



# Sentencing Act 2020

## 2020 CHAPTER 17

### FOURTH GROUP OF PARTS Further powers relating to sentencing

#### PART 11

##### BEHAVIOUR ORDERS

#### CHAPTER 2

##### SEXUAL HARM PREVENTION ORDERS

### **343 Sexual harm prevention order**

- (1) In this Code “sexual harm prevention order” means an order under this Chapter made in respect of an offender which prohibits the offender from doing anything described in the order.
- (2) The only prohibitions that may be included in a sexual harm prevention order are those necessary for the purpose of—
  - (a) protecting the public or any particular members of the public from sexual harm from the offender, or
  - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the offender outside the United Kingdom.

### **344 Meaning of “sexual harm”**

- (1) In this Chapter, “sexual harm” from a person means physical or psychological harm caused—
  - (a) by the person committing one or more offences listed in Schedule 3 to the Sexual Offences Act 2003 (sexual offences for the purposes of Part 2 of that Act), or

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- (b) (in the context of harm outside the United Kingdom) by the person doing, outside the United Kingdom, anything which would constitute an offence listed in that Schedule if done in any part of the United Kingdom.
- (2) Where an offence listed in that Schedule is listed subject to a condition that relates—
  - (a) to the way in which the offender is dealt with in respect of an offence so listed, or
  - (b) to the age of any person,
 that condition is to be disregarded in determining for the purposes of subsection (1) whether the offence is listed in that Schedule.

### **345 Sexual harm prevention order: availability on conviction**

- (1) Where a person is convicted of an offence listed in Schedule 3 or 5 to the Sexual Offences Act 2003 (sexual offences, and other offences, for the purposes of Part 2 of that Act), the court dealing with the offender in respect of the offence may make a sexual harm prevention order.
- (2) Where an offence listed in Schedule 3 to that Act is listed subject to a condition that relates—
  - (a) to the way in which the offender is dealt with in respect of an offence so listed, or
  - (b) to the age of any person,
 that condition is to be disregarded in determining for the purposes of subsection (1) whether the offence is listed in that Schedule.

### **346 Exercise of power to make sexual harm prevention order**

Where a sexual harm prevention order is available to a court, the court may make such an order only if satisfied that it is necessary to do so for the purpose of—

- (a) protecting the public or any particular members of the public from sexual harm from the offender, or
- (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the offender outside the United Kingdom.

### **347 Sexual harm prevention orders: matters to be specified**

- (1) A sexual harm prevention order must specify—
  - (a) the prohibitions included in the order, and
  - (b) for each prohibition, the period for which it is to have effect (the “prohibition period”).

See section 348 for further matters to be included in the case of a prohibition on travelling to any country outside the United Kingdom.

- (2) The prohibition period must be—
  - (a) a fixed period of not less than 5 years, or
  - (b) an indefinite period (so that the prohibition has effect until further order).

This is subject to section 348(1) (prohibition on foreign travel).

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- (3) A sexual harm prevention order—
  - (a) may specify fixed periods for some of its prohibitions and an indefinite period for others;
  - (b) may specify different periods for different prohibitions.

### **348 Sexual harm prevention orders: prohibitions on foreign travel**

- (1) A prohibition on foreign travel contained in a sexual harm prevention order must be for a fixed period of not more than 5 years.
- (2) Subsection (1) does not prevent a prohibition on foreign travel from being extended for a further period (of no more than 5 years each time) under section 350.
- (3) A “prohibition on foreign travel” means—
  - (a) a prohibition on travelling to any country outside the United Kingdom named or described in the order,
  - (b) a prohibition on travelling to any country outside the United Kingdom other than a country named or described in the order, or
  - (c) a prohibition on travelling to any country outside the United Kingdom.
- (4) A sexual harm prevention order that contains a prohibition within subsection (3)(c)—
  - (a) must require the offender to surrender all of the offender’s passports at a police station, and
  - (b) must specify—
    - (i) the police station at which the passports are to be surrendered, and
    - (ii) the period within which they must be surrendered (if not surrendered on or before the date when the prohibition takes effect).
- (5) Any passports surrendered must be returned as soon as reasonably practicable after the offender ceases to be subject to a sexual harm prevention order containing a prohibition within subsection (3)(c) (unless the offender is subject to an equivalent prohibition under another order).
- (6) Subsection (5) 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.
- (7) 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.

