(4) Where in proceedings for an offence under this section it is proved that the defendant was related to the other person in any of those ways, it is to be taken that the defendant knew or could reasonably have been expected to know that he was related in that way unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that he was.

(5) 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 2 years.

Other offences

66 Exposure

(1) A person commits an offence if—

(a) he intentionally exposes his genitals, and

(b) he intends that someone will see them and be caused alarm or distress.

(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 2 years.

67 Voyeurism

(1) A person commits an offence if—

(a) for the purpose of obtaining sexual gratification, he observes another person doing a private act, and

(b) he knows that the other person does not consent to being observed for his sexual gratification.

(2) A person commits an offence if—

(a) he operates equipment with the intention of enabling another person to observe, for the purpose of obtaining sexual gratification, a third person (B) doing a private act, and

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(b) he knows that B does not consent to his operating equipment with that intention.

(3) A person commits an offence if—
(a) he records another person (B) doing a private act,
(b) he does so with the intention that he or a third person will, for the purpose of obtaining sexual gratification, look at an image of B doing the act, and
(c) he knows that B does not consent to his recording the act with that intention.

(4) A person commits an offence if he instals equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling himself or another person to commit an offence under subsection (1).

(5) 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 2 years.

68 Voyeurism: interpretation

(1) For the purposes of section 67, a person is doing a private act if the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and—
(a) the person's genitals, buttocks or breasts are exposed or covered only with underwear,
(b) the person is using a lavatory, or
(c) the person is doing a sexual act that is not of a kind ordinarily done in public.

(2) In section 67, "structure" includes a tent, vehicle or vessel or other temporary or movable structure.

69 Intercourse with an animal

(1) A person commits an offence if—
(a) he intentionally performs an act of penetration with his penis,
(b) what is penetrated is the vagina or anus of a living animal, and
(c) he knows that, or is reckless as to whether, that is what is penetrated.

(2) A person (A) commits an offence if—
(a) A intentionally causes, or allows, A's vagina or anus to be penetrated,
(b) the penetration is by the penis of a living animal, and
(c) A knows that, or is reckless as to whether, that is what A is being penetrated by.

(3) 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 2 years.

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70 Sexual penetration of a corpse

(1) A person commits an offence if—
- (a) he intentionally performs an act of penetration with a part of his body or anything else,
- (b) what is penetrated is a part of the body of a dead person,
- (c) he knows that, or is reckless as to whether, that is what is penetrated, and
- (d) the penetration is sexual.

(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 2 years.

71 Sexual activity in a public lavatory

(1) A person commits an offence if—
- (a) he is in a lavatory to which the public or a section of the public has or is permitted to have access, whether on payment or otherwise,
- (b) he intentionally engages in an activity, and,
- (c) the activity is sexual.

(2) For the purposes of this section, an activity is sexual if a reasonable person would, in all the circumstances but regardless of any person's purpose, consider it to be sexual.

(3) A person guilty of an offence under this section is liable on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both.

Offences outside the United Kingdom

72 Offences outside the United Kingdom

(1) Subject to subsection (2), any act done by a person in a country or territory outside the United Kingdom which—
- (a) constituted an offence under the law in force in that country or territory, and
- (b) would constitute a sexual offence to which this section applies if it had been done in England and Wales or in Northern Ireland,

constitutes that sexual offence under the law of that part of the United Kingdom.

(2) Proceedings by virtue of this section may be brought only against a person who was on 1st September 1997, or has since become, a British citizen or resident in the United Kingdom.

(3) An act punishable under the law in force in any country or territory constitutes an offence under that law for the purposes of this section, however it is described in that law.

(4) Subject to subsection (5), the condition in subsection (1)(a) is to be taken to be met unless, not later than rules of court may provide, the defendant serves on the prosecution a notice—

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(a) stating that, on the facts as alleged with respect to the act in question, the condition is not in his opinion met,
(b) showing his grounds for that opinion, and
(c) requiring the prosecution to prove that it is met.

(5) The court, if it thinks fit, may permit the defendant to require the prosecution to prove that the condition is met without service of a notice under subsection (4).

(6) In the Crown Court the question whether the condition is met is to be decided by the judge alone.

(7) Schedule 2 lists the sexual offences to which this section applies.

Supplementary and general

73 Exceptions to aiding, abetting and counselling

(1) A person is not guilty of aiding, abetting or counselling the commission against a child of an offence to which this section applies if he acts for the purpose of—
(a) protecting the child from sexually transmitted infection,
(b) protecting the physical safety of the child,
(c) preventing the child from becoming pregnant, or
(d) promoting the child's emotional well-being by the giving of advice,
and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence or the child's participation in it.

(2) This section applies to—
(a) an offence under any of sections 5 to 7 (offences against children under 13);
(b) an offence under section 9 (sexual activity with a child);
(c) an offence under section 13 which would be an offence under section 9 if the offender were aged 18;
(d) an offence under any of sections 16, 25, 30, 34 and 38 (sexual activity) against a person under 16.

(3) This section does not affect any other enactment or any rule of law restricting the circumstances in which a person is guilty of aiding, abetting or counselling an offence under this Part.

74 "Consent"

For the purposes of this Part, a person consents if he agrees by choice, and has the freedom and capacity to make that choice.

75 Evidential presumptions about consent

(1) If in proceedings for an offence to which this section applies it is proved—
(a) that the defendant did the relevant act,
(b) that any of the circumstances specified in subsection (2) existed, and
(c) that the defendant knew that those circumstances existed,
the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he consented, and the defendant

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is to be taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(2) The circumstances are that—

(a) any person was, at the time of the relevant act or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against him;

(b) any person was, at the time of the relevant act or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;

(c) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act;

(d) the complainant was asleep or otherwise unconscious at the time of the relevant act;

(e) because of the complainant's physical disability, the complainant would not have been able at the time of the relevant act to communicate to the defendant whether the complainant consented;

(f) any person had administered to or caused to be taken by the complainant, without the complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act.

(3) In subsection (2)(a) and (b), the reference to the time immediately before the relevant act began is, in the case of an act which is one of a continuous series of sexual activities, a reference to the time immediately before the first sexual activity began.

76 Conclusive presumptions about consent

(1) If in proceedings for an offence to which this section applies it is proved that the defendant did the relevant act and that any of the circumstances specified in subsection (2) existed, it is to be conclusively presumed—

(a) that the complainant did not consent to the relevant act, and

(b) that the defendant did not believe that the complainant consented to the relevant act.

(2) The circumstances are that—

(a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act;

(b) the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant.

77 Sections 75 and 76: relevant acts

In relation to an offence to which sections 75 and 76 apply, references in those sections to the relevant act and to the complainant are to be read as follows—

Offence	*Relevant Act*
An offence under section 1 (rape).	The defendant intentionally penetrating, with his penis, the vagina, anus or mouth of another person ("the complainant").

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An offence under section 2 (assault by penetration).	The defendant intentionally penetrating, with a part of his body or anything else, the vagina or anus of another person ("the complainant"), where the penetration is sexual.
An offence under section 3 (sexual assault).	The defendant intentionally touching another person ("the complainant"), where the touching is sexual.
An offence under section 4 (causing a person to engage in sexual activity without consent).	The defendant intentionally causing another person ("the complainant") to engage in an activity, where the activity is sexual.

78 "Sexual"

For the purposes of this Part (except section 71), penetration, touching or any other activity is sexual if a reasonable person would consider that—

(a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or

(b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

79 Part 1: general interpretation

(1) The following apply for the purposes of this Part.

(2) Penetration is a continuing act from entry to withdrawal.

(3) References to a part of the body include references to a part surgically constructed (in particular, through gender reassignment surgery).

(4) "Image" means a moving or still image and includes an image produced by any means and, where the context permits, a three-dimensional image.

(5) References to an image of a person include references to an image of an imaginary person.

(6) "Mental disorder" has the meaning given by section 1 of the Mental Health Act 1983 (c. 20).

(7) References to observation (however expressed) are to observation whether direct or by looking at an image.

(8) Touching includes touching—

(a) with any part of the body,

(b) with anything else,

(c) through anything,

and in particular includes touching amounting to penetration.

(9) "Vagina" includes vulva.

(10) In relation to an animal, references to the vagina or anus include references to any similar part.

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PART 2

NOTIFICATION AND ORDERS

Notification requirements

80 Persons becoming subject to notification requirements

(1) A person is subject to the notification requirements of this Part for the period set out in section 82 ("the notification period") if—

(a) he is convicted of an offence listed in Schedule 3;

(b) he is found not guilty of such an offence by reason of insanity;

(c) he is found to be under a disability and to have done the act charged against him in respect of such an offence; or

(d) in England and Wales or Northern Ireland, he is cautioned in respect of such an offence.

(2) A person for the time being subject to the notification requirements of this Part is referred to in this Part as a "relevant offender".

81 Persons formerly subject to Part 1 of the Sex Offenders Act 1997

(1) A person is, from the commencement of this Part until the end of the notification period, subject to the notification requirements of this Part if, before the commencement of this Part—

(a) he was convicted of an offence listed in Schedule 3;

(b) he was found not guilty of such an offence by reason of insanity;

(c) he was found to be under a disability and to have done the act charged against him in respect of such an offence; or

(d) in England and Wales or Northern Ireland, he was cautioned in respect of such an offence.

(2) Subsection (1) does not apply if the notification period ended before the commencement of this Part.

(3) Subsection (1)(a) does not apply to a conviction before 1st September 1997 unless, at the beginning of that day, the person—

(a) had not been dealt with in respect of the offence;

(b) was serving a sentence of imprisonment or a term of service detention, or was subject to a community order, in respect of the offence;

(c) was subject to supervision, having been released from prison after serving the whole or part of a sentence of imprisonment in respect of the offence; or

(d) was detained in a hospital or was subject to a guardianship order, following the conviction.

(4) Paragraphs (b) and (c) of subsection (1) do not apply to a finding made before 1st September 1997 unless, at the beginning of that day, the person—

(a) had not been dealt with in respect of the finding; or

(b) was detained in a hospital, following the finding.

(5) Subsection (1)(d) does not apply to a caution given before 1st September 1997.

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(6) A person who would have been within subsection (3)(b) or (d) or (4)(b) but for the fact that at the beginning of 1st September 1997 he was unlawfully at large or absent without leave, on temporary release or leave of absence, or on bail pending an appeal, is to be treated as being within that provision.

(7) Where, immediately before the commencement of this Part, an order under a provision within subsection (8) was in force in respect of a person, the person is subject to the notification requirements of this Part from that commencement until the order is discharged or otherwise ceases to have effect.

(8) The provisions are—
- (a) section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders);
- (b) section 2 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders made in England and Wales);
- (c) section 2A of the Crime and Disorder Act 1998 (interim orders made in England and Wales);
- (d) section 20 of the Crime and Disorder Act 1998 (sex offender orders and interim orders made in Scotland);
- (e) Article 6 of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders made in Northern Ireland);
- (f) Article 6A of the Criminal Justice (Northern Ireland) Order 1998 (interim orders made in Northern Ireland).

82 The notification period

(1) The notification period for a person within section 80(1) or 81(1) is the period in the second column of the following Table opposite the description that applies to him.

TABLE

Description of relevant offender	*Notification period*
A person who, in respect of the offence, is or has been sentenced to imprisonment for life **[**[F15], to imprisonment for public protection under section 225 of the Criminal Justice Act 2003 or to imprisonment for**]** a term of 30 months or more	An indefinite period beginning with the relevant date
A person who, in respect of the offence, has been made the subject of an order under section 210F(1) of the Criminal Procedure (Scotland) Act 1995 (order for lifelong restriction)	An indefinite period beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital subject to a restriction order	An indefinite period beginning with that date
A person who, in respect of the offence, is or has been sentenced to	10 years beginning with that date

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imprisonment for a term of more than 6 months but less than 30 months	
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of 6 months or less	7 years beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital without being subject to a restriction order	7 years beginning with that date
A person within section 80(1)(d)	2 years beginning with that date
A person in whose case an order for conditional discharge or, in Scotland, a probation order, is made in respect of the offence	The period of conditional discharge or, in Scotland, the probation period
A person of any other description	5 years beginning with the relevant date

(2) Where a person is under 18 on the relevant date, subsection (1) has effect as if for any reference to a period of 10 years, 7 years, 5 years or 2 years there were substituted a reference to one-half of that period.

(3) Subsection (4) applies where a relevant offender within section 80(1)(a) or 81(1)(a) is or has been sentenced, in respect of two or more offences listed in Schedule 3—
   (a) to consecutive terms of imprisonment; or
   (b) to terms of imprisonment which are partly concurrent.

(4) Where this subsection applies, subsection (1) has effect as if the relevant offender were or had been sentenced, in respect of each of the offences, to a term of imprisonment which —
   (a) in the case of consecutive terms, is equal to the aggregate of those terms;
   (b) in the case of partly concurrent terms (X and Y, which overlap for a period Z), is equal to X plus Y minus Z.

(5) Where a relevant offender the subject of a finding within section 80(1)(c) or 81(1)(c) is subsequently tried for the offence, the notification period relating to the finding ends at the conclusion of the trial.

(6) In this Part, "relevant date" means—
   (a) in the case of a person within section 80(1)(a) or 81(1)(a), the date of the conviction;
   (b) in the case of a person within section 80(1)(b) or (c) or 81(1)(b) or (c), the date of the finding;
   (c) in the case of a person within section 80(1)(d) or 81(1)(d), the date of the caution;
   (d) in the case of a person within section 81(7), the date which, for the purposes of Part 1 of the Sex Offenders Act 1997 (c. 51), was the relevant date in relation to that person.

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Textual Amendments

F15 Words in table in s. 82(1) substituted (S.) (8.12.2005) by Management of Offenders etc. (Scotland) Act 2005 (asp 14), **ss. 17**, 24(1); and those same words substituted (E.W.N.I.) (12.2.2007) by Violent Crime Reduction Act 2006 (c. 38), **ss. 57**, 66(2); S.I. 2007/74, **art. 2**

83 Notification requirements: initial notification

(1) A relevant offender must, within the period of 3 days beginning with the relevant date (or, if later, the commencement of this Part), notify to the police the information set out in subsection (5).

(2) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 80(1) if—

(a) immediately before the conviction, finding or caution, he was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court ("the earlier event"),

(b) at that time, he had made a notification under subsection (1) in respect of the earlier event, and

(c) throughout the period referred to in subsection (1), he remains subject to the notification requirements as a result of the earlier event.

(3) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 81(1) or an order within section 81(7) if the offender complied with section 2(1) of the Sex Offenders Act 1997 in respect of the conviction, finding, caution or order.

(4) Where a notification order is made in respect of a conviction, finding or caution, subsection (1) does not apply to the relevant offender in respect of the conviction, finding or caution if—

(a) immediately before the order was made, he was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court ("the earlier event"),

(b) at that time, he had made a notification under subsection (1) in respect of the earlier event, and

(c) throughout the period referred to in subsection (1), he remains subject to the notification requirements as a result of the earlier event.

(5) The information is—

(a) the relevant offender's date of birth;

(b) his national insurance number;

(c) his name on the relevant date and, where he used one or more other names on that date, each of those names;

(d) his home address on the relevant date;

(e) his name on the date on which notification is given and, where he uses one or more other names on that date, each of those names;

(f) his home address on the date on which notification is given;

(g) the address of any other premises in the United Kingdom at which, at the time the notification is given, he regularly resides or stays.

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[[F16](h) whether he has any passports and, in relation to each passport he has, the details set out in subsection (5A);

(i) such other information, about him or his personal affairs, as the Scottish Ministers may prescribe in regulations.

(5A) The details are—

(a) the issuing authority;

(b) the number;

(c) the dates of issue and expiry;

(d) the name and date of birth given as being those of the passport holder.**]**

(6) When determining the period for the purpose of subsection (1), there is to be disregarded any time when the relevant offender is—

(a) remanded in or committed to custody by an order of a court;

(b) serving a sentence of imprisonment or a term of service detention;

(c) detained in a hospital; or

(d) outside the United Kingdom.

(7) In this Part, "home address" means, in relation to any person—

(a) the address of his sole or main residence in the United Kingdom, or

(b) where he has no such residence, the address or location of a place in the United Kingdom where he can regularly be found and, if there is more than one such place, such one of those places as the person may select.

