

SEXUAL OFFENCES ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Notification and Orders

Section 80: Persons becoming subject to notification requirements

149. **Sections 80 to 92** re-enact, with amendments, Part 1 of the Sex Offenders Act 1997 (the 1997 Act), which established a requirement on sex offenders to notify certain personal details to the police. This process is commonly known as “registration”, and often referred to loosely as creating a “sex offenders’ register”. Sections 80 and 81 set out the persons who are required to comply with the notification requirements. Such a person is referred to as a “relevant offender” (*subsection (2)*).
150. *Subsection (1)* provides that notification requirements apply to a person who is dealt with by a court, in any of the ways specified in the subsection (which include conviction), in respect of an offence specified in Schedule 3. The offences in Schedule 3 are exclusively sexual offences, and include the offences that were listed in the corresponding section of Schedule 1 of the 1997 Act. In relation to England, Wales and Northern Ireland, Schedule 3 also includes various offences under Part 1 of this Act. A number of the offences in Schedule 3 are subject to age and sentence thresholds beneath which the offence will not trigger the notification requirements.
151. In relation to section 80 (and Part 2 generally) a “conviction” includes a conviction after commencement which results in a conditional but not an absolute discharge: section 134 provides that in relation to an order for a conditional discharge, the legislation that deems a conviction with an absolute or conditional discharge not to be a conviction, does not apply in relation to this Part of the Act. The term “convicted” as it applies to mentally disordered offenders is explained at section 135(1) and (2). The reference at *subsection (1)(c)* is further explained at section 135(3).
152. *Subsection (1)(d)* refers to a person who is cautioned for a relevant offence. Section 133 provides that the term “caution” includes a reprimand or warning given under section 65 of the Crime and Disorder Act 1998 (the 1998 Act). These reprimands and warnings are given to young offenders.

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

153. **Section 81** provides that, on commencement of this Part of the Act, offenders previously subject to the notification requirements of the 1997 Act by virtue of a conviction, relevant finding or caution for an offence listed in Schedule 3 of this Act, will be subject to the notification requirements of this Part unless their period of notification ended before commencement. *Subsections (3) to (6)* replicate the partially retrospective provisions of the 1997 Act, so that, save in specified circumstances, convictions, findings and cautions that pre-date 1 September 1997 (the date of commencement of the 1997 Act) will not trigger the notification requirements. *Subsections (7) and (8)* relate to persons who immediately before commencement of this Part were subject to a sex offender order or an interim sex offender order in England, Wales, Northern Ireland

or Scotland, or a restraining order in England and Wales. These orders all impose the notification requirements under the 1997 Act. Such persons will, from commencement, become subject to the notification requirements of this Part of this Act until the order ceases to have effect.

Section 82: The notification period

154. **Section 82** sets out the period during which a relevant offender will be subject to the notification requirements. In the most serious cases, as reflected in the sentence passed for the offence, the person will be subject to the requirements for an indefinite period, which means the rest of his life. In less serious cases, the offender will be subject to the requirements for a fixed period. For example, where after commencement a person is cautioned for a relevant offence, the notification period is two years.
155. The notification period starts from the date of conviction, finding or caution. This is called the ‘relevant date’ (*subsection (6)*). The ‘relevant date’ in relation to offences in Schedule 3 that are subject to sentence thresholds is set out in section 132.
156. *Subsection (2)* provides that, where an adult would be subject to the notification requirements for a determinate period (that is ten, seven, five or two years), that period will be halved in the case of an offender who is under 18 on the relevant date (that is, the date of conviction, relevant finding or reprimand or final warning).
157. *Subsections (3) and (4)* set out how to calculate the notification period where an offender is sentenced for more than one Schedule 3 offence and these sentences are terms of imprisonment running consecutively or partly concurrently. Where the terms are consecutive, they are to be added together. For example, where an offender is sentenced to 3 months’ imprisonment for one relevant offence and 10 months’ imprisonment for another such offence, to run consecutively, the sentence would be treated as 13 months’ imprisonment for the purposes of working out the notification period (in this case, 10 years). Terms will be partly concurrent when they are imposed on different occasions. An example would be where an offender is sentenced to 10 years’ imprisonment for a Schedule 3 offence, and 6 years into this term he is sentenced to 12 years’ imprisonment for a second Schedule 3 offence. Where this is the case, the notification period is based on the combined length of the terms minus any overlapping period. In the example given, the combined length of the sentences would be 22 years and the overlapping period would be the remaining 4 years of the 10-year sentence. So the sentence for the purposes of working out the notification period would be 18 years.
158. *Subsection (5)* relates to the situation where there is an initial finding that a person is under a disability and has done the act charged and he is later tried for the offence. An example would be where such a finding was made, the person was admitted to hospital under a restriction order and the notification requirements would therefore apply for an indefinite period. Where such a person was subsequently tried for the offence, the indefinite notification period will cease to apply as from the end of the trial. If the person is convicted and sentenced to, say, 12 months’ imprisonment for the offence, the new notification period would be 10 years, starting from the date of the conviction. If the person is acquitted at trial, the person ceases to be subject to the notification requirements in respect of that matter.

Section 83: Notification requirements: initial notification

159. **Section 83** sets out the information the offender needs to supply to the police when he first makes a notification and the time scales within which he is required to provide that information.
160. *Subsection (2)* relates to a case where someone who is dealt with by a court in one of the ways specified at subsection 80(1) is, at the date of being so dealt with, already subject to the notification requirements by virtue of an earlier conviction or finding or caution in respect of a Schedule 3 offence. If, in these circumstances, at the date of

being dealt with by the court, the person has complied with *subsection (1)* in respect of the earlier conviction or finding or caution, he does not need to notify his details again in accordance with *subsection (1)*. This is only the case, however, where the notification period in respect of the earlier conviction, finding or caution lasts throughout the period specified at *subsection (1)* (as extended in accordance with *subsection (6)* – see below – if appropriate).