### **349 Making of sexual harm prevention order: effect on other orders**

- (1) Where a court makes a sexual harm prevention order in relation to an offender who is already subject to—
  - (a) a sexual harm prevention order, or

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- (b) an order under section 103A of the Sexual Offences Act 2003 (sexual harm prevention orders under that Act),  
the earlier order ceases to have effect.
- (2) Where a court makes a sexual harm prevention order in relation to an offender who is already subject to—
  - (a) a sexual offences prevention order under section 104 of the Sexual Offences Act 2003, or
  - (b) a foreign travel order under section 114 of that Act,
 the earlier order ceases to have effect (whichever part of the United Kingdom it was made in) unless the court orders otherwise.

### **350 Sexual harm prevention orders: variations, renewals and discharges**

- (1) Where a sexual harm prevention order has been made in respect of an offender, a person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging the sexual harm prevention order.
- (2) The persons are—
  - (a) the offender;
  - (b) the chief officer of police for the area in which the offender resides;
  - (c) a chief officer of police who believes that the offender is in, or is intending to come to, that officer’s police area.
- (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) Subsection (5) applies where an application under subsection (1) is made.
- (5) After hearing—
  - (a) the person making the application, and
  - (b) if they wish to be heard, the other persons mentioned in subsection (2),
 the court may make any order, varying, renewing or discharging the sexual harm prevention order, that it considers appropriate.  
  
 This is subject to subsections (6) and (7).
- (6) An order may be renewed, or varied so as to impose additional prohibitions on the offender, only if it is necessary to do so for the purpose of—
  - (a) protecting the public or any particular members of the public from sexual harm from the offender, or
  - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the offender outside the United Kingdom.

Any renewed or varied order may contain only such prohibitions as are necessary for this purpose.

- (7) The court must not discharge an order before the end of the period of 5 years beginning with the day on which the order was made, without the consent of the offender 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 offender resides.
- (8) Subsection (7) does not apply to an order containing a prohibition on foreign travel and no other prohibitions.
- (9) In this section “the appropriate court” means—
- (a) where the Crown Court or the Court of Appeal made the sexual harm prevention order, the Crown Court;
  - (b) where a magistrates’ court made the order and the offender is aged 18 or over—
    - (i) the court which made the order, if it is an adult magistrates’ court,
    - (ii) a magistrates’ court acting in the local justice area in which the offender resides, or
    - (iii) if the application is made by a chief officer of police, any magistrates’ court acting for a local justice area that includes any part of the chief officer’s police area;
  - (c) where a youth court made the order and the offender is aged under 18—
    - (i) that court,
    - (ii) a youth court acting in the local justice area in which the offender resides, or
    - (iii) if the application is made by a chief officer of police, any youth court acting for a local justice area that includes any part of the chief officer’s police area.

In this subsection “adult magistrates’ court” means a magistrates’ court that is not a youth court.

- (10) For circumstances in which a sexual harm prevention order ceases to have effect when a court in the United Kingdom makes another order, see the following provisions of the Sexual Offences Act 2003—
- (a) section 103C(6) (sexual harm prevention order under that Act);
  - (b) section 136ZB(2) (certain orders made by a court in Northern Ireland or Scotland).

### **351 Variation of sexual harm prevention order by court in Northern Ireland**

- (1) This section applies where a sexual harm prevention order has been made in respect of an offender who—
- (a) is residing in Northern Ireland, or
  - (b) is in or intends to come to Northern Ireland.
- (2) An application may be made to the appropriate court in Northern Ireland—
- (a) by the offender, or
  - (b) by the Chief Constable of the Police Service of Northern Ireland,
- for an order varying the sexual harm prevention order.
- (3) An application under subsection (2) 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.