[[F17](8) In this section, "passport" means—

(a) a United Kingdom passport within the meaning of the Immigration Act 1971 (c. 77);

(b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;

(c) a document that can be used (in some or all circumstances) instead of a passport.**]**

Textual Amendments

F16 S. 83(5)(h)(i)(5A) inserted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 78(2)**, 104; S.S.I. 2006/432, **art. 2(d)**

F17 S. 83(8) inserted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 78(3)**, 104; S.S.I. 2006/432, **art. 2(d)**

84 Notification requirements: changes E+W+N.I.

(1) A relevant offender must, within the period of 3 days beginning with—

(a) his using a name which has not been notified to the police under section 83(1), this subsection, or section 2 of the Sex Offenders Act 1997 (c. 51),

(b) any change of his home address,

(c) his having resided or stayed, for a qualifying period, at any premises in the United Kingdom the address of which has not been notified to the police under section 83(1), this subsection, or section 2 of the Sex Offenders Act 1997, or

(d) his release from custody pursuant to an order of a court or from imprisonment, service detention or detention in a hospital,

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notify to the police that name, the new home address, the address of those premises or (as the case may be) the fact that he has been released, and (in addition) the information set out in section 83(5).

(2) A notification under subsection (1) may be given before the name is used, the change of home address occurs or the qualifying period ends, but in that case the relevant offender must also specify the date when the event is expected to occur.

(3) If a notification is given in accordance with subsection (2) and the event to which it relates occurs more than 2 days before the date specified, the notification does not affect the duty imposed by subsection (1).

(4) If a notification is given in accordance with subsection (2) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified—
   (a) the notification does not affect the duty imposed by subsection (1), and
   (b) the relevant offender must, within the period of 6 days beginning with the date specified, notify to the police the fact that the event did not occur within the period of 3 days beginning with the date specified.

(5) Section 83(6) applies to the determination of the period of 3 days mentioned in subsection (1) and the period of 6 days mentioned in subsection (4)(b), as it applies to the determination of the period mentioned in section 83(1).

(6) In this section, "qualifying period" means—
   (a) a period of 7 days, or
   (b) two or more periods, in any period of 12 months, which taken together amount to 7 days.

Extent Information

E1 This version of this provision extends to England, Wales and Northern Ireland only; a separate version has been created for Scotland only

84 Notification requirements: changes S

(1) A relevant offender must, within the period of 3 days beginning with—
   (a) his using a name which has not been notified to the police under section 83(1), this subsection, or section 2 of the Sex Offenders Act 1997 (c. 51),
   (b) any change of his home address,
   (c) his having resided or stayed, for a qualifying period, at any premises in the United Kingdom the address of which has not been notified to the police under section 83(1), this subsection, or section 2 of the Sex Offenders Act 1997, [F71] . . .
   (d) his release from custody pursuant to an order of a court or from imprisonment, service detention or detention in a hospital,
   [[F72](e) his losing or ceasing to have a passport notified to the police under section 83(1) or this subsection,
   (f) his receiving a passport which has not been notified to the police under section 83(1) or this subsection, or

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(g) the occurrence, in relation to information required to be notified by virtue of regulations made under section 83(5)(i), of an event prescribed by the Scottish Ministers in regulations,**]**

notify to the police that name, the new home address, the address of those premises or **[**[F73]the fact that he has been released, the fact that he has lost or ceased to have the passport, the details set out in section 83(5A) in relation to the passport or (as the case may be) such information as the Scottish Ministers prescribe in regulations**]**, and (in addition) the information set out in section 83(5).

[[F74](1A) In subsection (1), "passport" has the same meaning as in section 83.**]**

(2) A notification under subsection (1) may be given before the name is used, the change of home address occurs or the qualifying period ends, but in that case the relevant offender must also specify the date when the event is expected to occur.

(3) If a notification is given in accordance with subsection (2) and the event to which it relates occurs more than 2 days before the date specified, the notification does not affect the duty imposed by subsection (1).

(4) If a notification is given in accordance with subsection (2) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified—

(a) the notification does not affect the duty imposed by subsection (1), and

(b) the relevant offender must, within the period of 6 days beginning with the date specified, notify to the police the fact that the event did not occur within the period of 3 days beginning with the date specified.

(5) Section 83(6) applies to the determination of the period of 3 days mentioned in subsection (1) and the period of 6 days mentioned in subsection (4)(b), as it applies to the determination of the period mentioned in section 83(1).

(6) In this section, "qualifying period" means—

(a) a period of 7 days, or

(b) two or more periods, in any period of 12 months, which taken together amount to 7 days.

Extent Information

E4 This version of this provision extends to Scotland only; a separate version has been created for England, Wales and Northern Ireland only

Textual Amendments

F71 Word in s. 84(1) repealed (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 78(5)(a)**, 104; S.S.I. 2006/432, **art. 2(d)**

F72 S. 84(1)(e)-(g) inserted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 78(5)(b)**, 104; S.S.I. 2006/432, **art. 2(d)**

F73 Words in s. 84(1) substituted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 78(5)(c)**, 104; S.S.I. 2006/432, **art. 2(d)**

F74 S. 84(1A) inserted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 78(6)**, 104; S.S.I. 2006/432, **art. 2(d)**

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85 Notification requirements: periodic notification

(1) A relevant offender must, within the period of one year after each event within subsection (2), notify to the police the information set out in section 83(5), unless within that period he has given a notification under section 84(1).

(2) The events are—
- (a) the commencement of this Part (but only in the case of a person who is a relevant offender from that commencement);
- (b) any notification given by the relevant offender under section 83(1) or 84(1); and
- (c) any notification given by him under subsection (1).

(3) Where the period referred to in subsection (1) would (apart from this subsection) end whilst subsection (4) applies to the relevant offender, that period is to be treated as continuing until the end of the period of 3 days beginning when subsection (4) first ceases to apply to him.

(4) This subsection applies to the relevant offender if he is—
- (a) remanded in or committed to custody by an order of a court,
- (b) serving a sentence of imprisonment or a term of service detention,
- (c) detained in a hospital, or
- (d) outside the United Kingdom.

86 Notification requirements: travel outside the United Kingdom

(1) The Secretary of State may by regulations make provision requiring relevant offenders who leave the United Kingdom, or any description of such offenders—
- (a) to give in accordance with the regulations, before they leave, a notification under subsection (2);
- (b) if they subsequently return to the United Kingdom, to give in accordance with the regulations a notification under subsection (3).

(2) A notification under this subsection must disclose—
- (a) the date on which the offender will leave the United Kingdom;
- (b) the country (or, if there is more than one, the first country) to which he will travel and his point of arrival (determined in accordance with the regulations) in that country;
- (c) any other information prescribed by the regulations which the offender holds about his departure from or return to the United Kingdom or his movements while outside the United Kingdom.

(3) A notification under this subsection must disclose any information prescribed by the regulations about the offender's return to the United Kingdom.

(4) Regulations under subsection (1) may make different provision for different categories of person.

87 Method of notification and related matters E+W+N.I.

(1) A person gives a notification under section 83(1), 84(1) or 85(1) by—
- (a) attending at such police station in his local police area as the Secretary of State may by regulations prescribe or, if there is more than one, at any of them, and

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(b) giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station.

(2) A person giving a notification under section 84(1)—

(a) in relation to a prospective change of home address, or

(b) in relation to premises referred to in subsection (1)(c) of that section,

may give the notification at a police station that would fall within subsection (1) above if the change in home address had already occurred or (as the case may be) if the address of those premises were his home address.

(3) Any notification under this section must be acknowledged; and an acknowledgment under this subsection must be in writing, and in such form as the Secretary of State may direct.

(4) Where a notification is given under section 83(1), 84(1) or 85(1), the relevant offender must, if requested to do so by the police officer or person referred to in subsection (1)(b), allow the officer or person to—

(a) take his fingerprints,

(b) photograph any part of him, or

(c) do both these things.

(5) The power in subsection (4) is exercisable for the purpose of verifying the identity of the relevant offender.

(6) Regulations under subsection (1) may make different provision for different categories of person.

Extent Information

E2 This version of this provision extends to England, Wales and Northern Ireland only; a separate version has been created for Scotland only

87 Method of notification and related matters S

(1) A person gives a notification under section 83(1), 84(1) or 85(1) by—

(a) attending at such police station in his local police area as the Secretary of State may by regulations prescribe or, if there is more than one, at any of them, and

(b) giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station.

(2) A person giving a notification under section 84(1)—

(a) in relation to a prospective change of home address, or

(b) in relation to premises referred to in subsection (1)(c) of that section,

may give the notification at a police station that would fall within subsection (1) above if the change in home address had already occurred or (as the case may be) if the address of those premises were his home address.

(3) Any notification under this section must be acknowledged; and an acknowledgment under this subsection must be in writing, and in such form as the Secretary of State may direct.

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[[F75](5A) Where a notification is given in Scotland under section 83(1), 84(1) or 85(1), the relevant offender must, if requested to do so by the police officer or person referred to in subsection (1)(b), do one or more of the following—

(a) allow the officer or person to photograph any part of the offender,

(b) allow the officer or person to take from the offender, or provide to the officer or person, such relevant physical data as the officer or person considers appropriate,

(c) allow the officer or person to take from the offender any sample mentioned in any of paragraphs (a) to (c) of subsection (6) of section 18 of the Criminal Procedure (Scotland) Act 1995 by the means specified in that paragraph in relation to that sample,

(d) allow the officer or person to take from the offender any sample mentioned in subsection (6A) of that section by the means specified in that subsection.**]**

[[F76](5B) Where a notification is given in Scotland under section 83(1), 84(1) or 85(1), the relevant offender must, if requested to do so by the police officer or person referred to in subsection (1)(b), produce each passport he has to that officer or person, for inspection by that officer or person.

(5C) In subsection (5B), "passport" has the same meaning as in section 83.**]**

(6) Regulations under subsection (1) may make different provision for different categories of person.

Extent Information

E5 This version of this provision extends to Scotland only; a separate version has been created for England, Wales and Northern Ireland only

Textual Amendments

F75 S. 87(5A) substituted for s. 87(4)(5) (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) , {ss. 77(7)}, 104; S.S.I. 2006/432, **art. 2(d)**

F76 S. 87(5B)(5C) inserted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) , {ss. 78(7)}, 104; S.S.I. 2006/432, **art. 2(d)**

88 Section 87: interpretation

(1) Subsections (2) to (4) apply for the purposes of section 87.

(2) "Photograph" includes any process by means of which an image may be produced.

[[F18](2A) "Relevant physical data" has the meaning given by section 18(7A) of the Criminal Procedure (Scotland) Act 1995.**]**

(3) "Local police area" means, in relation to a person—

(a) the police area in which his home address is situated;

(b) in the absence of a home address, the police area in which the home address last notified is situated;

(c) in the absence of a home address and of any such notification, the police area in which the court which last dealt with the person in a way mentioned in subsection (4) is situated.

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(4) The ways are—

(a) dealing with a person in respect of an offence listed in Schedule 3 or a finding in relation to such an offence;

(b) dealing with a person in respect of an offence under section 128 or a finding in relation to such an offence;

(c) making, in respect of a person, a notification order, interim notification order, sexual offences prevention order or interim sexual offences prevention order;

(d) making, in respect of a person, an order under section 2, 2A or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders and interim orders made in England and Wales or Scotland) or Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders and interim orders made in Northern Ireland);

and in paragraphs (a) and (b), "finding" in relation to an offence means a finding of not guilty of the offence by reason of insanity or a finding that the person was under a disability and did the act or omission charged against him in respect of the offence.

(5) Subsection (3) applies as if Northern Ireland were a police area.

Textual Amendments

F18 S. 88(2A) inserted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 77(8)**, 104; S.S.I. 2006/432, **art. 2(d)**

VALID FROM 25/10/2010

[F19 88A Review of indefinite notification requirements: applicable persons

(1) Sections 88B to 88H apply to—

(a) a person who, on or after the date on which this section comes into force, becomes subject to the notification requirements of this Part for an indefinite period by virtue of section 80(1) or a notification order made under section 97(5); and

(b) a person who immediately before that date was subject to the notification requirements of this Part for an indefinite period by virtue of—

(i) section 80(1);

(ii) section 81(1); or

(iii) a notification order made under section 97(5).

(2) A person who falls within subsection (1)(a) or (b) is referred to in sections 88B to 88G as a "relevant sex offender".**]**

Textual Amendments

F19 Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010 (S.S.I. 2010/370), arts. 1(1), **3** (which Order is revoked and re-enacted with modifications (28.1.2011) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 (S.S.I. 2011/45))

Status: *Point in time view as at 01/03/2007. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 25/10/2010

[F19 88B Review of indefinite notification requirements: date of discharge and further date of discharge

(1) For the purposes of this Part, the date of discharge is—
- (a) where the relevant sex offender was aged 18 or over on the relevant date, the date falling 15 years after that date;
- (b) where the relevant sex offender was aged under 18 on the relevant date, the date falling 8 years after that date.

(2) In determining the date of discharge under subsection (1), there is to be disregarded any time when the relevant sex offender was—
- (a) remanded in or committed to custody by order of a court;
- (b) serving a sentence of imprisonment or a term of service detention;
- (c) detained in hospital; or
- (d) outside the United Kingdom,

before the relevant sex offender first notified information to the police under section 2(1) of the Sex Offenders Act 1997 or section 83(1) of this Part.

(3) Where a notification continuation order made under this Part has effect in respect of the relevant sex offender, for the purposes of this Part the further date of discharge is the date of expiry of the fixed period specified in that order.

(4) In this section and section 88D "relevant date"—
- (a) in relation to a relevant sex offender who is subject to the notification requirements of this Part for an indefinite period by virtue of section 80(1) or 81(1), has the meaning applicable to that offender specified in section 82(6)(a) to (c);
- (b) in relation to a relevant sex offender who is subject to the notification requirements of this Part for an indefinite period by virtue of a notification order made under section 97(5), has the meaning applicable to that offender specified in section 98(2).**]**

Textual Amendments

F19 Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010 (S.S.I. 2010/370), arts. 1(1), **3** (which Order is revoked and re-enacted with modifications (28.1.2011) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 (S.S.I. 2011/45))

VALID FROM 25/10/2010

[F19 88C Review of the indefinite notification requirements: procedure and grounds

(1) The relevant chief constable must no later than the date of discharge—
- (a) make a notification continuation order in respect of the relevant sex offender; or

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(b) notify the relevant sex offender that the offender ceases to be subject to the notification requirements of this Part on the date of discharge.

(2) A notification continuation order is an order making the relevant sex offender subject to the notification requirements of this Part for a fixed period of not more than 15 years from the date which would, but for the order, have been the date of discharge.

(3) The relevant chief constable may make a notification continuation order only if satisfied, on the balance of probabilities, that the relevant sex offender poses a risk of sexual harm to the public, or any particular members of the public, in the United Kingdom.

(4) In deciding whether to make a notification continuation order, the relevant chief constable must take into account—

(a) the seriousness of the offence (or offences)—

(i) of which the relevant sex offender was convicted;

(ii) of which the relevant sex offender was found not guilty by reason of insanity;

(iii) in respect of which the relevant sex offender was found to be under a disability and to have done the act charged; or

(iv) in respect of which the relevant sex offender was cautioned in England and Wales or Northern Ireland,

which made the relevant sex offender subject to the notification requirements of this Part for an indefinite period;

(b) the period of time which has elapsed since the relevant sex offender committed the offence (or offences);

(c) where the relevant sex offender falls within section 88A(1)(b)(ii), whether the relevant sex offender committed any offence under section 3 of the Sex Offenders Act 1997;

(d) whether the relevant sex offender has committed any offence under section 91 of this Act;

(e) the age of the relevant sex offender at the time of the decision;

(f) the age of the relevant sex offender at the time the offence (or offences) referred to in paragraph (a) was (or were) committed;

(g) the age of any person who was a victim of any such offence (where applicable) and the difference in age between the victim and the relevant sex offender at the time the offence was committed;

(h) any convictions or findings made by a court in respect of the relevant sex offender for any other offence listed in Schedule 3;

(i) any caution which the relevant sex offender has received for an offence in England and Wales or Northern Ireland which is listed in Schedule 3;

(j) whether any criminal proceedings for any offences listed in Schedule 3 have been instituted against the relevant sex offender but have not concluded;

(k) any assessment of the risk posed by the relevant sex offender which has been made by the responsible authorities under the joint arrangements for managing and assessing risk established under section 10 of the Management of Offenders etc. (Scotland) Act 2005;

(l) any other submission or evidence of the risk of sexual harm posed by the relevant sex offender to the public, or any particular members of the public, in the United Kingdom;

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(m) any submission or evidence presented by or on behalf of the relevant sex offender which demonstrates that the relevant sex offender does not pose a risk of sexual harm to the public, or any particular members of the public, in the United Kingdom; and

(n) any other matter which the relevant chief constable considers to be appropriate.