161. *Subsection (4)* makes similar provision in respect of persons who are already subject to the notification requirements at the time when a notification order (as defined in section 97) is made.
162. *Subsection (3)* provides that the obligation imposed by *subsection (1)* does not apply to a person who, on commencement, in relation to a pre-commencement conviction, finding, caution or order, has complied with the obligation to notify his name and address to the police under section 2(1) of the 1997 Act. Where a person subject to the requirements of the 1997 Act has not complied with section 2(1) of that Act, he must, under *subsection (1)*, notify the police of the details in *subsection (5)* within 3 days of commencement of Part 2 of the Act.
163. The details in *subsection (5)* include the offender's home address. The term 'home address' is defined in *subsection (7)*. This provides that where an offender is homeless or has no fixed abode his 'home address' means an address or location where he can be regularly found. This might, for example, be a shelter, a friend's house, a caravan or a park bench.
164. In calculating the period within which an offender must give notification under *subsection (1)*, any time when the offender meets the conditions specified in *subsection (6)* - for instance, any time when he is serving a sentence of imprisonment - does not count.

Section 84: Notification requirements: changes

165. *Section 84* sets out the requirements on a relevant offender to notify the police of changes to notified details. Under *subsection (1)(c)* an offender must notify the police within 3 days, of the address of any premises he has stayed at within the UK, besides his home address, for a 'qualifying period'. This place might be a friend or relative's house or a hotel where he has stayed. A qualifying period is defined at *subsection (6)* and is a period of 7 days, or two or more periods, in any twelve months, which taken together amount to 7 days.
166. *Subsection (2)* allows an offender to notify the police of any change to his notified details (his name, address or having stayed away from home for 7 or more days) in advance of such change. The advance notification must give a date when the change is expected to occur.
167. *Subsections (3) and (4)* deal with the scenario in which the change does not take place as notified in advance. As long as the change takes place no earlier than 2 days before the date notified or no later than 3 days after the date notified, the offender need not update the police as to the actual date on which the change took place. However, where the change takes place outside this period, the person must notify the change in accordance with *subsection (1)*, that is, within 3 days of the actual change. And, where the change takes place 3 days or more after the date specified, the person must also notify the police (within 6 days of the date specified) that the information he notified in advance is no longer correct.
168. The effect of *subsection (5)* is that time when an offender is in custody, detained or abroad (as provided at *subsection (6)* of section 83), will be disregarded for the purpose of determining the 3 day period specified in *subsection (1)* and the 6 day period specified in *subsection (4)(b)*.

Section 85: Notification requirements: periodic notification

169. Section 85 provides (at *subsection (1)*) that an offender must re-notify the police of the details set out in *subsection (5)* of section 83 within one year after each of the specified events, unless during this period he re-notifies, because of a change of circumstances, under section 84.
170. The specified events are:
- the commencement of this Part of the Act;
 - any notification the offender has given under *subsection (1)* of section 83 or 85; and
 - any earlier notification the offender has given under *subsection (1)*.
171. Commencement will only be a trigger for this periodic notification requirement where a person is exempt from complying with *subsection (1)* of section 83 by reason of *subsection (2), (3) or (4)* of section 83 (i.e., where the person has complied with an earlier initial notification requirement).
172. This means that where a person becomes subject to the notification requirements for the first time and does not change his name or address and does not stay away from home for 7 days or more, he will have to re-notify within a year of his initial notification and annually thereafter. Where a person does notify his having stayed away from home for 7 days, for example, he will have to re-notify the police of the information set out in *subsection (5)* of section 83 within a year of giving the notification of having stayed away from home. And, if within that year he notifies another period spent away from home, or a change of name or address, the re-notification of the details set out in section 83(5) will be put back to a year after that latter notification.
173. *Subsection (3)* provides that where a relevant offender is detained or abroad in the ways provided at *subsection (4)* at the time the periodic notification requirement falls due, the person may give that notification up to 3 days after he is released from the detention specified in *subsection (4)* or returns to the UK.

Section 86: Notification requirements: travel outside the United Kingdom

174. *Subsection (1)* of section 86 provides a power for the Secretary of State to make regulations setting out notification requirements for relevant offenders who leave the UK or for any description of such offenders (for example those intending to leave the UK for a specified period). The regulations would oblige such persons to notify certain details concerning their travel plans to the police.
175. *Subsection (4)* might be used for example to make provision for young offenders to notify for a different period of foreign travel than do other offenders
176. These regulations are subject to the affirmative resolution procedure (section 138(2)). For Scotland, the regulations will be made by Scottish Ministers and laid before the Scottish Parliament.

Section 87: Method of notification and related matters

177. Section 87 describes how and where an offender is required to notify information to the police under the sections relating to initial notification, change of details and periodic notification. It provides a power for the Secretary of State to make regulations specifying the police stations at which an offender may notify the police of the relevant information. For Scotland the regulations will be made by Scottish Ministers and laid before the Scottish Parliament. The regulations will prescribe one or more police stations for each police area and where more than one has been prescribed for a particular offender's area, that offender may notify at any one of them. The term 'local police area' is defined in *subsection (3)* of section 88. Where the notification relates to having stayed away from a home address for 7 days or more or to a prospective

change of address, the offender may use a police station within the police area of that other address (*subsection (2)*). When making a notification, other than a notification of foreign travel, the police may take the person's fingerprints and/or a photograph (*subsection (4)*). The term "photograph" is explained at *subsection (2)* of section 88 and, because *subsection (4)(b)* of section 87 refers to a photograph of any part of the person, it will include an iris scan.

