

SEXUAL OFFENCES ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Notification and Orders

Section 123: Risk of sexual harm order: applications, grounds and effects

252. This and the following seven sections relate to a civil, preventative order for which the police can apply to a magistrates' court in respect of a person over the age of 18, if that person has on at least two occasions engaged in sexually explicit conduct or communication with a child or children, and as a result there is reasonable cause to believe that the order is necessary to protect a child or children from harm arising out of future such acts by him. The defendant may or may not have a conviction for a sexual (or any other) offence. The child or children to be protected must be under 16 (section 124(3)) or, for the purpose of the application of the section to Northern Ireland, 17 (section 124(8)).
253. *Subsection (1)* explains the circumstances in which a risk of sexual harm order may be made. The acts in *subsection (3)* which constitute the trigger behaviour for an order all involve explicitly sexual communication or conduct with or towards a child. The terms "image" and "sexual activity" are defined and an explanation is given in section 124(6) of when a communication is sexual. The types of behaviour at (3)(a) and (b) may amount to a criminal offence, for example under sections 10 to 13. However the trigger behaviour need not amount to criminal conduct. *Subsection (3)(c)* would cover a person giving condoms or a sex toy to a child. *Subsection (3)(d)* would cover a person sending pornographic images to a child over the Internet or describing the sexual acts he would like to carry out on the child. An order will not be made unless the court is satisfied (under *subsection (4)(b)*) that further such acts would cause a child or children physical or psychological harm (section 124(2)).