(5) A notification continuation order must state—

(a) the reasons why the order was made; and

(b) the reasons for the determination of the fixed period in the order.

(6) A notification continuation order must be notified to the relevant sex offender by—

(a) the relevant chief constable sending a copy of the order to the relevant sex offender by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate); or

(b) a constable serving a copy of the order on the relevant sex offender.

(7) In this section—

"sexual harm" means physical or psychological harm caused by the relevant sex offender doing anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom; and

"responsible authorities" has the meaning given by section 10(7) of the Management of Offenders etc. (Scotland) Act 2005.

(8) In this section and sections 88D to 88G, "relevant chief constable" means the chief constable of the police force for the police area in which the relevant sex offender resides.**]**

Textual Amendments

F19 Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010 (S.S.I. 2010/370), arts. 1(1), **3** (which Order is revoked and re-enacted with modifications (28.1.2011) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 (S.S.I. 2011/45))

VALID FROM 25/10/2010

[F19 88D Review of indefinite notification requirement: transitional arrangements

(1) This section applies to a relevant sex offender falling within section 88A(1)(b)(ii) if the person—

(a) was aged under 18 on the relevant date; and

(b) after disregarding any time referred to in subsection (2), has been subject to the notification requirements of Part 1 of the Sex Offenders Act 1997 and this Part for a total period of at least 8 years on the date on which this section comes into force.

(2) That time is any time during which the relevant sex offender was—

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(a) remanded in or committed to custody by order of the court;
(b) serving a sentence of imprisonment or a term of service detention;
(c) detained in hospital; or
(d) outside the United Kingdom,

before the relevant sex offender first notified information to the police under section 2(1) of the Sex Offenders Act 1997.

(3) The relevant chief constable must no later than the applicable date—
(a) make a notification continuation order in respect of the relevant sex offender; or
(b) notify the relevant sex offender that the offender ceases to be subject to the notification requirements of this Part on the applicable date.

(4) Section 88C(2) to (8) applies in relation to this section, but a reference to the date of discharge is to be read as a reference to the applicable date.

(5) In this section, the "applicable date" is the date falling 3 months after the date on which this section comes into force.**]**

Textual Amendments

F19 Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010 (S.S.I. 2010/370), arts. 1(1), **3** (which Order is revoked and re-enacted with modifications (28.1.2011) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 (S.S.I. 2011/45))

VALID FROM 25/10/2010

[F19 88E Review of indefinite notification requirements: further review

(1) Where a notification continuation order has been made, the relevant chief constable must no later than the further date of discharge—
(a) make another notification continuation order in respect of the relevant sex offender; or
(b) notify the relevant sex offender that the offender ceases to be subject to the notification requirements of this Part on the further date of discharge.

(2) Section 88C(2) to (8) applies in relation to this section, but a reference to the date of discharge is to be read as a reference to the further date of discharge.**]**

Textual Amendments

F19 Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010 (S.S.I. 2010/370), arts. 1(1), **3** (which Order is revoked and re-enacted with modifications (28.1.2011) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 (S.S.I. 2011/45))

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VALID FROM 25/10/2010

[F19 88F Review of the indefinite notification requirements: application to a sheriff

(1) Where a relevant chief constable fails to comply with section 88C(1), 88D(3) or 88E(1), the relevant sex offender may make an application to a sheriff for an order that the offender is no longer subject to the notification requirements of this Part.

(2) An application under subsection (1) is to be made by summary application to the sheriff in whose sheriffdom the relevant sex offender resides.

(3) On an application under subsection (1), the sheriff may—
- (a) make the order sought in the application; or
- (b) make a notification continuation order in respect of the relevant sex offender.

(4) Section 88C(2) to (5) and (7) applies in relation to the making of a notification continuation order under this section, but—
- (a) a reference to the relevant chief constable is to be read as a reference to the sheriff;
- (b) if an application under subsection (1) is made in relation to the failure of the relevant chief constable to comply with section 88D(3), the reference to the date of discharge in section 88C(2) is to be read as a reference to the applicable date; and
- (c) if an application under subsection (1) is made in relation to the failure of the relevant chief constable to comply with section 88E(1), the reference to the date of discharge in section 88C(2) is to be read as a reference to the further date of discharge.

(5) The relevant chief constable and the relevant sex offender may appear or be represented at any hearing in respect of the application.

(6) Where an application under subsection (1) is determined, the sheriff clerk must send a copy of the interlocutor, and where made a copy of the notification continuation order, to the relevant sex offender and the relevant chief constable.

(7) The copy of the interlocutor, and where made the copy of the notification continuation order, is sent in accordance with subsection (6) if—
- (a) sent by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate); or
- (b) personally served on the relevant sex offender and the relevant chief constable.

(8) The relevant sex offender remains subject to the notification requirements of this Part until the matter is finally determined as mentioned in section 88G(10).

Textual Amendments

F19 Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010 (S.S.I. 2010/370), arts. 1(1), **3** (which Order is revoked and re-enacted with

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modifications (28.1.2011) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 (S.S.I. 2011/45))

VALID FROM 25/10/2010

88G Review of indefinite notification requirements: appeals

(1) The decision of the relevant chief constable—
- (a) to make a notification continuation order; and
- (b) setting the fixed period of the notification continuation order,

may be appealed by the relevant sex offender within 21 days after the date specified in subsection (3).

(2) An appeal under subsection (1) is to be made by summary application to the sheriff in whose sheriffdom the relevant sex offender resides.

(3) The date is—
- (a) where the appeal is brought against the decision of the relevant chief constable made under section 88C(1), the date of discharge;
- (b) where the appeal is brought against the decision of the relevant chief constable made under section 88D(1), the applicable date; or
- (c) where the appeal is brought against the decision of the relevant chief constable made under section 88E(1), the further date of discharge.

(4) The decision of a sheriff—
- (a) on an application made under section 88F(1);
- (b) on appeal made under subsection (1); and
- (c) in relation to the fixed period of the notification continuation order,

may be appealed by the relevant sex offender or the relevant chief constable to the sheriff principal within 21 days of the date of that decision.

(5) On an appeal under this section, the sheriff or the sheriff principal may—
- (a) uphold or quash the decision of the relevant chief constable or, as the case may be, the sheriff;
- (b) make a notification continuation order; or
- (c) vary the fixed period in that order.

(6) Section 88C(3) to (5) apply in relation to the making of a notification continuation order under this section but a reference to the relevant chief constable is to be read as a reference to the sheriff or, as the case may be, sheriff principal.

(7) Where an appeal under this section is finally determined, the sheriff clerk must send a copy of the interlocutor, and where made a copy of the notification continuation order, to the relevant sex offender and the relevant chief constable.

(8) The copy of the interlocutor, and where made the copy of the notification continuation order, shall be sent in accordance with subsection (7) if—
- (a) sent by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the

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Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate); or

(b) personally served on the relevant sex offender and relevant chief constable.

(9) The relevant sex offender remains subject to the existing notification requirements of this Part until the matter is finally determined as mentioned in subsection (10).

(10) The matter is finally determined—

(a) where it is decided that a relevant sex offender should cease to be subject to the notification requirements of this Part, or the decision to make a notification continuation order is quashed, on the expiry of the period of 21 days referred to in subsection (4) without an appeal being taken;

(b) where a notification continuation order is made, or a decision to make such an order is upheld on appeal, on the expiry of the period of 21 days referred to in subsection (1) or (4) without an appeal being taken; or

(c) where an appeal is taken—

(i) on the disposal of the appeal; or

(ii) on its being abandoned.

Textual Amendments

F19 Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010 (S.S.I. 2010/370), arts. 1(1), **3** (which Order is revoked and re-enacted with modifications (28.1.2011) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 (S.S.I. 2011/45))

VALID FROM 25/10/2010

88H Review of indefinite notification requirements: power to amend periods

The Secretary of State may by order amend—

(a) the periods specified in sections 88B(1)(a) and (b); and

(b) the fixed period specified in section 88C(2).

Textual Amendments

F19 Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010 (S.S.I. 2010/370), arts. 1(1), **3** (which Order is revoked and re-enacted with modifications (28.1.2011) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 (S.S.I. 2011/45))

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VALID FROM 25/10/2010

88I Discharge from indefinite notification requirements: England, Wales and Northern Ireland

(1) A relevant offender who is, under the relevant legislation, discharged from the notification requirements of this Part by a court, person or body in England and Wales or Northern Ireland is, by virtue of the discharge, also discharged from the notification requirements of this Part as it applies to Scotland.

(2) In subsection (1) "relevant legislation" means legislation which makes provision equivalent to that made by sections 88A to 88H and this section for a relevant offender who is subject to the notification requirements of this Part as it applies to England and Wales or, as the case may be, Northern Ireland for an indefinite period to be discharged from those notification requirements.**]**

Textual Amendments

F19 Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010 (S.S.I. 2010/370), arts. 1(1), **3** (which Order is revoked and re-enacted with modifications (28.1.2011) by The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 (S.S.I. 2011/45))

89 Young offenders: parental directions

(1) Where a person within the first column of the following Table ("the young offender") is under 18 (or, in Scotland, 16) when he is before the court referred to in the second column of the Table opposite the description that applies to him, that court may direct that subsection (2) applies in respect of an individual ("the parent") having parental responsibility for (or, in Scotland, parental responsibilities in relation to) the young offender.

TABLE

Description of person	*Court which may make the direction*
A relevant offender within section 80(1)(a) to (c) or 81(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A relevant offender within section 129(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A person who is the subject of a notification order, interim notification order, sexual offences prevention order or interim sexual offences prevention order	The court which makes the order
A relevant offender who is the defendant to an application under subsection (4) (or, in Scotland, the subject of an application under subsection (5))	The court which hears the application

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(2) Where this subsection applies—
- (a) the obligations that would (apart from this subsection) be imposed by or under sections 83 to 86 on the young offender are to be treated instead as obligations on the parent, and
- (b) the parent must ensure that the young offender attends at the police station with him, when a notification is being given.

(3) A direction under subsection (1) takes immediate effect and applies—
- (a) until the young offender attains the age of 18 (or, where a court in Scotland gives the direction, 16); or
- (b) for such shorter period as the court may, at the time the direction is given, direct.

(4) A chief officer of police may, by complaint to any magistrates' court whose commission area includes any part of his police area, apply for a direction under subsection (1) in respect of a relevant offender ("the defendant")—
- (a) who resides in his police area, or who the chief officer believes is in or is intending to come to his police area, and
- (b) who the chief officer believes is under 18.

(5) In Scotland, a chief constable may, by summary application to any sheriff within whose sheriffdom lies any part of the area of his police force, apply for a direction under subsection (1) in respect of a relevant offender ("the subject")—
- (a) who resides in that area, or who the chief constable believes is in or is intending to come to that area, and
- (b) who the chief constable believes is under 16.

90 Parental directions: variations, renewals and discharges

(1) A person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a direction under section 89(1).

(2) The persons are—
- (a) the young offender;
- (b) the parent;
- (c) the chief officer of police for the area in which the young offender resides;
- (d) a chief officer of police who believes that the young offender is in, or is intending to come to, his police area;
- (e) in Scotland, where the appropriate court is a civil court—
  - (i) the chief constable of the police force within the area of which the young offender resides;
  - (ii) a chief constable who believes that the young offender is in, or is intending to come to, the area of his police force,

  and in any other case, the prosecutor;
- (f) where the direction was made on an application under section 89(4), the chief officer of police who made the application;
- (g) where the direction was made on an application under section 89(5), the chief constable who made the application.

(3) An application under subsection (1) may be made—

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(a) where the appropriate court is the Crown Court (or in Scotland a criminal court), in accordance with rules of court;

(b) in any other case, by complaint (or, in Scotland, by summary application).

(4) 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 direction, that the court considers appropriate.

(5) In this section, the "appropriate court" means—

(a) where the Court of Appeal made the order, the Crown Court;

(b) in any other case, the court that made the direction under section 89(1).

91 Offences relating to notification E+W+N.I.

(1) A person commits an offence if he—

(a) fails, without reasonable excuse, to comply with section 83(1), 84(1), 84(4)(b), 85(1), 87(4) or 89(2)(b) or any requirement imposed by regulations made under section 86(1); or

(b) notifies to the police, in purported compliance with section 83(1), 84(1) or 85(1) or any requirement imposed by regulations made under section 86(1), any information which he knows to be false.

(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) A person commits an offence under paragraph (a) of subsection (1) on the day on which he first fails, without reasonable excuse, to comply with section 83(1), 84(1) or 85(1) or a requirement imposed by regulations made under section 86(1), and continues to commit it throughout any period during which the failure continues; but a person must not be prosecuted under subsection (1) more than once in respect of the same failure.

(4) Proceedings for an offence under this section may be commenced in any court having jurisdiction in any place where the person charged with the offence resides or is found.

Extent Information

E3 This version of this provision extends to England, Wales and Northern Ireland only; a separate version has been created for Scotland only

91 Offences relating to notification S

(1) A person commits an offence if he—

(a) fails, without reasonable excuse, to comply with section 83(1), 84(1), 84(4)(b), 85(1), **[**[F77]87(5A)**][**[F78]or (5B)**]** or 89(2)(b) or any requirement imposed by regulations made under section 86(1); or

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(b) notifies to the police, in purported compliance with section 83(1), 84(1) or 85(1) or any requirement imposed by regulations made under section 86(1), any information which he knows to be false.

(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) A person commits an offence under paragraph (a) of subsection (1) on the day on which he first fails, without reasonable excuse, to comply with section 83(1), 84(1) or 85(1) or a requirement imposed by regulations made under section 86(1), and continues to commit it throughout any period during which the failure continues; but a person must not be prosecuted under subsection (1) more than once in respect of the same failure.

[[F79](4) Proceedings for an offence under this section may be commenced in any court—

(a) having jurisdiction in any place where the accused—

(i) resides;

(ii) is last known to have resided; or

(iii) is found;

(b) which has convicted the accused of an offence if the accused is subject to the notification requirements of this Part by virtue of that conviction; or

(c) which has made an order under section 104(1)(b) in respect of the accused if the accused is subject to those requirements by virtue of that order.**]**

Extent Information

E6 This version of this provision extends to Scotland only; a separate version has been created for England, Wales and Northern Ireland only

Textual Amendments

F77 Words in s. 91(1)(a) substituted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 77(9)**, 104; S.S.I. 2006/432, **art. 2(d)**

F78 Words in s. 91(1)(a) inserted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 78(8)**, 104; S.S.I. 2006/432, **art. 2(d)**

F79 S. 91(4) substituted (S.) (8.2.2006) by Management of Offenders etc. (Scotland) Act 2005 (asp 14), **ss. 18**, 24(2); S.S.I. 2006/48, **art. 3(1)**, Sch. Pt. 1 (subject to art. 3(3))

92 Certificates for purposes of Part 2

(1) Subsection (2) applies where on any date a person is—

(a) convicted of an offence listed in Schedule 3;

(b) found not guilty of such an offence by reason of insanity; or

(c) found to be under a disability and to have done the act charged against him in respect of such an offence.

(2) If the court by or before which the person is so convicted or found—

(a) states in open court—

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(i) that on that date he has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged against him, and

(ii) that the offence in question is an offence listed in Schedule 3, and

(b) certifies those facts, whether at the time or subsequently,

the certificate is, for the purposes of this Part, evidence (or, in Scotland, sufficient evidence) of those facts.

(3) Subsection (4) applies where on any date a person is, in England and Wales or Northern Ireland, cautioned in respect of an offence listed in Schedule 3.

(4) If the constable—

(a) informs the person that he has been cautioned on that date and that the offence in question is an offence listed in Schedule 3, and

(b) certifies those facts, whether at the time or subsequently, in such form as the Secretary of State may by order prescribe,

the certificate is, for the purposes of this Part, evidence (or, in Scotland, sufficient evidence) of those facts.

93 Abolished homosexual offences

Schedule 4 (procedure for ending notification requirements for abolished homosexual offences) has effect.

Information for verification

94 Part 2: supply of information to Secretary of State etc. for verification

(1) This section applies to information notified to the police under—

(a) section 83, 84 or 85, or

(b) section 2(1) to (3) of the Sex Offenders Act 1997 (c. 51).

(2) A person within subsection (3) may, for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, supply information to which this section applies to—

(a) the Secretary of State,

(b) a Northern Ireland Department, or

(c) a person providing services to the Secretary of State or a Northern Ireland Department in connection with a relevant function,

for use for the purpose of verifying the information.