Section 88: Section 87: interpretation

178. *Subsection (3)* of section 88 defines "local police area". *Subsection 3(b)* and (c) deal with cases where the offender has no home address (as defined in *subsection (7)* of section 83). He may have no home address because for example he spends most of his time abroad and only returns to the UK occasionally, or because he is itinerant.

Section 89: Young offenders: parental directions

179. *Section 89* provides that, in the case of a young offender, the court may direct a person with parental responsibility for the offender to comply with the notification requirements in place of the offender until either the offender attains the relevant age (18 in England, Wales and Northern Ireland and where the offender is dealt with by a service court; 16 in Scotland) or until an earlier date specified by the court. The court may make the direction at the time it deals with the offender in respect of an offence or finding which triggers the notification requirements, or when it makes an order which imposes those requirements. *Subsections (4)* and *(5)* also allow the police to apply to the court for a parental direction to be made. This will cover cases where the court, for whatever reason, did not make a direction at the stage referred to above but an order now seems appropriate. It will also cover cases where the young offender has received a reprimand or final warning for a Schedule 3 offence.

Section 90: Parental directions: variations, renewals and discharges

180. *Section 90* provides that a court may vary, renew or discharge a parental direction. This may be required where, for example, there is a direction that the father notifies on behalf of the young offender and the father subsequently becomes divorced from the mother and the offender goes to live with the mother. Or an order may need to be discharged where, for example, the parent can no longer control the young offender and is unable to ensure that he attends with the parent to notify. In these circumstances the court may consider that the liability for his failure to attend should revert to the young offender himself. *Subsections (2)(e)* and *(3)(a)* and *(b)* draw an explicit distinction between parental directions imposed by criminal courts and civil courts in Scotland in terms of the procedures and circumstances where such directions can be varied, renewed and discharged in Scotland.

Section 91: Offences relating to notification

181. *Subsection (3)* provides that the offence of failing to give a notification continues throughout the period during which the required notification is not given. An offender cannot be prosecuted more than once for the same failure. However, if an offender fails to comply with a requirement, is convicted for this offence and then fails to comply again in respect of the same requirement, he commits a new offence and may be prosecuted again.
182. An offence will not be committed where the person has a "reasonable excuse" for failure to comply with a notification requirement. This might be, for example, where an offender does not provide the information in the required time scale because he is in hospital following an accident. In respect of an offence relating to *subsection (2)(b)* of section 89 a reasonable excuse might be that the parent took all reasonable steps to persuade the young offender to accompany him to the police station.

Section 92: Certificates for the purposes of Part 2

183. **Section 92** provides that when a court convicts or makes a relevant finding in respect of a person in relation to a Schedule 3 offence, or when a person is cautioned by the police, the court or police officer may issue a certificate that will be evidence of the conviction or finding or caution for a relevant offence and of the notification requirements which follow from it. *Subsection (4)* provides a power for the Secretary of State to prescribe by order the form certificate that will need to be issued by a police officer when a caution is given. These regulations will be subject to the negative resolution procedure (section 138(3)). Whilst the Regulations are in respect of cautions in England and Wales, a certificate made as a result of a caution will be sufficient evidence of that fact in a Scottish court.

Section 93: Abolished homosexual offences

184. **Section 93** gives effect to Schedule 4 to the Act. Schedule 4 introduces a procedure whereby the Secretary of State may remove the notification requirement from offenders convicted of buggery and indecency between men (sections 12 and 13 of the Sexual Offences Act 1956) or convicted of attempting, inciting or conspiring to commit these offences or of aiding, abetting, counselling or procuring the commission of the offences. This procedure is necessary because in some cases, a man will be subject to the notification requirements in relation to consensual homosexual activity with a man who was aged 16 or over at the time of the offence.

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

185. **Sections 94 and 95** provide the power to enable the police to verify that an offender has notified the correct details in compliance with sections 83, 84 and 85 of this Act or with the relevant sections of the Sex Offenders Act 1997, and that he is not omitting any details (such as another name or address he uses). This will be done by comparing the details provided at notification against information the offenders will have provided to certain bodies performing Government functions.
186. *Subsection (3)* describes the police, and policing organisations having the power to supply this information. *Subsections (2) and (8)* describe the bodies to whom the information may be supplied. These are those bodies which perform social security, child support, employment and training functions on behalf of the Secretary of State for the Department of Work and Pensions (DWP) and the equivalent Northern Ireland Department, those who perform functions in relation to passports on behalf of the Home Secretary, and those who perform functions under Part 3 of the Road Traffic Act 1988 on behalf of the Secretary of State for the Department of Transport (i.e. the Driver and Vehicle Licensing Agency) or Part 2 of the Road Traffic (Northern Ireland) Order 1981. By virtue of *subsection (2)(c)*, section 94 also allows for the supply of information to persons providing services to the Secretary of State in connection with these functions i.e. an executive agency or private company.
187. By virtue of *subsection (1)*, the details the police may provide to these bodies are an offender's date of birth, national insurance number, any names he has notified, and his home address and any other addresses notified. This information may have been supplied by an offender at his initial notification, when notifying a change, or at his periodic notification.
188. *Subsection (4)* provides that this information may only be shared for the purpose of verifying that the information supplied to the police etc. by the offender is accurate and for the purpose of compiling a report of the comparison. It could not, for example, be used by DWP to pursue someone for a child support payment.
189. This section applies to Northern Ireland, the only difference being that the police may supply information to the Department for Social Development, the Department of the Environment or the Department for Employment and Learning in Northern Ireland or

to a person providing services to these Departments in connection with a “relevant function”.