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- (4) Subsection (5) applies where an application under subsection (2) is made.
- (5) After hearing—
- (a) the person making the application, and
  - (b) the other person mentioned in subsection (2) (if that person wishes to be heard),
- the court may make any order varying the sexual harm prevention order that it considers appropriate.
- This is subject to subsections (6) and (7).
- (6) An order may be varied so as to impose additional prohibitions on the offender only if it is necessary to do so for the purpose of—
- (a) protecting the public in Northern Ireland, or any particular members of the public in Northern Ireland, from sexual harm from the offender, or
  - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the offender outside the United Kingdom.
- (7) An order as varied under this section may contain only such prohibitions as are necessary for the purpose of—
- (a) protecting the public or any particular members of the public from sexual harm from the offender, or
  - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the offender outside the United Kingdom.
- (8) The offender may appeal against the making of an order under this section, 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 in Northern Ireland;
  - (b) in any other case, to a county court in Northern Ireland.
- (9) On an appeal under subsection (8)(b), the county 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.
- (10) In this section—
- “the appropriate court” means—
- (a) where the sexual harm prevention order was made by—
    - (i) the Crown Court, otherwise than on appeal from a magistrates’ court, or
    - (ii) the Court of Appeal,  
the Crown Court (in Northern Ireland);
  - (b) where—
    - (i) the sexual harm prevention order was made by a magistrates’ court, or by the Crown Court on appeal from a magistrates’ court, and
    - (ii) the offender is aged 18 or over,  
any court of summary jurisdiction in Northern Ireland;
  - (c) where—

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- (i) the offender is aged under 18, and
  - (ii) paragraph (a) does not apply,
- any youth court in Northern Ireland;  
“complaint” means a complaint under Part 8 of the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).

### **352 Sexual harm prevention orders: notification requirements**

- (1) Where—
- (a) a sexual harm prevention order is made in respect of an offender who was subject to the notification requirements immediately before the making of the order, and
  - (b) the offender would (apart from this subsection) cease to be subject to the notification requirements while the order (as renewed from time to time) has effect,
- the offender remains subject to the notification requirements.
- (2) Where a sexual harm prevention order is made in respect of an offender who was not subject to the notification requirements immediately before the making of the order—
- (a) the order causes the offender to become subject to the notification requirements from the making of the order until the order (as renewed from time to time) ceases to have effect, and
  - (b) Part 2 of the Sexual Offences Act 2003 (notification and orders) applies to the offender, subject to the modification set out in subsection (3).
- (3) References in that Part of that Act to the “relevant date” are references to the date of service of the sexual harm prevention order.
- (4) In this section, “the notification requirements” means the notification requirements of Part 2 of the Sexual Offences Act 2003.

### **353 Sexual harm prevention orders: appeals**

- (1) An offender may appeal against the making of an order under section 350, 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.
- (2) On an appeal under subsection (1)(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.

### **354 Offence: breach of sexual harm prevention order**

- (1) A person who, without reasonable excuse, does anything that the person is prohibited from doing by a sexual harm prevention order, commits an offence.
- (2) See section 113 of the Sexual Offences Act 2003 for offences in Scotland and Northern Ireland of doing anything prohibited by such an order.

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- (3) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed under section 348(4) (requirement to surrender passports).
- (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, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine, or both.
- (5) An order for conditional discharge is not available in respect of an offence under this section.

**355 Parenting order where sexual harm prevention order made in case of offender aged under 18**

See section 8(1)(b) of the Crime and Disorder Act 1998 for powers of a court to make a parenting order under that Act in a case where it makes a sexual harm prevention order in respect of an offender aged under 18.

**356 Sexual harm prevention orders: supplementary**

- (1) The Secretary of State must issue guidance to chief officers of police in relation to the exercise by them of their powers with regard to sexual harm prevention orders under this Code.
- (2) The Secretary of State may revise the guidance issued under subsection (1).
- (3) The Secretary of State must arrange for any guidance issued or revised under subsection (1) or (2) to be published in such manner as the Secretary of State considers appropriate.
- (4) Rules of court may, in relation to a person who reaches the age of 18 after proceedings against that person by virtue of section 350, have begun—
  - (a) prescribe circumstances in which the proceedings may or must remain in the youth court;
  - (b) make provision for the transfer of the proceedings from the youth court to a magistrates' court that is not a youth court.

**357 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 Chapter.

**358 Sexual harm prevention orders: interpretation**

In this Chapter—

- “child” means a person under 18;
- “the public” means the public in the United Kingdom;
- “sexual harm” has the meaning given by section 344;
- “vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from physical or psychological harm is significantly impaired through physical or mental disability or illness, through old age or otherwise.