(3) The persons are—

(a) a chief officer of police (in Scotland, a chief constable),

(b) the Police Information Technology Organisation,

[[F20](c) the Serious Organised Crime Agency.**]**

(4) In relation to information supplied under subsection (2) to any person, the reference to verifying the information is a reference to—

(a) checking its accuracy by comparing it with information held—

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(i) where the person is the Secretary of State or a Northern Ireland Department, by him or it in connection with the exercise of a relevant function, or

(ii) where the person is within subsection (2)(c), by that person in connection with the provision of services referred to there, and

(b) compiling a report of that comparison.

(5) Subject to subsection (6), the supply of information under this section is to be taken not to breach any restriction on the disclosure of information (however arising or imposed).

(6) This section does not authorise the doing of anything that contravenes the Data Protection Act 1998 (c. 29).

(7) This section does not affect any power existing apart from this section to supply information.

(8) In this section—

"Northern Ireland Department" means the Department for Employment and Learning, the Department of the Environment or the Department for Social Development;

"relevant function" means—

(a) a function relating to social security, child support, employment or training,

(b) a function relating to passports,

(c) a function under Part 3 of the Road Traffic Act 1988 (c. 52) or Part 2 of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)).

Textual Amendments

F20 S. 94(3)(c) substituted for s. 94(3)(c)(d) (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 194**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

95 Part 2: supply of information by Secretary of State etc.

(1) A report compiled under section 94 may be supplied by—

(a) the Secretary of State,

(b) a Northern Ireland Department, or

(c) a person within section 94(2)(c),

to a person within subsection (2).

(2) The persons are—

(a) a chief officer of police (in Scotland, a chief constable),

[[F21](b) the Serious Organised Crime Agency.**]**

(3) Such a report may contain any information held—

(a) by the Secretary of State or a Northern Ireland Department in connection with the exercise of a relevant function, or

(b) by a person within section 94(2)(c) in connection with the provision of services referred to there.

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(4) Where such a report contains information within subsection (3), the person within subsection (2) to whom it is supplied—

(a) may retain the information, whether or not used for the purposes of the prevention, detection, investigation or prosecution of an offence under this Part, and

(b) may use the information for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Part), but for no other purpose.

(5) Subsections (5) to (8) of section 94 apply in relation to this section as they apply in relation to section 94.

Textual Amendments

F21 S. 95(2)(b) substituted for s. 95(b)(c) (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 195**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

Information about release or transfer

96 Information about release or transfer

(1) This section applies to a relevant offender who is serving a sentence of imprisonment or a term of service detention, or is detained in a hospital.

(2) The Secretary of State may by regulations make provision requiring notice to be given by the person who is responsible for that offender to persons prescribed by the regulations, of any occasion when the offender is released or a different person becomes responsible for him.

[[F22](2A) The regulations may make provision requiring the person who is responsible for an offender, in giving notice under the regulations, to provide—

(a) any information about the offender, or

(b) a photograph of any part of the offender.

(2B) In subsection (2A), "photograph" is to be construed in accordance with section 88(2).**]**

(3) The regulations may make provision for determining who is to be treated for the purposes of this section as responsible for an offender.

[[F23](4) The regulations may make different provision for different purposes.**]**

Textual Amendments

F22 S. 96(2A)(2B) inserted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 79(2)**, 104; S.S.I. 2006/432, **art. 2(d)**

F23 S. 96(4) inserted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 79(3)**, 104; S.S.I. 2006/432, **art. 2(d)**

[F24 96A Entry and examination of home address

Police powers of entry to and examination of relevant offender's home address

Status: *Point in time view as at 01/03/2007. This version of this Act contains provisions that are not valid for this point in time.*
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(1) A sheriff may, if satisfied on the application of a senior police officer of the relevant force as to the matters mentioned in subsection (2), grant a warrant authorising any constable of the relevant force to enter premises in the sheriffdom (if necessary using reasonable force) and to examine and search them, and the things in them, for the purpose mentioned in subsection (3).

(2) Those matters are—
- (a) that the premises are either—
  - (i) premises whose address has been notified by a relevant offender as his home address in his most recent notification of a home address under this Part; or
  - (ii) premises whose address has been notified by a relevant offender as the address of any other premises at which he regularly resides or stays, in his most recent notification under section 83(1) or 85(1) or in any notification under section 84(1) given by him since that notification;
- (b) that the offender is not one to whom subsection (4) applies;
- (c) that it would assist the carrying out of the purpose mentioned in subsection (3), for a constable of the relevant force to examine and search the premises and the things in them; and
- (d) that on more than one occasion, a constable of the relevant force has attempted to examine and search the premises and the things in them for the purpose mentioned in subsection (3) and has been unable (whether by not being able to search and examine the premises and the things in them, or by not being able to obtain entry to the premises) to do so.

(3) That purpose is assessing the risk of the offender committing a sexual offence.

(4) This subsection applies to the relevant offender if he is—
- (a) remanded in or committed to custody by an order of a court;
- (b) serving a sentence of imprisonment or a term of service detention;
- (c) detained in a hospital; or
- (d) outside the United Kingdom.

(5) A sheriff is to determine an application for a warrant under subsection (1) without hearing from the relevant offender or any other person who has an interest in the premises.

(6) A warrant under subsection (1) does not confer power to seize anything in the premises to which it relates.

(7) A warrant under subsection (1) must be executed at a reasonable hour.

(8) A warrant under subsection (1) continues in force until the expiry of the period of one month beginning with the date of the warrant's grant.

(9) A warrant under subsection (1) authorises entry on one occasion only.

(10) This section does not prejudice any other power of entry, examination, search or seizure.

(11) In this section—

"the relevant force" means the police force maintained for the area in which the premises are situated;

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"senior police officer" means a constable of the rank of superintendent or above; and

"sexual offence" means—

(a) an offence within any of paragraphs 36 to 59C of Schedule 3; or

(b) any other offence in circumstances in which it would be likely that a determination such as is mentioned in paragraph 60 of that Schedule would be made in relation to the offence.**]**

Textual Amendments

F24 S. 96A inserted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 80**, 104; S.S.I. 2006/432, **art. 2(d)**

VALID FROM 31/05/2007

[F25 Entry and search of home address

Textual Amendments

F25 S. 96B and cross-heading inserted (E.W.N.I.) (31.5.2007) by Violent Crime Reduction Act 2006 (c. 38), **ss. 58(1)**, 66(2); S.I. 2007/858, **art. 3(f)**

96B Power of entry and search of relevant offender's home address

(1) If on an application made by a senior police officer of the relevant force a justice of the peace is satisfied that the requirements in subsection (2) are met in relation to any premises, he may issue a warrant authorising a constable of that force—

(a) to enter the premises for the purpose of assessing the risks posed by the relevant offender to which the warrant relates; and

(b) to search the premises for that purpose.

(2) The requirements are—

(a) that the address of each set of premises specified in the application is an address falling within subsection (3);

(b) that the relevant offender is not one to whom subsection (4) applies;

(c) that it is necessary for a constable to enter and search the premises for the purpose mentioned in subsection (1)(a); and

(d) that on at least two occasions a constable has sought entry to the premises in order to search them for that purpose and has been unable to obtain entry for that purpose.

(3) An address falls within this subsection if—

(a) it is the address which was last notified in accordance with this Part by a relevant offender to the police as his home address; or

(b) there are reasonable grounds to believe that a relevant offender resides there or may regularly be found there.

(4) This subsection applies to a relevant offender if he is—

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(a) remanded in or committed to custody by order of a court;
(b) serving a sentence of imprisonment or a term of service detention;
(c) detained in a hospital; or
(d) outside the United Kingdom.

(5) A warrant issued under this section must specify the one or more sets of premises to which it relates.

(6) The warrant may authorise the constable executing it to use reasonable force if necessary to enter and search the premises.

(7) The warrant may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose mentioned in subsection (1)(a).

(8) Where a warrant issued under this section authorises multiple entries, the number of entries authorised may be unlimited or limited to a maximum.

(9) In this section a reference to the relevant offender to whom the warrant relates is a reference to the relevant offender—
(a) who has in accordance with this Part notified the police that the premises specified in the warrant are his home address; or
(b) in respect of whom there are reasonable grounds to believe that he resides there or may regularly be found there.

(10) In this section—
"the relevant force" means the police force maintained for the police area in which the premises in respect of which the application is made or the warrant is issued are situated;
"senior police officer" means a constable of the rank of superintendent or above.**]**

Notification orders

97 Notification orders: applications and grounds

(1) A chief officer of police may, by complaint to any magistrates' court whose commission area includes any part of his police area, apply for an order under this section (a "notification order") in respect of a person ("the defendant") if—
(a) it appears to him that the following three conditions are met with respect to the defendant, and
(b) the defendant resides in his police area or the chief officer believes that the defendant is in, or is intending to come to, his police area.

(2) The first condition is that under the law in force in a country outside the United Kingdom—
(a) he has been convicted of a relevant offence (whether or not he has been punished for it),
(b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity,

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(c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or

(d) he has been cautioned in respect of a relevant offence.

(3) The second condition is that—

(a) the first condition is met because of a conviction, finding or caution which occurred on or after 1st September 1997,

(b) the first condition is met because of a conviction or finding which occurred before that date, but the person was dealt with in respect of the offence or finding on or after that date, or has yet to be dealt with in respect of it, or

(c) the first condition is met because of a conviction or finding which occurred before that date, but on that date the person was, in respect of the offence or finding, subject under the law in force in the country concerned to detention, supervision or any other disposal equivalent to any of those mentioned in section 81(3) (read with sections 81(6) and 131).

(4) The third condition is that the period set out in section 82 (as modified by subsections (2) and (3) of section 98) in respect of the relevant offence has not expired.

(5) If on the application it is proved that the conditions in subsections (2) to (4) are met, the court must make a notification order.

(6) In this section and section 98, "relevant offence" has the meaning given by section 99.

98 Notification orders: effect

(1) Where a notification order is made—

(a) the application of this Part to the defendant in respect of the conviction, finding or caution to which the order relates is subject to the modifications set out below, and

(b) subject to those modifications, the defendant becomes or (as the case may be) remains subject to the notification requirements of this Part for the notification period set out in section 82.

(2) The "relevant date" means—

(a) in the case of a person within section 97(2)(a), the date of the conviction;

(b) in the case of a person within section 97(2)(b) or (c), the date of the finding;

(c) in the case of a person within section 97(2)(d), the date of the caution.

(3) In section 82—

(a) references, except in the Table, to a person (or relevant offender) within any provision of section 80 are to be read as references to the defendant;

(b) the reference in the Table to section 80(1)(d) is to be read as a reference to section 97(2)(d);

(c) references to an order of any description are to be read as references to any corresponding disposal made in relation to the defendant in respect of an offence or finding by reference to which the notification order was made;

(d) the reference to offences listed in Schedule 3 is to be read as a reference to relevant offences.

(4) In sections 83 and 85, references to the commencement of this Part are to be read as references to the date of service of the notification order.

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99 Sections 97 and 98: relevant offences

(1) "Relevant offence" in sections 97 and 98 means an act which—

(a) constituted an offence under the law in force in the country concerned, and

(b) would have constituted an offence listed in Schedule 3 (other than at paragraph 60) if it had been done in any part of the United Kingdom.

(2) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (1) however it is described in that law.

(3) Subject to subsection (4), on an application for a notification order the condition in subsection (1)(b) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice—

(a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met,

(b) showing his grounds for that opinion, and

(c) requiring the applicant to prove that the condition is met.

(4) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (3).

100 Interim notification orders

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

(2) An application for an order under this section ("an interim notification order")—

(a) may be made in the complaint containing the main application, 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 notification 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) While such an order has effect—

(a) the defendant is subject to the notification requirements of this Part;

(b) this Part applies to the defendant, subject to the modification set out in subsection (6).

(6) The "relevant date" means the date of service of the order.

(7) The applicant or the defendant may by complaint apply to the court that made the interim notification order for the order to be varied, renewed or discharged.

101 Notification orders and interim notification orders: appeals

A defendant may appeal to the Crown Court against the making of a notification order or interim notification order.

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102 Appeals in relation to notification orders and interim notification orders: Scotland

In Scotland—

(a) an interlocutor granting or refusing a notification order or interim notification order is an appealable interlocutor; and

(b) where an appeal is taken against an interlocutor so granting such an order the order shall, without prejudice to any power of the court to vary or recall it, continue to have effect pending the disposal of the appeal.

103 Sections 97 to 100: Scotland

(1) Sections 97 to 100 apply to Scotland with the following modifications—

(a) references to a chief officer of police and to his police area are to be read, respectively, as references to a chief constable and to the area of his police force;

(b) references to the defendant are to be read as references to the person in respect of whom the order is sought or has effect;

(c) an application for a notification order or interim notification order is made by summary application to any sheriff within whose sheriffdom lies any part of the area of the applicant's police force (references to "the court" being construed accordingly).

(2) A record of evidence shall be kept on any summary application made by virtue of subsection (1)(c) above.

(3) The clerk of the court by which, by virtue of that subsection, a notification order or interim notification order is made, varied, renewed or discharged shall cause a copy of, as the case may be—

(a) the order as so made, varied or renewed; or

(b) the interlocutor by which discharge is effected,

to be given to the person named in the order or sent to him by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate).

Sexual offences prevention orders

104 Sexual offences prevention orders: applications and grounds

(1) A court may make an order under this section in respect of a person ("the defendant") where any of subsections (2) to (4) applies to the defendant and—

(a) where subsection (4) applies, it is satisfied that the defendant's behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant;

(b) in any other case, it is satisfied that it is necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.

(2) This subsection applies to the defendant where the court deals with him in respect of an offence listed in Schedule 3 or 5.

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(3) This subsection applies to the defendant where the court deals with him in respect of a finding—
  (a) that he is not guilty of an offence listed in Schedule 3 or 5 by reason of insanity, or
  (b) that he is under a disability and has done the act charged against him in respect of such an offence.

(4) This subsection applies to the defendant where—
  (a) an application under subsection (5) has been made to the court in respect of him, and
  (b) on the application, it is proved that he is a qualifying offender.

(5) A chief officer of police may by complaint to a magistrates' court apply for an order under this section in respect of a person 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 person is a qualifying offender, and
  (b) the person has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.

(6) An application under subsection (5) 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 person acted in a way mentioned in subsection (5)(b).

105 SOPOs: further provision as respects Scotland

(1) A chief constable may apply for an order under this section in respect of a person who he believes is in, or is intending to come to, the area of his police force if it appears to the chief constable that—
  (a) the person has been convicted of, found not guilty by reason of insanity of or found to be under a disability and to have done the act charged against him in respect of—
    (i) an offence listed in paragraph 60 of Schedule 3; or
    (ii) before the commencement of this Part, an offence in Scotland other than is mentioned in paragraphs 36 to 59 of that Schedule if the chief constable considers that had the conviction or finding been after such commencement it is likely that a determination such as is mentioned in paragraph 60 would have been made in relation to the offence; and
  (b) the person has since the conviction or finding acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.

(2) An application under subsection (1) may be made by summary application to a sheriff
  [[F26](aa) within whose sheriffdom the person in respect of whom the order is sought resides;
  (ab) within whose sheriffdom the person is believed by the applicant to be;
  (ac) to whose sheriffdom the person is believed by the applicant to be intending to come;**]**
  (b) **[**[F27]Within whose sheriffdom lies**]** any place where it is alleged that the person acted in a way mentioned in subsection (1)(b).

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(3) The sheriff may make the order where satisfied—

(a) that the person's behaviour since the conviction or finding makes it necessary to make such an order, for the purposes of protecting the public or any particular members of the public from serious sexual harm from the person; and

(b) where the application is by virtue of subsection (1)(a)(ii), that there was a significant sexual aspect to the person's behaviour in committing the offence.

(4) Subsection (3) of section 106 applies for the purposes of this section as it applies for the purposes of section 104 and subsections (2) and (3) of section 112 apply in relation to a summary application made by virtue of subsection (1) as they apply in relation to one made by virtue of subsection **[**[F28](1)(e)**]** of that section.

Textual Amendments

F26 Words in s. 105(2) substituted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(1)(a)(i)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

F27 Words in s. 105(2)(b) inserted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(1)(a)(ii)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

F28 Words in s. 105(4) substituted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(1)(b)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

106 Section 104: supplemental

(1) In this Part, "sexual offences prevention order" means an order under section 104 or 105.

(2) Subsections (3) to (8) apply for the purposes of section 104.