190. *Subsection (6)* provides that any transfer of data must comply with the Data Protection Act 1998.

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

191. *Section 95* provides that the report complied under *subsection (4)(b)* of section 94 may be provided to the police (and the police organisations stated in *subsection (2)*). The police may retain the information and use it in the prevention, detection, investigation or prosecution of offences but for no other purpose. This would include an offence under section 91 of failing to comply with the notification requirements or by providing false information at notification (*Subsection (4)*). In addition, the information may be used to prevent, detect, investigate or prosecute other offences: for example, information that identified the possible whereabouts of an offender who was wanted for robbery could be used by the police in investigating that offence.

Section 96: Information about release or transfer

192. This section re-enacts, with amendments, section 5B of the 1997 Act. Section 96 allows the Secretary of State to make regulations requiring those who are responsible for an offender while he is in detention (as defined in *subsection (1)*) to notify other relevant authorities of his release or transfer to another institution. The regulations may define the person responsible for the offender (for example, the Chief Executive of a hospital) and the person who must be informed about release and transfer. An example might be the governor of a prison being required to inform the local chief officer of police when a relevant offender is about to be released from his prison. These regulations will be subject to the negative resolution procedure (section 138(3)). For Scotland, the regulations will be made by Scottish Ministers and laid before the Scottish Parliament.

Section 97: Notification orders: applications and grounds

193. *Section 97* provides a power for the police to apply to the magistrates’ court for an order making an offender who has been convicted, cautioned or had a relevant finding made against him, in respect of a “relevant offence” (defined in *subsection (1)* of section 99) abroad, subject to the notification requirements.
194. The chief officer of police may apply for an order if the defendant resides in his police area or the chief officer believes that the person is currently in or is intending to come to his police area. The “intending to come to” limb will cover for example a person who is in France but who the chief officer of Kent believes has plans to arrive at Dover within the next few days. A notification order might, for example, be sought in respect of a UK citizen who has been convicted of a sexual offence overseas and who is deported to the UK on release from prison abroad. The police could also apply for a notification order in respect of a foreign citizen who the police know has been convicted of a sex offence in his or her own country and who comes to the UK.
195. The provisions in *subsection (3)* reflect the partially retrospective arrangements that apply in respect of the application of the notification requirements to people with convictions etc. in the UK (see section 81). The relevant conviction, finding or caution abroad must have taken place on or after 1 September 1997, which was the commencement date for the 1997 Act. Findings or convictions that occurred before that date will only be a trigger for a notification order where the person had yet to be dealt with on 1 September 1997 or was still serving a sentence or was subject to supervision or otherwise detained in respect of that offence on that date.
196. The effect of *subsection (4)* is that an order may not be made where the notification period (the period for which an offender is to be subject to the notification requirements), calculated from the date of conviction or finding or caution abroad, has

expired. So where, for example, a person is cautioned abroad after commencement for a relevant offence (the notification period for a post-commencement caution is 2 years), the court may not make a notification order against that person if he comes to the UK more than 2 years after receiving the caution. Clause 103 provides certain modifications to clause 99 to ensure that the provisions contained therein reflect Scottish procedures, practices and references.

Section 98: Notification orders: effect

197. **Section 98** provides that where an order is made, the offender will become subject to the notification requirements for the period set out in section 82 that applies to the sentence he received abroad. This period will run from the date of conviction or finding or caution abroad. So for example, if a person was convicted abroad of an offence equivalent to the domestic offence of sexual assault and sentenced to 6 months' imprisonment, the notification period for the sentence of 6 months would be 7 years. If the offender did not come to the UK until 5 years after the conviction, the notification requirements imposed under a notification order would only last for the remaining 2 of the 7 years since the date of conviction.
198. The provisions of *subsection (3)* modify the notification provisions as they apply to people subject to notification orders.
199. The effect of *subsection (4)* is that for people subject to notification orders, the initial obligation to provide details to the police will be within 3 days of the date of service of the order, and (subject to the other provisions in section 85 relating to annual notification) annually thereafter.

Section 99: Sections 97 and 98: relevant offences

200. A relevant offence for the purposes of a notification order is an act constituting an offence abroad, which would also have amounted to one of the offences set out in Schedule 3 had it been committed in the UK. The defendant may require the police to show that his offence if committed in the UK would have constituted an offence listed in Schedule 3. Otherwise, this is deemed to be accepted.

Section 100: Interim notification orders

201. **Section 100** allows the police to apply for an interim notification order pending the application for a main order being heard. This may be, for example, because papers need to be obtained from a foreign country before the main application for a notification order can be determined. *Subsections (5) and (6)* provide that the offender will be subject to the notification requirements during the period of the interim notification order, with the notification period starting from the date of service of the order, as opposed to the date of the conviction etc. This means, for example, that the defendant will have to comply with the initial notification requirement (at section 83(1)) within 3 days of the service of the order, unless the period for compliance is extended to take into account any period during which the offender meets the conditions set out in section 83(6).

Section 101: Notification orders and interim notification orders: appeals

202. **Section 101** allows the offender to appeal to the Crown Court against the making of an interim or full notification order.

Section 102: Appeals in relation to notification orders and interim notification orders: Scotland

203. **Section 102** allows the offender to appeal against the making of an interim or full notification order in accordance with normal civil procedures. It also makes clear that where an appeal has been taken against an interlocutor any order can continue to have effect pending the appeal.

