



Sexual Offences Act 2003

2003 CHAPTER 42

PART 2

NOTIFICATION AND ORDERS

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.
- (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.

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- (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 within whose sheriffdom lies—
- (a) any part of the area of the applicant's police force; or
 - (b) any place where it is alleged that the person acted in a way mentioned in subsection (1)(b).
- (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 (1)(g) of that section.

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
 - (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—

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- (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
 - (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
 - (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

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- (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—
 - (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

- (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).

111 Appeals in relation to SOPOs and interim SOPOs: Scotland

In Scotland—

- (a) an interlocutor granting, refusing, varying, renewing or discharging a sexual offences prevention order or interim sexual offences prevention 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.

112 Sections 104 and 106 to 109: Scotland

- (1) Sections 104 and 106 to 109 apply to Scotland with the following modifications—
 - (a) subsections (1)(b), (2) and (3) of section 104 shall be disregarded;
 - (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 or interim sexual offences prevention order is made by summary application to any sheriff within whose sheriffdom lies—
 - (i) any part of the area of the applicant’s police force; or
 - (ii) any place where it is alleged that the person in respect of whom the order is sought or has effect acted in a way mentioned in subsection (5)(b) of section 104,(references to “the court” being construed accordingly);
 - (f) an application for the variation, renewal or discharge of either such 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; or
 - (ii) where the application is made by a chief constable, 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)(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—
 - (a) the order as so made, varied or renewed; or

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(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).

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.