(3) "Protecting the public or any particular members of the public from serious sexual harm from the defendant" means protecting the public in the United Kingdom or any particular members of that public from serious physical or psychological harm, caused by the defendant committing one or more offences listed in Schedule 3.

(4) Acts, behaviour, convictions and findings include those occurring before the commencement of this Part.

(5) "Qualifying offender" means a person within subsection (6) or (7).

(6) A person is within this subsection if, whether before or after the commencement of this Part, he—

(a) has been convicted of an offence listed in Schedule 3 (other than at paragraph 60) or in Schedule 5,

(b) has been found not guilty of such an offence by reason of insanity,

(c) has been found to be under a disability and to have done the act charged against him in respect of such an offence, or

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(d) in England and Wales or Northern Ireland, has been cautioned in respect of such an offence.

(7) A person is within this subsection if, under the law in force in a country outside the United Kingdom and whether before or after the commencement of this Part—

(a) he has been convicted of a relevant offence (whether or not he has been punished for it),

(b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity,

(c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or

(d) he has been cautioned in respect of a relevant offence.

(8) "Appropriate date", in relation to a qualifying offender, means the date or (as the case may be) the first date on which he was convicted, found or cautioned as mentioned in subsection (6) or (7).

(9) In subsection (7), "relevant offence" means an act which—

(a) constituted an offence under the law in force in the country concerned, and

(b) would have constituted an offence listed in Schedule 3 (other than at paragraph 60) or in Schedule 5 if it had been done in any part of the United Kingdom.

(10) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (9), however it is described in that law.

(11) Subject to subsection (12), on an application under section 104(5) the condition in subsection (9)(b) (where relevant) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice—

(a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met,

(b) showing his grounds for that opinion, and

(c) requiring the applicant to prove that the condition is met.

(12) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (11).

107 SOPOs: effect

(1) A sexual offences prevention order—

(a) prohibits the defendant from doing anything described in the order, and

(b) has effect for a fixed period (not less than 5 years) specified in the order or until further order.

(2) The only prohibitions that may be included in the order are those necessary for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.

(3) Where—

(a) an order is made in respect of a defendant who was a relevant offender immediately before the making of the order, and

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(b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the order (as renewed from time to time) has effect,

the defendant remains subject to the notification requirements.

(4) Where an order is made in respect of a defendant who was not a relevant offender immediately before the making of the order—

(a) the order causes the defendant to become subject to the notification requirements of this Part from the making of the order until the 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 (5).

(5) The "relevant date" is the date of service of the order.

(6) Where a court makes a sexual offences prevention 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.

(7) Section 106(3) applies for the purposes of this section and section 108.

108 SOPOs: variations, renewals and discharges

(1) A person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a sexual offences prevention order.

(2) The persons are—

(a) the defendant;

(b) the chief officer of police for the area in which the defendant resides;

(c) a chief officer of police who believes that the defendant is in, or is intending to come to, his police area;

(d) where the order was made on an application under section 104(5), the chief officer of police who made the application.

(3) An application under subsection (1) may be made—

(a) where the appropriate court is the Crown Court, in accordance with rules of court;

(b) in any other case, by complaint.

(4) Subject to subsections (5) and (6), 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 sexual offences prevention order, that the court considers appropriate.

(5) 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 the public or any particular members of the public from serious sexual harm from the defendant (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).

(6) The court must not discharge an order before the end of 5 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

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(b) in any other case, the chief officer of police for the area in which the defendant resides.

(7) In this section "the appropriate court" means—

(a) where the Crown Court or the Court of Appeal made the sexual offences prevention order, the Crown Court;

(b) where a magistrates' court made the order, that court, a magistrates' court for the area in which the defendant resides or, where the application is made by a chief officer of police, any magistrates' court whose commission area includes any part of the chief officer's police area;

(c) where a youth court made the order, that court, a youth court for the area in which the defendant resides or, where the application is made by a chief officer of police, any youth court whose commission area includes any part of the chief officer's police area.

(8) This section applies to orders under—

(a) section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders),

(b) section 2 or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders made in England and Wales or Scotland), and

(c) Article 6 of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders made in Northern Ireland),

as it applies to sexual offences prevention orders.

109 Interim SOPOs

(1) This section applies where an application under section 104(5) or 105(1) ("the main application") has not been determined.

(2) An application for an order under this section ("an interim sexual offences prevention 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 sexual offences prevention 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) Section 107(3) to (5) apply to an interim sexual offences prevention order as if references to an order were references to such an order, and with the omission of "as renewed from time to time" in both places.

(6) The applicant or the defendant may by complaint apply to the court that made the interim sexual offences prevention order for the order to be varied, renewed or discharged.

(7) Subsection (6) applies to orders under—

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(a) section 2A or 20(4)(a) of the Crime and Disorder Act 1998 (c. 37) (interim orders made in England and Wales or Scotland), and

(b) Article 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (interim orders made in Northern Ireland),

as it applies to interim sexual offences prevention orders.

110 SOPOs and interim SOPOs: appeals U.K.

(1) A defendant may appeal against the making of a sexual offences prevention order—

(a) where section 104(2) applied to him, as if the order were a sentence passed on him for the offence;

(b) where section 104(3) (but not section 104(2)) applied to him, as if he had been convicted of the offence and the order were a sentence passed on him for that offence;

(c) where the order was made on an application under section 104(5), to the Crown Court.

(2) A defendant may appeal to the Crown Court against the making of an interim sexual offences prevention order.

(3) A defendant may appeal against the making of an order under section 108, or the refusal to make such an order—

(a) where the application for such an order was made to the Crown Court, to the Court of Appeal;

(b) in any other case, to the Crown Court.

(4) On an appeal under subsection (1)(c), (2) or (3)(b), 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.

(5) Any order made by the Crown Court on an appeal under subsection (1)(c) or (2) (other than an order directing that an application be re-heard by a magistrates' court) is for the purpose of section 108(7) or 109(7) (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).

110 SOPOs and interim SOPOs: appeals E+W+N.I.

(1) A defendant may appeal against the making of a sexual offences prevention order—

(a) where section 104(2) applied to him, as if the order were a sentence passed on him for the offence;

(b) where section 104(3) (but not section 104(2)) applied to him, as if he had been convicted of the offence and the order were a sentence passed on him for that offence;

(c) where the order was made on an application under section 104(5), to the Crown Court.

(2) A defendant may appeal to the Crown Court against the making of an interim sexual offences prevention order.

(3) A defendant may appeal against the making of an order under section 108, or the refusal to make such an order—

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(a) where the application for such an order was made to the Crown Court, to the Court of Appeal;

(b) in any other case, to the Crown Court.

(4) On an appeal under subsection (1)(c), (2) or (3)(b), 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.

(5) Any order made by the Crown Court on an appeal under subsection (1)(c) or (2) (other than an order directing that an application be re-heard by a magistrates' court) is for the purpose of section 108(7) or 109(7) (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).

111 Appeals in relation to SOPOs and interim SOPOs: Scotland

In Scotland—

(a) an interlocutor granting, [F29]. . . a sexual offences prevention order **[**[F30]on an application under section 104(5) or 105(1)**]** or interim sexual offences prevention order **[**[F31]or refusing, varying, renewing or discharging either such order**]** is an appealable interlocutor; [F32]. . .

(b) where an appeal is taken against an interlocutor so granting, varying or renewing such an order the order shall, without prejudice to any power of the court to vary or recall it, continue to have effect pending the disposal of the appeal.

[[F33](c) a sexual offences prevention order made in any other case and any order granting or refusing a variation, renewal or discharge of such a sexual offences prevention order are, for the purposes of appeal, to be regarded—

(i) in the case of solemn proceedings, as if they were orders of the kind referred to in section 106(1)(d) of the Criminal Procedure (Scotland) Act 1995 (c. 46)(appeal against probation and community service orders);

(ii) in the case of summary proceedings, as if they were orders of the kind referred to in section 175(2)(c) of that Act (appeal against probation, community service and other orders); and

(d) where an appeal is taken by virtue of paragraph (c) above, the High Court of Justiciary may, in the appeal proceedings, suspend the order appealed against pending the disposal of the appeal.**]**

Textual Amendments

F29 Words in s. 111(a) repealed (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(2)(a)(i)**; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

F30 Words in s. 111(a) inserted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(2)(a)(ii)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

F31 Words in s. 111(a) inserted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(2)(a)(iii)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

F32 Word in s. 111 repealed (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(2)(b)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

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F33 S. 111(c)(d) added (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(2)(c)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

VALID FROM 01/11/2011

[F34 111A SOPO and interim SOPO requirements: Scotland

(1) This section applies in relation to a sexual offences prevention order or an interim sexual offences prevention order made, or to be made, by a court in Scotland.

(2) Such an order, in addition to or instead of prohibiting the defendant from doing anything described in the order, may require the defendant to do anything described in the order.

(3) Accordingly, in relation to such an order—

(a) the references in sections 107(2) and 108(5) to a prohibition include a reference to a requirement, and

(b) the reference in section 113(1) to a person's doing anything which he is prohibited from doing includes a reference to his failing to do anything which he is required to do.**]**

Textual Amendments

F34 S. 111A inserted (S.) (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 100(2)(c)**, 206(1)

112 Sections 104 and 106 to 109: Scotland

(1) Sections 104 and 106 to 109 apply to Scotland with the following modifications—

[F35F36(aa) the references in subsection (2) and (3)(a) of section 104 to an offence listed in Schedule 3 or 5 shall be read as references to an offence listed at paragraphs 36 to 60 of Schedule 3;**]**

(b) an application under subsection (5) of section 104 shall not be competent in respect of a person who is a qualifying offender by virtue only of a conviction or finding which relates to any offence listed at paragraphs 64 to 111 of Schedule 5;

(c) references to a chief officer of police and to his police area are to be read, respectively, as references to a chief constable and to the area of his police force;

(d) references to the defendant are to be read as references to the person in respect of whom the order is sought or has effect;

(e) an application for a sexual offences prevention order F37. . . is made by summary application to any sheriff

[F38(ia) within whose sheriffdom the person in respect of whom the order is sought resides;

(ib) within whose sheriffdom that person is believed by the applicant to be;

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(ic) to whose sheriffdom that person is believed by the applicant to be intending to come;**]**

(ii) **[**[F39]within whose sheriffdom lies**]** any place where it is alleged that **[**[F40]that person**]** acted in a way mentioned in subsection (5)(b) of section 104,

(**[**[F41]and, in relation to such an order, references to a court or the court shall be**]** construed accordingly);

[[F42](ea) an application for an interim sexual offences prevention order—

(i) is made by way of the main application; or

(ii) if the main application has been made, is made, by application to a sheriff for the sheriffdom of the sheriff to whom the main application was made, by the person who made that application,

(and, in relation to such an order, references to a court or the court shall be construed accordingly),**]**

(f) an application for the variation, renewal or discharge of **[**[F43]a sexual offences prevention order which was made on an application under section 104(5) or 105(1) or an interim sexual offences prevention order**]** is made by summary application to the sheriff who made the order or to a sheriff—

(i) within whose sheriffdom the person subject to the order resides; [F44]. . .

[[F45](iia) within whose sheriffdom that person is believed by the applicant to be; or

(iib) to whose sheriffdom that person is believed by the applicant to be intending to come,**]**

(**[**[F46]and, in relation to an application made by virtue of this paragraph, references to a court or the court shall be**]** construed accordingly).

[[F47](g) an application for the variation, renewal or discharge of a sexual offences prevention order which was made where subsection (2) or (3) of section 104 applies may be made only by the person in respect of whom the order has effect or the prosecutor;

(h) such an application is made—

(i) where the sexual offences prevention order sought to be varied, renewed or discharged was made by the High Court of Justiciary, to that court;

(ii) where that order was made by the sheriff, to the appropriate sheriff.**]**

[[F48](1A) In subsection (1)(h)(ii), the "appropriate sheriff" is—

(a) in a case where the person in respect of whom the order has effect is, at the time of the application for its variation, renewal or discharge, resident in a sheriffdom other than the sheriffdom of the sheriff who made the order, any sheriff exercising criminal jurisdiction in the sheriffdom in which the person is resident;

(b) in any other case, any sheriff exercising criminal jurisdiction in the sheriff court district of the sheriff who made the order.**]**

(2) A record of evidence shall be kept on any summary application made by virtue of subsection (1)(e) or (f) above.

(3) The clerk of the court by which, by virtue of that subsection, a sexual offences prevention order or interim sexual offences prevention order is made, varied, renewed or discharged shall cause a copy of, as the case may be—

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(a) the order as so made, varied or renewed; or

(b) the interlocutor by which discharge is effected,

to be given to the person named in the order or sent to him by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate).

Textual Amendments

F35 S. 112(1)(aa) inserted (7.10.2005) in place of s. 112(1)(a) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(4)(b)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

F36 S. 112(1)(a) repealed (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(4)(a)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

F37 Words in s. 112(1)(e) omitted (7.10.2005) by virtue of Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(4)(c)(i)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

F38 Words in s. 112(1)(e) substituted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(4)(c)(ii)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

F39 Words in s. 112(1)(e)(ii) inserted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(4)(c)(iii)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

F40 Words in s. 112(1)(e)(ii) substituted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(4)(c)(iv)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

F41 Words in s. 112(1)(e) substituted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(4)(c)(v)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

F42 S. 112(1)(ea) inserted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(4)(d)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

F43 Words in s. 112(1)(f) substituted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(4)(e)(i)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

F44 Word in s. 112(1)(f) repealed (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(4)(e)(ii)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

F45 S. 112(1)(f)(iia)(iib) substituted (7.10.2005) for s. 112(1)(f)(ii) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(4)(e)(iii)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

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F46 Words in s. 112(1)(f) substituted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **s. 17(4)(e)(iv)** (as amended (8.11.2006) by 2006 c. 38, s. 56(1)(a)); S.S.I. 2005/480, **art. 2** (subject to art. 3)

F47 S. 112(1)(g)(h) inserted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(4)(f)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

F48 S. 112(1A) inserted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(5)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

113 Offence: breach of SOPO or interim SOPO

(1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by—

(a) a sexual offences prevention order;

(b) an interim sexual offences prevention order;

(c) an order under section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders);

(d) an order under section 2, 2A or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders and interim orders made in England and Wales and in Scotland);

(e) an order under Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders and interim orders made in Northern Ireland).

(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 or, in Scotland, a probation order.

Foreign travel orders

114 Foreign travel orders: applications and grounds

(1) A chief officer of police may by complaint to a magistrates' court apply for an order under this section (a "foreign travel order") in respect of a person ("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 is a qualifying offender, and

(b) the defendant has since the appropriate date acted in such a way as to give 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 any part of the applicant's police area.

(3) On the application, the court may make a foreign travel order if it is satisfied that—

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(a) the defendant is a qualifying offender, and

(b) the defendant's behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom.

115 Section 114: interpretation

(1) Subsections (2) to (5) apply for the purposes of section 114.

(2) "Protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom" means protecting persons under 16 generally or any particular person under 16 from serious physical or psychological harm caused by the defendant doing, outside the United Kingdom, anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom.

(3) Acts and behaviour include those occurring before the commencement of this Part.

(4) "Qualifying offender" has the meaning given by section 116.

(5) "Appropriate date", in relation to a qualifying offender, means the date or (as the case may be) the first date on which he was convicted, found or cautioned as mentioned in subsection (1) or (3) of section 116.

(6) In this section and section 116 as they apply to Northern Ireland, references to persons, or to a person, under 16 are to be read as references to persons, or to a person, under 17.

116 Section 114: qualifying offenders

(1) A person is a qualifying offender for the purposes of section 114 if, whether before or after the commencement of this Part, he—

(a) has been convicted of an offence within subsection (2),

(b) has been found not guilty of such an offence by reason of insanity,

(c) has been found to be under a disability and to have done the act charged against him in respect of such an offence, or

(d) in England and Wales or Northern Ireland, has been cautioned in respect of such an offence.

(2) The offences are—

(a) an offence within any of paragraphs 13 to 15, 44 to 46, 77, 78 and 82 of Schedule 3;

(b) an offence within paragraph 31 of that Schedule, if the intended offence was an offence against a person under 16;

(c) an offence within paragraph 93 of that Schedule, if—

(i) the corresponding civil offence is an offence within any of paragraphs 13 to 15 of that Schedule;

(ii) the corresponding civil offence is an offence within paragraph 31 of that Schedule, and the intended offence was an offence against a person under 16; or

(iii) the corresponding civil offence is an offence within any of paragraphs 1 to 12, 16 to 30 and 32 to 35 of that Schedule, and the victim of the offence was under 16 at the time of the offence.