Section 103: Sections 97 to 100: Scotland

204. **Section 103** applies the notification order power to Scotland, subject to certain modifications. The procedure for the notification order mirrors the existing procedure for sex offender orders, so these modifications ensure that the procedure is consistent with this and with Scottish civil procedure. The police will apply for a notification order by summary application and a record of evidence is required to be kept by the clerk. This procedure is similar to that required for sex offender orders.

Section 104: Sexual offences prevention orders: applications and grounds

205. **Section 104** states the circumstances in which a sexual offences prevention order may be made against an offender. Sexual offences prevention orders are civil preventative orders designed to protect the public from serious sexual harm. These orders replace, with amendments, restraining orders and sex offender orders (provisions in relation to which are found at section 5A of the 1997 Act and sections 2 to 4 and section 20 of the 1998 Act respectively in relation to England, Wales and Scotland, and at Article 6 and 6A of the Criminal Justice (Northern Ireland) Order 1998).

206. A court may make a sexual offences prevention order:

when it deals with a person in respect of an offence listed at Schedule 3 or Schedule 5 to the Act, or, in the case of a mentally incapacitated offender, deals with him in respect of a finding relating to such an offence; or

(in the case of a magistrates' court) when an application for such an order is made to it by a chief officer of police in respect of a person, and it is satisfied that:

the person has been dealt with by a court in respect of an offence listed in Schedule 3 (other than at paragraph 60) or at Schedule 5; or has been dealt with by a court abroad in respect of an act which was an offence under the law of that territory and which would, if committed in any part of the UK, have constituted an offence listed in Schedule 3 (other than at paragraph 60) or at Schedule 5; and that

the person's behaviour, since the date on which he was first dealt with in this way, means it is necessary to make the order "for the purpose of protecting the public or any particular members of the public from serious sexual harm from the offender".

207. A chief officer of police may only make an application to a magistrates' court as described above if two conditions are met. These conditions are:

that the person has been dealt with in respect of an offence listed at Schedule 3 (other than at paragraph 60 of that Schedule) or at Schedule 5, or has been dealt with abroad in respect of an act which constituted an offence under the law of the territory in question, and which would, if committed in the UK, have constituted an offence listed at Schedule 3 (other than at paragraph 60) or at Schedule 5; and

that the person's behaviour, since the first date on which he was dealt with in this way (this will be relevant if for example an offender has been convicted of several offences listed in Schedule 3), gives rise to reasonable cause to believe that it is necessary for such an order to be made.

208. The offences in Schedule 3 are all sexual offences, some of which are subject to thresholds in relation to age and sentence, below which the offence will not trigger a sexual offences prevention order. The offences in Schedule 5 are violent offences and various offences under this Act relating to trafficking and prostitution and child pornography. Schedule 5 includes murder as well as all the offences in Schedule 15 of the Criminal Justice Act 2003, which relates to the provisions in that Act dealing with "dangerous offenders".

209. In its application to Scotland, section 104 essentially allows a chief constable to make an application for such an order in respect of persons convicted in the UK of a sexual

offence set out in Schedule 3 (other than at paragraph 60 of that Schedule) or, where the person has a conviction from England, Wales or Northern Ireland, in respect of offences set out in paragraphs 1 to 63 of Schedule 5.

210. The term “protecting the public in the United Kingdom or any particular members to the public from serious sexual harm from the defendant” is defined in *subsection (3)* of section 106. The court may be satisfied of this necessity either by the circumstances of the offence or from other evidence of the defendant’s behaviour.
211. An example of when the police might apply for a sexual offences prevention order is as follows. An offender has a conviction for sexual activity with a child and has been released after his term of imprisonment. Following his release he behaves in a way that suggests he is likely to offend again, for example by loitering around schools or inviting children back to his house. An application for a sexual offences prevention order is to be made by complaint. This is a civil procedure and the relevant procedure is set out at sections 51 to 57 of the Magistrates’ Courts Act 1980.

Section 105: SOPOs: further provision as respects Scotland

212. **Section 105** does not affect the power set out at section 104. But it makes further specific provision for a sheriff in Scotland to grant a sexual offences prevention order on the application of a chief constable in certain circumstances.
213. A chief constable may apply to a sheriff for an order under section 105 where he believes that a person is in, or is intending to come to the area of his police force, and that either:
- the person has been dealt with by a court in respect of an offence which comes within paragraph 60 of Schedule 3, in that in dealing with him, the court determined that there was a “significant sexual aspect” to his behaviour; or
 - the person was dealt with by a court, before the commencement of this Part, in respect of an offence other than one listed at paragraphs 36 to 59 of Schedule 3, and it is likely that, had he been so dealt with after commencement, the court would have determined that his behaviour in committing the offence had a “significant sexual aspect; and
 - that the person’s behaviour, since he was dealt with in respect of the offence, has been such that there is reasonable cause to believe that such an order is necessary.
214. The sheriff may make an order under section 105 if he believes that it is necessary to do so to protect the public or any members of the public from serious sexual harm, and (in the case of a person who was dealt with in respect of an offence before the commencement of this Part) if he believes that there was a significant sexual aspect to the person’s behaviour in committing the offence.

Section 106: Section 104: supplemental

215. *Subsection (5)* to *subsection (7)* define the term ‘qualifying offender’ which applies in relation to orders made against offenders living in the community. This includes those who have a conviction, finding or caution for an offence overseas that is equivalent to one of the offences in Schedules 3 or 5.

Section 107: SOPOs: effect

216. *Subsection (1)* of section 107 explains what an order does and for how long it lasts. An order may prohibit the offender from doing anything specified in it. *Subsection (2)* provides that the prohibitions contained within an order must be necessary “for the purpose protecting the public or any particular members of the public from serious sexual harm from the defendant”. This phrase is defined in section 106(3). Prohibitions could include, for example, preventing an offender from contacting his victims or from

taking part in sporting activities that involve close contact with children or from living in a household with girls under 16.