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(d) an offence within any other paragraph of that Schedule, if the victim of the offence was under 16 at the time of the offence.

(3) A person is also a qualifying offender for the purposes of section 114 if, under the law in force in a country outside the United Kingdom and whether before or after the commencement of this Part—

(a) he has been convicted of a relevant offence (whether or not he has been punished for it),

(b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity,

(c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or

(d) he has been cautioned in respect of a relevant offence.

(4) In subsection (3), "relevant offence" means an act which—

(a) constituted an offence under the law in force in the country concerned, and

(b) would have constituted an offence within subsection (2) if it had been done in any part of the United Kingdom.

(5) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (4), however it is described in that law.

(6) Subject to subsection (7), on an application under section 114 the condition in subsection (4)(b) above (where relevant) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice—

(a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met,

(b) showing his grounds for that opinion, and

(c) requiring the applicant to prove that the condition is met.

(7) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (6).

117 Foreign travel orders: effect

(1) A foreign travel order has effect for a fixed period of not more than 6 months, specified in the order.

(2) The order prohibits the defendant from doing whichever of the following is specified in the order—

(a) travelling to any country outside the United Kingdom named or described in the order,

(b) travelling to any country outside the United Kingdom other than a country named or described in the order, or

(c) travelling to any country outside the United Kingdom.

(3) The only prohibitions that may be included in the order are those necessary for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom.

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(4) If at any time while an order (as renewed from time to time) has effect a defendant is not a relevant offender, the order causes him to be subject to the requirements imposed by regulations made under section 86(1) (and for these purposes the defendant is to be treated as if he were a relevant offender).

(5) Where a court makes a foreign travel 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.

(6) Section 115(2) applies for the purposes of this section and section 118.

VALID FROM 01/04/2010

[F49 117A Foreign travel orders: surrender of passports

(1) This section applies in relation to a foreign travel order which contains a prohibition within section 117(2)(c).

(2) The order must require the defendant to surrender all of the defendant's passports, at a police station specified in the order—
  (a) on or before the date when the prohibition takes effect, or
  (b) within a period specified in the order.

(3) Any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a foreign travel order containing a prohibition within section 117(2)(c).

(4) Subsection (3) does not apply in relation to—
  (a) a passport issued by or on behalf of the authorities of a country outside the United Kingdom if the passport has been returned to those authorities;
  (b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

(5) In this section "passport" means—
  (a) a United Kingdom passport within the meaning of the Immigration Act 1971;
  (b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;
  (c) a document that can be used (in some or all circumstances) instead of a passport.**]**

Textual Amendments

F49 S. 117A inserted (E.W.N.I.) (1.4.2010) by Policing and Crime Act 2009 (c. 26), **ss. 25(2)**, 116(1) (with s. 25(4)); S.I. 2010/507, **art. 5(l)** (subject to art. 6)

Status: *Point in time view as at 01/03/2007. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 13/12/2010

[F50 117B Surrender of passports: Scotland

(1) This section applies in relation to a foreign travel order which contains a prohibition within section 117(2)(c).

(2) The order must require the person in respect of whom the order has effect to surrender all of the person's passports, at a police station in Scotland specified in the order—
  (a) on or before the date when the prohibition takes effect, or
  (b) within a period specified in the order.

(3) Any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a foreign travel order containing a prohibition within section 117(2)(c).

(4) Subsection (3) does not apply in relation to—
  (a) a passport issued by or on behalf of the authorities of a country outside the United Kingdom if the passport has been returned to those authorities;
  (b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

(5) In this section "passport" means—
  (a) a United Kingdom passport within the meaning of the Immigration Act 1971 (c.77);
  (b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;
  (c) a document that can be used (in some or all circumstances) instead of a passport.**]**

Textual Amendments

F50 S. 117B inserted (S.) (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 101(5)**, 206(1); S.S.I. 2010/413, art. 2, **Sch.**

118 Foreign travel orders: 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 foreign travel order.

(2) The persons are—
  (a) the defendant;
  (b) the chief officer of police on whose application the foreign travel 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 subsection (4), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned

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in subsection (2), may make any order, varying, renewing or discharging the foreign travel 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 serious sexual harm from the defendant outside the United Kingdom (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).

(5) In this section "the appropriate court" means—
- (a) the court which made the foreign travel 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.

119 Foreign travel orders: appeals

(1) A defendant may appeal to the Crown Court—
- (a) against the making of a foreign travel order;
- (b) against the making of an order under section 118, 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) (other than an order directing that an application be re-heard by a magistrates' court) is for the purposes of section 118(5) 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).

120 Appeals in relation to foreign travel orders: Scotland

In Scotland—
- (a) an interlocutor granting, refusing, varying, renewing or discharging a foreign travel order is an appealable interlocutor; and
- (b) where an appeal is taken against an interlocutor so granting, varying or renewing such an order the order shall, without prejudice to any power of the court to vary or recall it, continue to have effect pending the disposal of the appeal.

121 Sections 114 to 118: Scotland

(1) Sections 114 to 118 apply to Scotland with the following modifications—
- (a) references to a chief officer of police and to his police area are to be read, respectively, as references to a chief constable and to the area of his police force;
- (b) references to the defendant are to be read as references to the person in respect of whom the order is sought or has effect;
- (c) an application for a foreign travel order is made by summary application to any sheriff within whose sheriffdom lies any part of the area of the applicant's police force (references to "the court" being construed accordingly);

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(d) for paragraphs (a) to (c) of section 118(5) there is substituted—

"(a) the sheriff who made the foreign travel order; or

(b) where the application is made by a chief constable, a sheriff whose sheriffdom includes any part of the area of the applicant's police force."

(2) A record of evidence shall be kept on any summary application made by virtue of subsection (1)(c) above.

(3) The clerk of the court by which, by virtue of that subsection, a foreign travel order is made, varied, renewed or discharged shall cause a copy of, as the case may be—

(a) the order as so made, varied or renewed; or

(b) the interlocutor by which discharge is effected,

to be given to the person named in the order or sent to him by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate).

122 Offence: breach of foreign travel order

(1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by a foreign travel 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 (or, in Scotland, a probation order).

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).

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(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.

(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.

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(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—
- (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.

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(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.

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.

[[F51](1A) In subsection (1) and, accordingly, in section 129(5) the references to a risk of sexual harm order and to an interim risk of sexual harm order include references, respectively—
- (a) to an order under section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (RSHOs in Scotland); and
- (b) to an order under section 5 of that Act (interim RSHOs in Scotland);

and, for the purposes of this section, prohibitions imposed by an order made in one part of the United Kingdom apply (unless expressly confined to particular localities) throughout that and every other part of the United Kingdom.**]**

(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.

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(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.

Textual Amendments

F51 S. 128(1A) inserted (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), **ss. 56(2)**, 66(2)

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 **[**[F52]mentioned in subsection (1A)**]** ;

(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.

[[F53](1A) Those offences are—

(a) an offence under section 128 of this Act;

(b) an offence under section 7 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (contravention of RSHO or interim RSHO in Scotland).**]**

(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.

(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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Textual Amendments

F52 Words in s. 129(1)(a) substituted (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), **ss. 56(3)**, 66(2)

F53 S. 129(1A) inserted (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), **ss. 56(3)**, 66(2)

Power to amend Schedules 3 and 5

130 Power to amend Schedules 3 and 5

(1) The Secretary of State may by order amend Schedule 3 or 5.

(2) Subject to subsection (3), an amendment within subsection (4) does not apply to convictions, findings and cautions before the amendment takes effect.

(3) For the purposes of sections 106 and 116, an amendment within subsection (4) applies to convictions, findings and cautions before as well as after the amendment takes effect.

(4) An amendment is within this subsection if it—

(a) adds an offence,

(b) removes a threshold relating to an offence, or

(c) changes a threshold in such a way as to cause an offence committed by or against a person of a particular age or in certain circumstances, or resulting in a particular disposal, to be within a Schedule when it would not otherwise be.

General

131 Young offenders: application

This Part applies to—

(a) a period of detention which a person is liable to serve under a detention and training order, or a secure training order,

(b) a period for which a person is ordered to be detained in residential accommodation under section 44(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46),

(c) a period of training in a training school, or of custody in a remand centre, which a person is liable to undergo or serve by virtue of an order under section 74(1)(a) or (e) of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.)),

(d) a period for which a person is ordered to be detained in a juvenile justice centre under Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)),

(e) a period for which a person is ordered to be kept in secure accommodation under Article 44A of the Order referred to in paragraph (d),

(f) a sentence of detention in a young offender institution, a young offenders institution or a young offenders centre,

(g) a sentence under a custodial order within the meaning of section 71AA of, or paragraph 10(1) of Schedule 5A to, the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or

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the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 43AA of, or paragraph 10(1) of Schedule 4A to, the Naval Discipline Act 1957 (c. 53),

(h) a sentence of detention under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 208 of the Criminal Procedure (Scotland) Act 1995 or Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998,

(i) a sentence of custody for life under section 93 or 94 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6),

(j) a sentence of detention, or custody for life, under section 71A of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 43A of the Naval Discipline Act 1957 (c. 53),

[[F54](k) a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003,

(l) an extended sentence under section 228 of that Act,**]**

as it applies to an equivalent sentence of imprisonment; and references in this Part to prison or imprisonment are to be interpreted accordingly.

Textual Amendments

F54 S. 131(k)(l) inserted (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 304, 336, **Sch. 32 para. 143**; S.I. 2005/950, **art. 2(1)**, Sch. 1 para. 42(39) (subject to art. 2(2), Sch. 2 (as amended by S.I. 2005/2122, art. 2))

132 Offences with thresholds

(1) This section applies to an offence which in Schedule 3 is listed subject to a condition relating to the way in which the defendant is dealt with in respect of the offence or (where a relevant finding has been made in respect of him) in respect of the finding (a "sentencing condition").

(2) Where an offence is listed if either a sentencing condition or a condition of another description is met, this section applies only to the offence as listed subject to the sentencing condition.

(3) For the purposes of this Part (including in particular section 82(6))—

(a) a person is to be regarded as convicted of an offence to which this section applies, or

(b) (as the case may be) a relevant finding in relation to such an offence is to be regarded as made,

at the time when the sentencing condition is met.

(4) In the following subsections, references to a foreign offence are references to an act which—

(a) constituted an offence under the law in force in a country outside the United Kingdom ("the relevant foreign law"), and

(b) would have constituted an offence to which this section applies (but not an offence, listed in Schedule 3, to which this section does not apply) if it had been done in any part of the United Kingdom.

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(5) In relation to a foreign offence, references to the corresponding UK offence are references to the offence (or any offence) to which subsection (4)(b) applies in the case of that foreign offence.

(6) For the purposes of this Part, a person is to be regarded as convicted under the relevant foreign law of a foreign offence at the time when he is, in respect of the offence, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding UK offence.

(7) Where in the case of any person a court exercising jurisdiction under the relevant foreign law makes in respect of a foreign offence a finding equivalent to a relevant finding, the court's finding is, for the purposes of this Part, to be regarded as made at the time when the person is, in respect of the finding, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding UK offence.

(8) Where (by virtue of an order under section 130 or otherwise) an offence is listed in Schedule 5 subject to a sentencing condition, this section applies to that offence as if references to Schedule 3 were references to Schedule 5.

(9) In this section, "relevant finding", in relation to an offence, means—
   (a) a finding that a person is not guilty of the offence by reason of insanity, or
   (b) a finding that a person is under a disability and did the act charged against him in respect of the offence.

VALID FROM 01/04/2010

[F55 132A Disapplication of time limit for complaints

Section 127 of the Magistrates' Courts Act 1980 (time limits) does not apply to a complaint under any provision of this Part.**]**

Textual Amendments

F55 S. 132A inserted (E.W.N.I.) (1.4.2010) by Policing and Crime Act 2009 (c. 26), **ss. 22(2)**, 116(1) (with s. 22(4)); S.I. 2010/507, **art. 5(i)** (subject to art. 6)

133 Part 2: general interpretation

(1) In this Part—

"admitted to a hospital" means admitted to a hospital under—

(a) section 37 of the Mental Health Act 1983 (c. 20), section 57(2)(a) or **[F56** 57A(2)**]** of the Criminal Procedure (Scotland) Act 1995 (c. 46) or Article 44 or 50A(2) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));

(b) Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25); or

(c) **[F57** section 46 of the Mental Health Act 1983, **[F58** section 69 of the Mental Health (Scotland) Act 1984**]** or Article 52 of the Mental Health (Northern Ireland) Order 1986;**]**

Status: *Point in time view as at 01/03/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Sexual Offences Act 2003 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"cautioned" means—

(a) cautioned by a police officer after the person concerned has admitted the offence, or

(b) reprimanded or warned within the meaning given by section 65 of the Crime and Disorder Act 1998 (c. 37),

and "caution" is to be interpreted accordingly;

"community order" means—

(a) a community order within the meaning of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) **[**[F59](as that Act had effect before the passing of the Criminal Justice Act 2003)**]**;

(b) a probation order or community service order under the Criminal Procedure (Scotland) Act 1995 or a supervised attendance order made in pursuance of section 235 of that Act;

(c) a community order within the meaning of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)), a probation order under section 1 of the Probation Act (Northern Ireland) 1950 (c. 7 (N.I.)) or a community service order under Article 7 of the Treatment of Offenders (Northern Ireland) Order 1976 (S.I. 1976/226 (N.I. 40)); or

(d) a community supervision order;

"community supervision order" means an order under paragraph 4 of Schedule 5A to the Army Act 1955 or the Air Force Act 1955 or Schedule 4A to the Naval Discipline Act 1957;

"country" includes territory;

"detained in a hospital" means detained in a hospital under—

(a) Part 3 of the Mental Health Act 1983, **[**[F60]section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)**]**, Part 6 of the Criminal Procedure (Scotland) Act 1995 or Part III of the Mental Health (Northern Ireland) Order 1986;

(b) Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991; or

(c) **[**[F61]section 46 of the Mental Health Act 1983, **[**[F62]section 69 of the Mental Health (Scotland) Act 1984**]** or Article 52 of the Mental Health (Northern Ireland) Order 1986;**]**

"guardianship order" means a guardianship order under section 37 of the Mental Health Act 1983 (c. 20), section 58 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or Article 44 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));

"home address" has the meaning given by section 83(7);

"interim notification order" has the meaning given by section 100(2);

"interim risk of sexual harm order" has the meaning given by section 126(2);

"interim sexual offences prevention order" has the meaning given by section 109(2);

"local police area" has the meaning given by section 88(3);

"local probation board" has the same meaning as in the Criminal Justice and Court Services Act 2000 (c. 43);

"notification order" has the meaning given by section 97(1);

"notification period" has the meaning given by section 80(1);

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"order for conditional discharge" has the meaning given by each of the following—

(a) section 12(3) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);

(b) Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24));

(c) paragraph 2(1) of Schedule 5A to the Army Act 1955 (3 & 4 Eliz. 2 c. 18);

(d) paragraph 2(1) of Schedule 5A to the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19);

(e) paragraph 2(1) of Schedule 4A to the Naval Discipline Act 1957 (c. 53);

"parental responsibility" has the same meaning as in the Children Act 1989 (c. 41) or the Children (Northern Ireland) Order 1995 (S.I. 1995/ 755 (N.I. 2)), and "parental responsibilities" has the same meaning as in Part 1 of the Children (Scotland) Act 1995 (c. 36);

"the period of conditional discharge" has the meaning given by each of the following—

(a) section 12(3) of the Powers of Criminal Courts (Sentencing) Act 2000;

(b) Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996;

(c) paragraph 2(1) of Schedule 5A to the Army Act 1955;

(d) paragraph 2(1) of Schedule 5A to the Air Force Act 1955;

(e) paragraph 2(1) of Schedule 4A to the Naval Discipline Act 1957;

"probation order" has the meaning given by section 228(1) of the Criminal Procedure (Scotland) Act 1995;

"probation period" has the meaning given by section 307(1) of the Criminal Procedure (Scotland) Act 1995;

"relevant date" has the meaning given by section 82(6) (save in the circumstances mentioned in sections 98, 100, 107, 109 and 129);

"relevant offender" has the meaning given by section 80(2);

"restriction order" means—

(a) an order under section 41 of the Mental Health Act 1983, section 57(2)(b) or 59 of the Criminal Procedure (Scotland) Act 1995 or Article 47(1) of the Mental Health (Northern Ireland) Order 1986;

(b) a direction under paragraph 2(1)(b) of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25) or Article 50A(3)(b) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)); or

(c) **[**[F63]a direction under section 46 of the Mental Health Act 1983, **[**[F64]section 69 of the Mental Health (Scotland) Act 1984**]** or Article 52 of the Mental Health (Northern Ireland) Order 1986;**]**

"risk of sexual harm order" has the meaning given by section 123(1);

"sexual offences prevention order" has the meaning given by section 106(1);

"supervision" means supervision in pursuance of an order made for the purpose or, in the case of a person released from prison on licence, in pursuance of a condition contained in his licence;

"term of service detention" means a term of detention awarded under section 71(1)(e) of the Army Act 1955 or the Air Force Act 1955 or section 43(1)(e) of the Naval Discipline Act 1957.

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[[F65](1A) A reference to a provision specified in paragraph (a) of the definition of "admitted to a hospital", "detained in a hospital" or "restriction order" includes a reference to the provision as it applies by virtue of—

(a) section 5 of the Criminal Procedure (Insanity) Act 1964,

(b) section 6 or 14 of the Criminal Appeal Act 1968,

(c) section 116A of the Army Act 1955 or the Air Force Act 1955 or section 63A of the Naval Discipline Act 1957, or

(d) section 16 or 23 of the Courts-Martial (Appeals) Act 1968.**]**

(2) Where under section 141 different days are appointed for the commencement of different provisions of this Part, a reference in any such provision to the commencement of this Part is to be read (subject to section 98(4)) as a reference to the commencement of that provision.

Textual Amendments

F56 S. 133(1): words in definition of "admitted to a hospital" substituted (S.) (27.9.2005) and otherwise (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 2, **Sch. 1 para. 33(2)(a)** and The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 7(a)**

F57 In s. 133(1) in definition of "admitted to a hospital" para. (c) substituted (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 57(2)(a)**; S.I. 2005/579, **art. 3(f)(g)**

F58 S. 133(1): words in definition of "admitted to a hospital" repealed (S.) (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 3, **Sch. 2**

F59 S. 133(1): words in definition of "community order" inserted (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 304, 336, **Sch. 32 para. 144**; S.I. 2005/950, **art. 2(1)**, Sch. 1 para. 42(39) (subject to art. 2(2), Sch. 2 (as amended by S.I. 2005/2122, art. 2))

F60 S. 133(1): words in definition of "detained in a hospital" substituted (S.) (27.9.2005) and otherwise (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 2, **Sch. 1 para. 33(2)(b)** and The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 7(b)**

F61 In s. 133(1) in definition of "detained in a hospital" para. (c) substituted (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 57(2)(b)**; S.I. 2005/579, **art. 3(f)(g)**

F62 S. 133(1): words in definition of "detained in a hospital" repealed (S.) (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 3, **Sch. 2**

F63 In s. 133(1) in definition of "restriction order" para. (c) substituted (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 57(2)(c)**; S.I. 2005/579, **art. 3(f)(g)**

F64 S. 133(1): words in definition of "restriction order" repealed (S.) (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 3, **Sch. 2**

F65 S. 133(1A) inserted (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 57(3)**; S.I. 2005/579, **art. 3(f)(g)**

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134 Conditional discharges and probation orders

(1) The following provisions do not apply for the purposes of this Part to a conviction for an offence in respect of which an order for conditional discharge or, in Scotland, a probation order is made—

(a) section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (conviction with absolute or conditional discharge deemed not to be a conviction);

(b) Article 6(1) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)) (conviction with absolute or conditional discharge deemed not to be a conviction);

(c) section 247(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (conviction with probation order or absolute discharge deemed not to be a conviction);

(d) paragraph 5(1) of Schedule 5A to the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or Schedule 4A to the Naval Discipline Act 1957 (c. 53) (conviction with absolute or conditional discharge or community supervision order deemed not to be a conviction).

(2) Subsection (1) applies only to convictions after the commencement of this Part.

(3) The provisions listed in subsection (1)(d) do not apply for the purposes of this Part to a conviction for an offence in respect of which a community supervision order is or has (before or after the commencement of this Part) been made.

135 Interpretation: mentally disordered offenders

(1) In this Part, a reference to a conviction includes a reference to a finding of a court in summary proceedings, where the court makes an order under an enactment within subsection (2), that the accused did the act charged; and similar references are to be interpreted accordingly.

(2) The enactments are—

(a) section 37(3) of the Mental Health Act 1983 (c. 20);

(b) section 58(3) of the Criminal Procedure (Scotland) Act 1995 (c. 46);

(c) Article 44(4) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)).

(3) In this Part, a reference to a person being or having been found to be under a disability and to have done the act charged against him in respect of an offence includes a reference to his being or having been found—

(a) unfit to be tried for the offence;

(b) to be insane so that his trial for the offence cannot or could not proceed; or

(c) unfit to be tried and to have done the act charged against him in respect of the offence.

(4) In section 133—

(a) a reference to admission or detention under Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), and the reference to a direction under paragraph 2(1)(b) of that Schedule, include respectively—

(i) a reference to admission or detention under Schedule 1 to the Criminal Procedure (Insanity) Act 1964 (c. 84); and

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(ii) a reference to a restriction order treated as made by paragraph 2(1) of that Schedule;

(b) a reference to admission or detention under any provision of Part 6 of the Criminal Procedure (Scotland) Act 1995, and the reference to an order under section 57(2)(b) or 59 of that Act, include respectively—

(i) a reference to admission or detention under section 174(3) or 376(2) of the Criminal Procedure (Scotland) Act 1975 (c. 21); and

(ii) a reference to a restriction order made under section 178(1) or 379(1) of that Act;

(c) [F66] . . . . . .

Textual Amendments

F66 S. 135(4)(c) repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58, 60, Sch. 10 para. 58, **Sch. 11**; S.I. 2005/579, art. 3(f)-(h)(i)(xi)

Modifications etc. (not altering text)

C1 S. 135(1) applied by Criminal Justice and Public Order Act 1994 (c. 33), **s. 327B(10)** (as inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 140(1)**, 153(7); S.I. 2008/1586, **art. 2**, Sch. 1 para. 43 (subject to Sch. 2))

C2 S. 135(2)(a) applied by Criminal Justice and Public Order Act 1994 (c. 33), **s. 327B(10)** (as inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 140(1)**, 153(7); S.I. 2008/1586, **art. 2**, Sch. 1 para. 43 (subject to Sch. 2))

C3 S. 135(3) applied by Criminal Justice and Public Order Act 1994 (c. 33), **s. 327B(10)** (as inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 140(1)**, 153(7); S.I. 2008/1586, **art. 2**, Sch. 1 para. 43 (subject to Sch. 2))

C4 S. 135(3) applied by Criminal Justice and Public Order Act 1994 (c. 33), **s. 327B(10)** (as inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 140(1)**, 153(7); S.I. 2008/1586, **art. 2**, Sch. 1 para. 43 (subject to Sch. 2))

136 Part 2: Northern Ireland

(1) This Part applies to Northern Ireland with the following modifications.

(2) References to a chief officer of police are to be read as references to the Chief Constable of the Police Service of Northern Ireland.

(3) References to police areas are to be read as references to Northern Ireland.

(4) References to a complaint are to be read as references to a complaint under Part VIII of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) to a court of summary jurisdiction.

(5) Subject to subsection (6), references to a magistrates' court are to be read as references to a court of summary jurisdiction.

(6) References to a magistrates' court for the area in which the defendant resides are to be read as references to a court of summary jurisdiction for the petty sessions district which includes the area where the defendant resides.

(7) References to a youth court for the area in which the defendant resides are to be read as references to a youth court for the petty sessions district which includes the area where the defendant resides.

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(8) References in sections 101, 110(1), (2), (3)(b), (4) and (5), 119 and 127 to the Crown Court are to be read as references to a county court.

(9) Any direction of the county court made under section 89(1) on an appeal under Article 143 of the Magistrates' Courts (Northern Ireland) Order 1981 (appeals in other cases) (other than one directing that an application be re-heard by a court of summary jurisdiction) is, for the purposes of section 90, to be treated as if it were made by the court from which the appeal was brought and not by the county court.

(10) Any order of the county court made on an appeal under Article 143 of the Magistrates' Courts (Northern Ireland) Order 1981 (other than one directing that an application be re-heard by a court of summary jurisdiction) is, for the purposes of section 108, to be treated as if it were an order of the court from which the appeal was brought and not an order of the county court.

VALID FROM 01/04/2010

[F67 PART 2A

CLOSURE ORDERS

Textual Amendments

F67 Pt. 2A inserted (E.W.N.I.) (1.4.2010 for E.W. and otherwise prosp.) by Policing and Crime Act 2009 (c. 26), ss. 21(1), 116(1), **Sch. 2 para. 1** (with s. 21(2)); S.I. 2010/507, **art. 5(t)** (subject to art. 6)

Basic definitions

136A Meaning of specified prostitution offence etc.

(1) This section applies for the purposes of this Part.

(2) The specified prostitution offences are—

(a) an offence under section 47 of this Act or Article 37 of the Sexual Offences (Northern Ireland) Order 2008 ("the Northern Ireland Order");

(b) an offence under section 48 of this Act, or Article 38 of the Northern Ireland Order, committed by causing or inciting a child to become a prostitute;

(c) an offence under section 49 of this Act, or Article 39 of the Northern Ireland Order, committed by controlling the activities of a child relating to the child's prostitution;

(d) an offence under section 50 of this Act, or Article 40 of the Northern Ireland Order, committed by arranging or facilitating a child's prostitution;

(e) an offence under section 52 of this Act or Article 62 of the Northern Ireland Order;

(f) an offence under section 53 of this Act or Article 63 of the Northern Ireland Order.

(3) The specified pornography offences are—

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(a) an offence under section 48 of this Act, or Article 38 of the Northern Ireland Order, committed by causing or inciting a child to be involved in pornography;

(b) an offence under section 49 of this Act, or Article 39 of the Northern Ireland Order, committed by controlling the activities of a child relating to the child's involvement in pornography;

(c) an offence under section 50 of this Act, or Article 40 of the Northern Ireland Order, committed by arranging or facilitating a child's involvement in pornography.

(4) Premises are being used for activities related to a specified prostitution offence—

(a) in the case of an offence under section 47 of this Act or Article 37 of the Northern Ireland Order, at any time when the sexual services mentioned in subsection (1)(a) of that section or, as the case may be, paragraph (1)(a) of that Article are being provided on the premises, and

(b) in the case of any other specified prostitution offence, at any time when the person in respect of whom the offence is committed is providing sexual services as a prostitute on the premises.

(5) Premises are being used for activities related to a specified pornography offence at any time when the person in respect of whom the offence is committed is doing anything on the premises which enables an indecent image of himself or herself to be recorded.

(6) Any reference to an offence under this Act includes a reference to—

(a) an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 of which the corresponding civil offence (within the meaning of the Act in question) is such an offence;

(b) an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is such an offence.

Closure notices

136B Power to authorise issue of closure notice

(1) A member of a police force not below the rank of superintendent ("the authorising officer") may authorise the issue of a closure notice in respect of any premises if three conditions are met.

(2) The first condition is that the officer has reasonable grounds for believing that either subsection (3) or (4) (or both) applies.

(3) This subsection applies if, during the relevant period, the premises were used for activities related to one or more specified prostitution offences.

But this subsection does not apply if only one person obtained all of the sexual services in question (whether or not on a single occasion).

(4) This subsection applies if, during the relevant period, the premises were used for activities related to one or more specified pornography offences.

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(5) In subsections (3) and (4), "the relevant period" means the period of 3 months ending with the day on which the officer is considering whether to authorise the issue of the notice.

(6) The second condition is that the officer has reasonable grounds for believing that the making of a closure order under section 136D is necessary to prevent the premises being used for activities related to one or more specified prostitution or pornography offences.

(7) The third condition is that the officer is satisfied—

(a) that the local authority for the area in which the premises are situated has been consulted, and

(b) that reasonable steps have been taken to establish the identity of any person who resides on the premises or who has control of or responsibility for or an interest in the premises.

(8) For the purposes of the second condition, it does not matter whether the officer believes that the offence or offences in question have been committed or that they will be committed (or will be committed unless a closure order is made).

(9) An authorisation under subsection (1) may be given orally or in writing, but if it is given orally the authorising officer must confirm it in writing as soon as it is practicable.

(10) The issue of a closure notice may be authorised whether or not a person has been convicted of any specified prostitution or pornography offence that the authorising officer believes has been committed.

(11) The Secretary of State may by regulations specify premises or descriptions of premises to which this section does not apply.

136C Contents and service of closure notice

(1) A closure notice must—

(a) state that no-one other than a person who regularly resides on, or owns, the premises may enter or remain on them,

(b) state that failure to comply with the notice amounts to an offence,

(c) specify the offence or offences in respect of which the authorising officer considers that the first and second conditions in section 136B are met,

(d) state that an application will be made under section 136D for the closure of the premises,

(e) specify the date and time when, and the place at which, that application will be heard, and

(f) explain the effects of an order under section 136D.

(2) A closure notice must be served by a constable.

(3) Service is effected by—

(a) fixing a copy of the notice to at least one prominent place on the premises,

(b) fixing a copy of the notice to each normal means of access to the premises,

(c) fixing a copy of the notice to any outbuildings which appear to the constable to be used with or as part of the premises, and

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(d) giving a copy of the notice to the persons identified in pursuance of section 136B(7)(b) and to any other person appearing to the constable to be a person of a description mentioned in that provision.

(4) A constable must also serve a copy of the notice on any person who occupies any other part of a building or other structure in which the premises are situated if, at the time of acting under subsection (3), the constable reasonably believes that the person's access to the other part of the building or structure will be impeded if a closure order is made.

(5) Subsection (3)(d) or (4) does not require a constable to serve a copy of the notice on a person if it is not reasonably practicable to do so.

(6) A constable acting under subsection (3) may enter any premises, using reasonable force if necessary, for the purpose of complying with subsection (3)(a) to (c).

(7) A closure notice has effect until an application for a closure order is determined under section 136D.

(8) But, if the hearing of an application for a closure order is adjourned, the closure notice ceases to have effect unless the court makes an order under section 136E(2).

Closure orders

136D Power to make a closure order

(1) If a closure notice has been issued, a constable must apply under this section to a magistrates' court for a closure order.

(2) A closure order is an order that the premises in respect of which the order is made are closed to all persons for such period not exceeding 3 months as is specified in the order.

(3) The application must be heard by the magistrates' court not later than 48 hours after the notice was served in pursuance of section 136C(3)(a).

(4) The magistrates' court may make a closure order if three conditions are met.

(5) The first condition is that the court is satisfied that either subsection (6) or subsection (7) (or both) applies.

(6) This subsection applies if, during the relevant period, the premises were used for activities related to one or more specified prostitution offences.

But this subsection does not apply if only one person obtained all of the sexual services in question (whether or not on a single occasion).

(7) This subsection applies if, during the relevant period, the premises were used for activities related to one or more specified pornography offences.

(8) In subsections (6) and (7), “the relevant period” means the period of 3 months ending with the day on which the issue of the closure notice was authorised.

(9) The second condition is that the court is satisfied that the making of the closure order is necessary to prevent the premises being used for activities related to one or more specified prostitution or pornography offences during the period to be specified in the order.

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(10) The third condition is that the court is satisfied that—

(a) before the issue of the closure notice was authorised, reasonable steps were taken to establish the identity of any person of a description mentioned in section 136B(7)(b), and

(b) a constable complied with section 136C(3)(d) in relation to the persons so identified.

(11) For the purposes of the second condition, it does not matter whether the court is satisfied that the offence or offences in question have been committed or that they will be committed (or will be committed unless a closure order is made).

(12) A closure order may be made whether or not a person has been convicted of any specified prostitution or pornography offence that the court is satisfied has been committed.

136E Making of closure orders: supplementary provision

(1) The magistrates' court may adjourn the hearing of an application for a closure order for a period of not more than 14 days to enable any of the following to show why a closure order should not be made—

(a) an occupier of the premises;

(b) a person who has control of or responsibility for the premises;

(c) any other person with an interest in the premises.

(2) If the court adjourns the hearing, it may order that the closure notice continues in effect until the end of the period of the adjournment.

(3) A closure order may include such provision as the court thinks appropriate relating to access to any other part of a building or other structure in which the premises are situated.

(4) A closure order may be made in respect of the whole or any part of the premises in respect of which the closure notice was issued.

Enforcement

136F Closure order: enforcement

(1) This section applies if a closure order is made.