- 217. The order must last for a minimum period of five years (*subsection 1(b)*). The period must be specified in the order but it may be an indefinite period and the period specified will not prevent a further order being made. However, *subsection (6)* operates to ensure an offender cannot be subject to more than one sexual offences prevention order at any one time.
- 218. *Subsection (3)* provides that where an order is made against an offender who is already subject to the notification requirements, but the notification period applicable to him would end during the currency of the order, he is to remain subject to the notification requirements for the duration of the order. If the notification period attaching to a relevant conviction, finding or caution lasts for longer than the order, the offender will remain subject to the notification requirements for that longer period.
- 219. *Subsection (4)* provides that where the offender is not subject to the notification requirements at the time an order is made, he will become subject to the notification requirements for the duration of the order.
- 220. The effect of *subsection (5)* is that the notification period runs from the date of service of the order (not from the date of the relevant conviction, caution or finding). This means, for example, that the defendant will have to comply with the initial notification requirement (at section 83(1)) within 3 days of the service of the order.

Section 108: SOPOs: variations, renewals and discharges

- 221. *Section 108* enables either the offender subject to the order or the various chief officers of police listed in *subsection (2)* to apply for an order to be varied, renewed or discharged.
- 222. The defendant might, for example, seek to vary an order if he finds the prohibitions are operating on him unduly harshly. He might apply for a discharge if he intended to emigrate. A chief officer of police who believes the defendant is moving to his area might apply for a variation if, for example, the order was made when the defendant was living in another part of the country and only restricted the defendant's behaviour in that original area.
- 223. It may also be necessary to seek a renewal of an order at the time an existing order expires, where there is evidence that the defendant still requires the measures of restraint imposed in the original order.
- 224. *Subsection (8)* provides that the procedure in this section will apply where variations, renewals and discharges are sought in respect of restraining orders and sex offender orders made prior to the commencement of this Part of the Act.

Section 109: Interim SOPOs

- 225. *Section 109* allows the police to apply for an interim sexual offences prevention order where an application has been made for a full order in respect of an offender living in the community. The purpose is to enable prohibitions to be placed on the offender's behaviour and to ensure that he will be subject to the notification requirements pending the application for the full order being determined. The interim order will be for a fixed period and will cease to have effect at the end of that period or, if earlier, when a decision is made on the full order.
- 226. The effect of *subsection (5)* is that the defendant will be subject to the notification requirements for the duration of the order, with the notification period to run from the date of service of the order. This means, for example, that the defendant will have to comply with the initial notification requirement (at section 83(1)) within 3 days of the service of the order.

Section 110: SOPOs and interim SOPOs: appeals

227. **Section 110** provides for appeals against the making of an order or an interim order. The appeals process should be used where the offender is challenging the fact that an order has been imposed.
228. **Subsections (1) and (2)** explain the process by which an appeal should be brought depending on the circumstances in which the order was made. Where an order was imposed on the court's dealing with an offender for an offence listed in Schedule 3 or Schedule 5, the offender should follow the usual appeal process that would apply if he were appealing against sentence. So, where the order was made in the Crown Court, the appeal against the order should be made to the Court of Appeal. Where the order was made in the magistrates' court or the youth court, the appeal is to the Crown Court.
229. Where the order was made following an application by the police in respect of an offender in the community, the appeal will lie to the Crown Court.
230. **Subsection (5)** relates to orders made by the Crown Court following an appeal against an order imposed on an offender in the community. It provides that the order made by the Crown Court is to be treated as if it was made by the magistrates' court that imposed the original order, for the purposes of determining where any application for variation, renewal or discharge should be heard (under section 108 or 109).

Section 111: Appeals in relation to SOPOs and interim SOPOs: Scotland

231. **Section 111** allows an offender in Scotland to appeal against the making of an interim or full order in accordance with normal civil procedures operating in Scotland. It also makes clear that where an appeal has been made the order can continue to have effect pending the appeal.

Section 112: Sections 104 and 106 to 109: Scotland

232. **Section 112** sets out how sections 104 and 106 to 109 are to be read for Scotland. The effect is that the procedure for SOPOs in Scotland mirrors that for notification orders and foreign travel orders in Scotland. So the procedures are consistent with each other and with Scottish civil procedure. Accordingly, a chief constable will apply for a SOPO by summary application and a record of evidence will be required to be kept by the clerk.

Section 113: Offence: breach of SOPO or interim SOPO

233. Failure, without reasonable excuse, to comply with any prohibition in a sexual offences prevention order or an interim sexual offences prevention order is a criminal offence. Breach of any restraining order or sex offender order will also be an offence under this section.

Section 114: Foreign travel orders: applications and grounds

234. **Section 114** provides for a new civil, preventative order, the foreign travel order. The foreign travel order will enable the courts to prohibit persons who are "qualifying offenders" (essentially, those dealt with in respect of certain sexual offences against a child under 16 (either in this country or abroad)) from travelling abroad where and so far as it is necessary to do so to protect a child or children from serious sexual harm outside the United Kingdom.
235. A foreign travel order may be made on application by the police to a magistrates' court and, if made, will place a prohibition on a sex offender from travelling abroad either to a named country or countries, to anywhere in the world other than a named country or to anywhere in the world.
236. The police may apply for a foreign travel order at the same time as a sexual offences prevention order or separately.