(2) A constable or an authorised person may—

(a) enter the premises in respect of which the order is made;

(b) do anything reasonably necessary to secure the premises against entry by any person.

(3) A constable or an authorised person seeking to enter premises for the purposes of subsection (2) must, if required to do so by or on behalf of the owner, occupier or other person in charge of the premises, produce evidence of the constable's or (as the case may be) the authorised person's identity and authority before entering the premises.

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(4) A constable or an authorised person may also enter the premises at any time while the order has effect for the purpose of carrying out essential maintenance of, or repairs to, the premises.

(5) A constable or an authorised person acting under subsection (2) or (4) may use reasonable force.

(6) In this section "authorised person"—
- (a) in the application of this section to England and Wales, means a person authorised by the chief officer of police for the area in which the premises are situated;
- (b) in the application of this section to Northern Ireland, means a person authorised by the Chief Constable of the Police Service of Northern Ireland.

136G Closure of premises: offences

(1) A person who remains on or enters premises in contravention of a closure notice commits an offence.

(2) A person who remains on or enters premises in contravention of a closure order commits an offence.

(3) A person does not commit an offence under subsection (1) or (2) if the person has a reasonable excuse for remaining on or entering the premises.

(4) A person who obstructs a constable or an authorised person acting under section 136C(3) or (4) or 136F(2) or (4) commits an offence.

(5) A person guilty of an offence under this section is liable on summary conviction—
- (a) to imprisonment for a period not exceeding 51 weeks, or
- (b) to a fine not exceeding level 5 on the standard scale,

or to both.

(6) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in subsection

(7) In the application of this section to Northern Ireland—
- (a) the reference in subsection (5)(a) to 51 weeks is to be read as a reference to 6 months, and
- (b) subsection (6) is omitted.

(8) In this section "authorised person" has the same meaning as in section 136F.

Extension and discharge of closure orders

136H Applications for extension of closure order

(1) At any time before the end of the period for which a closure order is made or extended a constable may make a complaint to the appropriate judicial officer for an extension or further extension of the period for which it has effect.

(2) A complaint may not be made under subsection (1) unless it is authorised by a member of a police force not below the rank of superintendent.

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(3) Authorisation may be given under subsection (2) if two conditions are met.

(4) The first condition is that the officer has reasonable grounds for believing that it is necessary to extend the period for which the order has effect to prevent the premises being used for activities related to any of the specified prostitution or pornography offences in respect of which section 136D(9) applied.

(5) The second condition is that the officer is satisfied that the local authority has been consulted about the intention to make a complaint.

(6) If a complaint is made under subsection (1) the appropriate judicial officer may issue a summons directed to—
   (a) any person on whom the closure notice relating to the closed premises was served under section 136C(3)(d) or (4), or
   (b) any other person who appears to the judicial officer to have an interest in the closed premises but on whom the closure notice was not served,

   requiring such person to appear before the magistrates' court to answer to the complaint.

(7) If a summons is issued in accordance with subsection (6), a notice stating the date and time when, and the place at which, the complaint will be heard must be served on—
   (a) the persons to whom the summons is directed,
   (b) such constable as the judicial officer thinks appropriate (unless the complainant is a constable), and
   (c) the local authority.

(8) In this section "the appropriate judicial officer" means—
   (a) in the application of this section to England and Wales, a justice of the peace;
   (b) in the application of this section to Northern Ireland, a lay magistrate.

136I Orders extending closure orders

(1) This section applies where a complaint is made under section 136H.

(2) The court may make an order extending the period for which the closure order has effect by a period specified in the order if the court is satisfied that the extension is necessary to prevent the premises being used for activities related to any of the specified prostitution or pornography offences in respect of which section 136D(9) applied.

(3) The period specified in the order may not exceed 3 months.

(4) The total period for which a closure order has effect may not exceed 6 months.

(5) An order under this section may include such provision as the court thinks appropriate relating to access to any other part of a building or other structure in which the premises are situated.

136J Discharge of closure order

(1) Any of the following persons may make a complaint to an appropriate judicial officer for an order that a closure order be discharged—
   (a) a constable;

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(b) the local authority;

(c) a person on whom the closure notice relating to the closed premises was served under section 136C(3)(d) or (4);

(d) any other person who has an interest in the closed premises but on whom the closure notice was not served.

(2) If a complaint is made under subsection (1) by a person other than a constable the judicial officer may issue a summons directed to such constable as the judicial officer thinks appropriate requiring the constable to appear before the magistrates' court to answer to the complaint.

(3) The court may not make an order discharging a closure order unless it is satisfied that the order is no longer necessary to prevent the premises being used for activities related to any of the specified prostitution or pornography offences in respect of which section 136D(9) applied.

(4) If a complaint is made under subsection (1), a notice stating the date and time when, and the place at which, the complaint will be heard must be served on—

(a) the persons mentioned in subsection (1)(c) and (d) (other than the complainant),

(b) a constable (unless a constable is the complainant), and

(c) the local authority (unless it is the complainant).

(5) In this section "appropriate judicial authority" has the same meaning as in section 136H.

Appeals against closure orders etc.

136K Appeals

(1) An appeal against an order under section 136D or 136I, or an appeal against a decision not to be make an order under section 136J, may be made to the appropriate appeal court by—

(a) a person on whom the closure notice relating to the closed premises was served under section 136C(3)(d), or

(b) any other person who has an interest in the closed premises but on whom the closure notice was not served.

(2) An appeal against a decision of a court not to make an order under section 136D or 136I, or an appeal against an order under section 136J, may be made to the appropriate appeal court by—

(a) a constable, or

(b) the local authority.

(3) An appeal under subsection (1) or (2) must be made before the end of the period of 21 days beginning with the day on which the order or decision is made.

(4) On an appeal under this section the court may make such order as it thinks appropriate.

(5) In this section "the appropriate appeal court" means—

(a) in the application of this section to England and Wales, the Crown Court;

(b) in the application of this section to Northern Ireland, a county court.

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Access to other premises

136L Access to other premises

(1) This section applies to any person who occupies or has an interest in any part of a building or other structure—
  (a) in which closed premises are situated, and
  (b) in respect of which the closure order does not have effect.

(2) A person to whom this section applies may at any time while a closure order has effect apply to—
  (a) the magistrates' court in respect of an order made under section 136D or 136I, or
  (b) the appropriate appeal court in respect of an order made by that court under section 136K.

(3) If an application is made under this section notice of the date and time when, and the place at which, the hearing to consider the application will take place must be given to—
  (a) a constable,
  (b) the local authority.
  (c) each person on whom the closure notice relating to the closed premises was served under section 136C(3)(d) or (4), and
  (d) any other person who appears to the court to have an interest in the closed premises but on whom the closure notice was not served.

(4) On an application under this section the court may make such order as it thinks appropriate in relation to access to any other part of a building or other structure in which the closed premises are situated.

(5) It is immaterial whether any provision has been made as mentioned in section 136E(3) or 136I(5).

(6) In this section “appropriate appeal court” has the same meaning as in section 136K.

Reimbursement of costs, compensation etc.

136M Reimbursement of costs

(1) A police authority or a local authority which incurs expenditure for the purpose of clearing, securing, repairing or maintaining closed premises may apply to the court which made the closure order for an order under this section.

(2) On an application under this section, the court may make such order as it thinks appropriate in the circumstances for the reimbursement (in full or in part) by the owner of the premises of the expenditure mentioned in subsection (1).

(3) An application under this section must not be entertained unless it is made before the end of the period of three months beginning with the day the closure order ceases to have effect.

(4) An application under this section must be served on—

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(a) the police authority for the area in which the premises are situated, if the application is made by the local authority,
(b) the local authority, if the application is made by a police authority, and
(c) the owner of the premises.

(5) In the application of this section to Northern Ireland references to the police authority are to be read as references to the Northern Ireland Policing Board.

136N Exemption from liability for certain damages

(1) A constable is not liable for relevant damages in respect of anything done or omitted to be done by the constable in the performance or purported performance of the constable's functions under this Part.

(2) A chief officer of police who has direction or control of a constable is not liable for relevant damages in respect of anything done or omitted to be done by the constable in the performance or purported performance of the constable's functions under this Part.

(3) An authorised person is not liable for relevant damages in respect of anything done or omitted to be done by the authorised person in the performance or purported performance of the authorised person's functions under this Part.

(4) No person is vicariously liable for anything done or omitted to be done by an authorised person as mentioned in subsection (3).

(5) Subsections (1) to (4) do not apply—
(a) if the act or omission is shown to have been in bad faith;
(b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998.

(6) This section does not affect any other exemption from liability for damages (whether at common law or otherwise).

(7) In this section—
(a) "authorised person" has the same meaning as in section 136F;
(b) "relevant damages" means damages in proceedings for judicial review or for the tort of negligence or misfeasance in public office.

(8) In the application of this section to Northern Ireland, the reference in subsection (2) to the chief officer of police is to be read as a reference to the Chief Constable of the Police Service of Northern Ireland.

136O Compensation

(1) A person who claims to have incurred financial loss in consequence of a closure notice or closure order may apply for compensation.

(2) The application must be made—
(a) to the appropriate appeal court, if the closure order was made or extended by an order of that court on an appeal under section 136K;
(b) in any other case, to the magistrates' court which considered the application for a closure order.

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(3) In a case where a closure notice is issued but a closure order is not made, the application must not be entertained unless it is made before the end of the period of three months beginning with—
  (a) the day the magistrates' court decides not to make a closure order, or
  (b) if there is an appeal against that decision, the day the appropriate appeal court dismisses that appeal.

(4) In a case where a closure order is made, the application must not be entertained unless it is made before the end of the period of three months beginning with the day the closure order ceases to have effect.

(5) The court which hears the application may order the payment of compensation out of central funds if it is satisfied—
  (a) that the person was not associated with the use of the premises for the activities in relation to which the first condition in section 136B was met,
  (b) if the person is the owner or occupier of the premises, that the person took reasonable steps to prevent that use,
  (c) that the person has incurred financial loss as mentioned in subsection (1), and
  (d) having regard to all the circumstances it is appropriate to order payment of compensation in respect of that loss.

(6) In this section—
  (a) "appropriate appeal court" has the same meaning as in section 136K;
  (b) "central funds" has the same meaning as in enactments providing for the payment of costs.

(7) In the application of this section to Northern Ireland—
  (a) the reference in subsection (5) to "central funds" is to be read as a reference to monies provided by Parliament, and
  (b) subsection (6)(b) is omitted.

General

136P Guidance

(1) The Secretary of State may issue guidance relating to the discharge of any functions under or for the purposes of this Part by a constable or by an authorised person (within the meaning of section 136F).

(2) A person discharging a function to which guidance under this section relates must have regard to the guidance in discharging the function.

136Q Issue of closure notices by persons other than police officers

(1) The Secretary of State may by order amend this Part so as to extend the power to authorise the issue of a closure notice to persons other than members of police forces.

(2) An order under subsection (1) may make such further amendments of this Part as the Secretary of State thinks appropriate in consequence of the extension of that power to persons other than members of police forces.**]**

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136R Interpretation

(1) This section applies for the purposes of this Part.

(2) "A closure notice" means a notice issued under section 136B.

(3) "A closure order" means—
- (a) an order made under section 136D;
- (b) an order extended under section 136I;
- (c) an order made or extended under section 136K which has the like effect as an order made or extended under section 136D or 136I (as the case may be).

(4) "Closed premises" means premises in respect of which a closure order has effect.

(5) "Local authority", in relation to England, means—
- (a) a district council;
- (b) a London borough council;
- (c) a county council for an area for which there is no district council;
- (d) the Common Council of the City of London in its capacity as a local authority;
- (e) the Council of the Isles of Scilly.

(6) "Local authority", in relation to Wales, means—
- (a) a county council;
- (b) a county borough council.

(7) "Local authority", in relation to Northern Ireland, means a district council.

(8) In the application of this Part to England and Wales, references to the local authority in relation to—
- (a) any premises,
- (b) a closure notice relating to any premises, or
- (c) a closure order relating to any premises,

are references to the local authority for the area in which the premises are situated.

(9) In the application of this Part to Northern Ireland, references to the local authority in relation to—
- (a) any premises,
- (b) a closure notice relating to any premises, or
- (c) a closure order relating to any premises,

are references to the council for the district in which the premises are situated.

(10) In the application of this Part to Northern Ireland, the reference in section 136B(7)(a) to the area is to be read as a reference to the district.

(11) "The owner", in relation to premises, means—
- (a) a person who, whether alone or jointly with another person, is for the time being entitled to dispose of the fee simple in the premises, whether in possession or in reversion (apart from a mortgagee not in possession);
- (b) a person who, whether alone or jointly with another person, holds or is entitled to the rents and profits of the premises under a lease which (when granted) was for a term of not less than 3 years.

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(12) "Premises" includes—

(a) any land or other place (whether enclosed or not);

(b) any outbuildings which are, or are used as, part of the premises.

(13) "Specified prostitution offence" means an offence listed in section 136A(2).

(14) "Specified pornography offence" means an offence listed in section 136A(3).

PART 3

GENERAL

137 Service courts

(1) In this Act—

(a) a reference to a court order or a conviction or finding includes a reference to an order of or a conviction or finding by a service court,

(b) a reference to an offence includes a reference to an offence triable by a service court,

(c) "proceedings" includes proceedings before a service court, and

(d) a reference to proceedings for an offence under this Act includes a reference to proceedings for the offence under section 70 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 42 of the Naval Discipline Act 1957 (c. 53) for which the offence under this Act is the corresponding civil offence.

(2) In sections 92 and 104(1), "court" includes a service court.

(3) Where the court making a sexual offences prevention order is a service court—

(a) sections 104(1)(a) and (4) to (6), 105, 109, 111 and 112 do not apply,

(b) in section 108, "the appropriate court" means the Crown Court in England and Wales, and

(c) in section 110(3)(a), the references to the Crown Court and Court of Appeal are references to the Crown Court and Court of Appeal in England and Wales.

(4) In this section "service court" means a court-martial or Standing Civilian Court.

138 Orders and regulations

(1) Any power to make orders or regulations conferred by this Act on the Secretary of State is exercisable by statutory instrument.

(2) A statutory instrument containing an order or regulations under section 21, **[**[F68]83, 84,**]** 86 or 130 may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.

(3) Any other statutory instrument, except one containing an order under section 141, is to be subject to annulment in pursuance of a resolution of either House of Parliament.

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Textual Amendments

F68 Words in s. 138(2) inserted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 78(9)**, 104; S.S.I. 2006/432, **art. 2(d)**

139 Minor and consequential amendments

Schedule 6 contains minor and consequential amendments.

140 Repeals and revocations

The provisions listed in Schedule 7 are repealed or revoked to the extent specified.

141 Commencement

(1) This Act, except this section and sections 138, 142 and 143, comes into force in accordance with provision made by the Secretary of State by order.

(2) An order under subsection (1) may—
- (a) make different provision for different purposes;
- (b) include supplementary, incidental, saving or transitional provisions.

Subordinate Legislation Made

P1 S. 141 power fully exercised: 1.5.2004 appointed by {S.I. 2004/874}, art. 2; {S.S.I. 2004/138}, art. 2

142 Extent, saving etc.

(1) Subject to section 137 and to subsections (2) to (4), this Act extends to England and Wales only.

(2) The following provisions also extend to Northern Ireland—
- (a) sections 15 to 24, 46 to 54, 57 **[**[F69]to 60C**]** , 66 to 72, 78 and 79,
- (b) Schedule 2,
- (c) Part 2, and
- (d) sections 138, 141, 143 and this section.

(3) The following provisions also extend to Scotland—
- (a) Part 2 except sections 93 **[**[F70], 110**]** and 123 to 129 and Schedule 4, and
- (b) sections 138, 141, 143 and this section.

(4) Unless otherwise provided, any amendment, repeal or revocation made by this Act has the same extent as the provision to which it relates.

(5) Section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) continues to have effect despite the repeal by this Act of section 8 of the Sex Offenders Act 1997 (c. 51).

(6) For the purposes of the Scotland Act 1998 (c. 46), this Act is to be taken to be a pre-commencement enactment.

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Textual Amendments

F69 Words in s. 142(2)(a) substituted (E.W.N.I.) (12.2.2007) by Violent Crime Reduction Act 2006 (c. 38), ss. 54, 66(2), **Sch. 4 para. 3**; S.I. 2007/74, **art. 2**

F70 Word in s. 142(3) inserted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), **ss. 17(6)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))

143 Short title

This Act may be cited as the Sexual Offences Act 2003.

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