237. The term “qualifying offender” is defined at section 116. “Appropriate date” is defined in *subsection (5)* of section 115 and means the first date on which the offender was dealt with in respect of an offence in *subsection (1)* or (3) of section 116. The phrase “the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom” is defined in section 115(2).
238. *Subsection (3)* sets out the circumstances in which the court may make an order.

Section 115: Section 114: interpretation

239. *Section 115* defines certain terms used in section 114. *Subsection (6)* provides that, in the application of sections 115 and 116 to Northern Ireland, any reference to a child under 16 is to be taken to mean a child under 17.

Section 116: Section 114: qualifying offenders

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

Section 117: Foreign travel orders: effect

246. *Section 117* sets out the effect of a foreign travel order. *Subsection (1)* provides that the duration of the order will not exceed six months and will be specified in the order. *Subsection (2)* provides that the order may prohibit the subject from travelling to a country outside the UK named in the order (such as Thailand and Malaysia); or from travelling to any country outside the UK that is not named in the order (for example,

this may be needed where the offender is banned from travelling anywhere in the world other than to a named country which he may need to visit for family reasons); or from travelling to any country outside the UK (where the offender is such a risk to children that a universal ban is required). *Subsection (4)* provides that if, while a foreign travel order is in force, the defendant is not a 'relevant offender' i.e. is not subject to the notification requirements of this Part of the Act, he must comply with any regulations made under section 86(1) (i.e. regulations imposing notification requirements relating to foreign travel). In practice, however, in the vast majority of cases the offender is likely already to be subject to all of the notification requirements by virtue of his conviction for a sexual offence against a child.

Section 118: Foreign travel orders: variations, renewals and discharges

247. *Section 118* sets out provisions permitting the variation, renewal or discharge of a foreign travel order. A defendant may wish to apply for a variation of an order if for example the order prohibits him from travelling to Romania but during the course of the order he has to attend an urgent business meeting in Romania. The police may wish to apply for a renewal of an order if, on the expiry of the previous order, they still have cause to believe that the defendant poses a risk of serious sexual harm to children abroad. *Subsection (5)* provides that an application for variation, renewal or discharge may be made to the court which made the original order; or to a magistrates' court in the area where the subject of the order resides (this will probably generally be the case where the subject of the order is making the application); or to any magistrates' court in the police area of the chief officer making the application. *Subsection (3)* provides that the court that hears the application must hear any person mentioned in *subsection (2)* who wishes to be heard. Having done so, it may make any order it considers appropriate in the light of the restrictions in *subsection (4)*. *Subsection (4)* provides that any additional prohibitions imposed on the subject must be necessary for the purpose of protecting children generally or any child from serious sexual harm from the defendant.

Section 119: Foreign travel orders: appeals

248. This section provides a right of appeal to the Crown Court against the making of a foreign travel order. *Subsection (1)* provides that such an appeal may be against either the making of an order, or against the making of an order varying, renewing or discharging a foreign travel order, or against the refusal to make such an order. *Subsection (3)* provides that any order made by the Crown Court, on an appeal against the making of a foreign travel order, will be deemed to be an order of the magistrates' court for the purposes of subsequent applications to vary, renew or discharge the order.

Section 120: Appeals in relation to foreign travel orders: Scotland

249. *Section 120* sets out the appeals mechanism for such orders in Scotland. It also provides that during such an appeal the foreign travel order will remain in force.

Section 121: Sections 114 to 118: Scotland

250. This clause sets out the manner in which the foreign travel order regime is to apply in Scotland. The procedures for the foreign travel order mirror the proposed procedure for notification orders in Scotland so as to ensure that the procedures are consistent with each other and with Scottish civil procedure. Accordingly in *subsection (1)* the chief constable is required to apply for a foreign travel order by summary application.

Section 122: Offence: breach of foreign travel order

251. *Section 122* makes it an offence for the offender to breach any prohibition contained within a foreign travel order without reasonable excuse. *Subsection (3)* provides that

a court cannot make a conditional discharge (or a probation order in Scotland) where someone is convicted of this offence.

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)).

Section 124: Section 123: interpretation.

254. The definition of "image" at *subsection (4)* includes photographs, cartoon strips, email attachments and drawings. The use of the words "but regardless of any person's purpose" in *subsections (5) to (7)* means that an activity, or communication, or image, will only be "sexual" for the purposes of section 123 if a reasonable person, purely from the nature and circumstances of the activity, communication or image, would consider it to be sexual, without having to enquire into the motive behind it. This catches activities or communications or images that, in all the circumstances, are explicitly or overtly sexual, for example a pornographic film or a description of oral sex. However, where for example a double entendre is used in communication, the reasonable person might have to consider the speaker's motive before he could decide whether the communication was sexual. So the use of the double entendre would not be "sexual" communication, for the purposes of section 123, as the term is defined in *subsection (6)*.

Section 125: RSHOs: variations, renewals and discharges

255. *Section 125* provides for variations, renewals and discharges of risk of sexual harm orders. The procedure here is the same as that used to vary, renew or discharge a sexual offences prevention order imposed on an offender in the community (the application is by complaint to a magistrates' court), and is explained in the notes to section 108. (As the risk of sexual harm order is a new order, not a re-enactment, there is no equivalent provision to section 108(8)).

Section 126: Interim RSHOs

256. This section allows the police to apply for an interim risk of sexual harm order where an application has been made for a full order in respect of a defendant, but has not yet been determined. The interim order will be for a fixed period and will cease to have effect at the end of that period or, if earlier, when a decision is made on the full order.

Section 127: RSHOs and Interim RSHOs : appeals

257. The appeals process set out in this section is to be used where the defendant is challenging the imposition of an order. *Subsection (3)* provides that an order made by the Crown Court on an appeal against the granting of an order or interim order (other than an order in which the Crown Court orders that the application for an order or interim order be re-heard by a magistrates' court) is to be treated, for the purposes of determining where any application for variation, renewal or discharge of the order should be heard, as if it were made by the magistrates' court which made the original order (under sections 125(7) or 126(5)).

Section 128: Offence: breach of RSHO or Interim RSHO

258. It is a criminal offence to breach a risk of sexual harm order or interim risk of sexual harm order unless the defendant has a reasonable excuse for doing so.

Section 129: Effect of a conviction etc. of an offence under section 128

259. *Subsection (2)* relates to a defendant who is already a "relevant offender" (that is, subject to the notification requirements of this Part – see section 80) when convicted of an offence under section 128, or cautioned in respect of such an offence, or found not guilty of such an offence by reason of insanity, or found to be under a disability and to have done the act charged against him in respect of such an offence. Such a person will remain subject to the notification requirements for the duration of the "relevant order" (defined in *subsection (5)*). That is, he will remain subject to the notification requirements for the duration of the risk of sexual harm order that he breached, or if he breached an interim order, either for the duration of that order, or if a main order is made, the duration of the main order. However, if the notification period (see section 82) which originally applied to the person lasts for longer than the order, the person remains subject to the notification requirements until the end of that longer period.
260. *Subsection (3)* relates to those defendants who are not already subject to the notification requirements when convicted of an offence under section 128. Such a person will become subject to notification requirements as a result of that offence until the relevant order (explained above) ceases to have effect.
261. For the purpose of the notification requirements, the "relevant date" (see section 83) is the date when the person is convicted of the section 128 offence, or the date when he is cautioned in respect of it or when the relevant finding in respect of it is made. This means, for example, that the person must comply with the initial notification requirement (at section 83(1)) within 3 days of that conviction, caution, or finding.

Section 130: Power to amend Schedules 3 and 5

262. **Section 130** allows the Secretary of State to amend by statutory instrument the list of offences in Schedules 3 and 5 and any of the age or sentence thresholds that apply to those offences. The offences listed in Schedule 3 trigger, providing the thresholds are met, the notification requirements of this Part of the Act. They can also be used, where the victim was under 16, to apply for a foreign travel order. The offences in Schedule 3 and Schedule 5 can trigger a sexual offences prevention order. Any amendment to Schedules 3 or 5, by adding an offence to them, will not extend the notification requirements of this Part retrospectively by, for example, making persons convicted of an offence added to Schedule 3 subject to the notification requirements, where they were convicted of that offence before the amendment was made. *Subsection (3)* provides, however, that it will be possible, where a new offence is added, for the police to apply for a sexual offences prevention order or an interim order or a foreign travel order in respect of an offender convicted or cautioned of that offence, or in respect of whom a relevant finding has been made relating to that offence, before the date of the amendment. The amending order will be subject to the affirmative resolution

procedure (section 138(2)). For Scotland, the statutory instrument will be made by Scottish Ministers and laid before the Scottish Parliament.

Section 131: Young offenders: application

263. Young offenders are not sentenced to periods of imprisonment in the same way as adults. Section 131 therefore lists the sentences and periods of detention applicable to young offenders that should be considered as equivalent to a sentence of imprisonment for the purposes of working out the notification period and other purposes (e.g. section 81(3)(b)).

Section 132: Offences with thresholds

264. **Section 132** provides that where an offence in Schedule 3 has a sentence (or other disposal, e.g. hospital order) threshold (“a sentencing condition”), the offender is to be regarded as having been convicted of that offence, or as having had a finding relating to that offence made in respect of him, only when the sentencing condition is met. This applies only to Part 2 of the Act. Establishing the date of a conviction or finding is important because it triggers the date when the notification requirements start to apply to the offender. For example, under section 83, an offender is required to make an initial notification at a police station within 3 days of the date of his conviction or finding for a relevant offence. In the case of offences with sentencing conditions, the notification requirements will only apply where the conditions are met and this will not be known until the offender is dealt with by the court. This could be some time after the conviction or finding in question. For example, a 25 year old who is convicted of sexual assault against a 20 year old woman would not be required to ‘register’ until he was sentenced to imprisonment for that offence or given an 12 month community sentence in respect of it by the court. *Subsection (3)* to *subsection (6)* cover foreign convictions and findings. These are relevant when determining whether to make a notification order and may be relevant in deciding whether to make a sexual offences prevention order or a foreign travel order. The effect of the subsections is the same as that of *subsection (3)* on convictions and findings in the United Kingdom, i.e. the date of the conviction or finding will be the date when the relevant sentencing conditions for the offence are met.
265. The offences in Schedule 5 (offences in relation to which which a sexual offences prevention order can be made) do not currently have sentencing conditions. However *subsection (4)* of section 130 provides a power which will enable the Secretary of State to amend sentencing conditions for offences in Schedules 3 and 5 in future. *Subsection (8)* of section 132 therefore extends the provisions to cover Schedule 5.

Section 133: Part 2: General interpretation

266. **Section 133** defines certain terms used in this Part of the Act.

Section 134: Conditional discharges and probation orders

267. **Section 134** provides that various provisions in other legislation to the effect that a conviction with absolute or conditional discharge is deemed not to be a conviction are not to apply for the purposes of this Part of the Act in relation to orders for conditional discharge made in respect of a post-commencement conviction.

Section 135: Interpretation: mentally disordered offenders

268. **Section 135** clarifies how the provisions in this Part apply in respect of mentally disordered offenders.

Section 136: Part 2: Northern Ireland

269. This section makes a series of minor referential modifications necessary for the application and operation of Part 2 in Northern Ireland.