



# Sentencing Act 2020

## 2020 CHAPTER 17

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

#### PART 11

#### BEHAVIOUR ORDERS

#### CHAPTER 1

#### CRIMINAL BEHAVIOUR ORDERS

### **330 Criminal behaviour order**

In this Code “criminal behaviour order” means an order which, for the purpose of preventing an offender from engaging in behaviour that is likely to cause harassment, alarm or distress to any person—

- (a) prohibits the offender from doing anything described in the order;
- (b) requires the offender to do anything described in the order.

### **331 Power to make criminal behaviour order**

- (1) This section applies where—
  - (a) a person is convicted of an offence, and
  - (b) the prosecution makes an application to the court for a criminal behaviour order to be made against the offender.
- (2) The court may make a criminal behaviour order against the offender if it—
  - (a) is satisfied that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person, and
  - (b) considers that making the order will help in preventing the offender from engaging in such behaviour.
- (3) But the court may make a criminal behaviour order only if it—

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- (a) does so in addition to dealing with the offender for the offence, and
  - (b) does not make an order for absolute discharge under section 79 in respect of the offence.
- (4) Prohibitions and requirements in a criminal behaviour order must, so far as practicable, be such as to avoid—
- (a) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment, and
  - (b) any conflict with the requirements of any other court order to which the offender may be subject.
- (5) The prosecution must find out the views of the local youth offending team before applying for a criminal behaviour order to be made if the offender will be under the age of 18 when the application is made.
- (6) In this section “local youth offending team” means the youth offending team in whose area it appears to the prosecution that the offender resides.

### **332 Proceedings on an application for an order**

- (1) For the purpose of deciding whether to make a criminal behaviour order the court may consider evidence led by the prosecution and evidence led by the offender.
- (2) It does not matter whether the evidence would have been admissible in the proceedings in which the offender was convicted.
- (3) The court may adjourn any proceedings on an application for a criminal behaviour order even after sentencing the offender.
- (4) If the offender does not appear for any adjourned proceedings the court may—
  - (a) further adjourn the proceedings,
  - (b) issue a warrant for the offender’s arrest, or
  - (c) hear the proceedings in the offender’s absence.
- (5) The court may not act under paragraph (b) of subsection (4) unless it is satisfied that the offender has had adequate notice of the time and place of the adjourned proceedings.
- (6) The court may not act under paragraph (c) of subsection (4) unless it is satisfied that the offender—
  - (a) has had adequate notice of the time and place of the adjourned proceedings, and
  - (b) has been informed that if the offender does not appear for those proceedings the court may hear the proceedings in the offender’s absence.
- (7) Subsection (8) applies in relation to proceedings in which a criminal behaviour order is made against an offender who is under the age of 18.
- (8) In so far as the proceedings relate to the making of the order—
  - (a) section 49 of the Children and Young Persons Act 1933 (restrictions on reports of proceedings in which children and young persons are concerned) does not apply in respect of the offender;
  - (b) section 39 of that Act (power to prohibit publication of certain matters) does so apply.

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### **333 Requirements included in orders**

- (1) A criminal behaviour order that includes a requirement must specify the person who is to be responsible for supervising compliance with the requirement.

The person may be an individual or an organisation.

- (2) Before including a requirement, the court must receive evidence about its suitability and enforceability from—

- (a) the individual to be specified under subsection (1), if an individual is to be specified;
- (b) an individual representing the organisation to be specified under subsection (1), if an organisation is to be specified.

- (3) Before including two or more requirements, the court must consider their compatibility with each other.

- (4) A person specified under subsection (1) must—

- (a) make any necessary arrangements in connection with the requirements for which the person has responsibility (the “relevant requirements”);
- (b) promote the offender’s compliance with the relevant requirements;
- (c) if the person considers that the offender—
  - (i) has complied with all the relevant requirements, or
  - (ii) has failed to comply with a relevant requirement,inform the prosecution and the appropriate chief officer of police.

- (5) In subsection (4)(c) “the appropriate chief officer of police” means the chief officer of police for the police area in which it appears to the person specified under subsection (1) that the offender resides.

- (6) An offender subject to a requirement in a criminal behaviour order must—

- (a) keep in touch with the person specified under subsection (1) in relation to that requirement, in accordance with any instructions given by that person from time to time;
- (b) notify the person of any change of address.

These obligations have effect as requirements of the order.

### **334 Duration of order etc**

- (1) A criminal behaviour order takes effect on the day it is made, subject to subsection (2).

- (2) If on the day a criminal behaviour order (“the new order”) is made the offender is subject to another criminal behaviour order (“the previous order”), the new order may be made so as to take effect on the day on which the previous order ceases to have effect.

- (3) A criminal behaviour order must specify the period (“the order period”) for which it has effect.

- (4) In the case of a criminal behaviour order made before the offender has reached the age of 18, the order period must be a fixed period of—

- (a) not less than 1 year, and
- (b) not more than 3 years.

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- (5) In the case of a criminal behaviour order made after the offender has reached the age of 18, the order period must be—
  - (a) a fixed period of not less than 2 years, or
  - (b) an indefinite period (so that the order has effect until further order).
- (6) A criminal behaviour order may specify periods for which particular prohibitions or requirements have effect.

### **335 Interim order**

- (1) This section applies where a court adjourns the hearing of an application for a criminal behaviour order.
- (2) The court may make a criminal behaviour order that lasts until the final hearing of the application or until further order (“an interim order”) if the court thinks it just to do so.
- (3) Section 331(1)(b), (3) and (5) and section 334(3) to (5) do not apply in relation to the making of an interim order.
- (4) Subject to that, the court has the same powers whether or not the criminal behaviour order is an interim order.

### **336 Variation or discharge of order**

- (1) A criminal behaviour order may be varied or discharged by the court which made it on the application of—
  - (a) the offender, or
  - (b) the prosecution.
- (2) If an application by the offender under this section is dismissed, the offender may make no further application under this section without—
  - (a) the consent of the court which made the order, or
  - (b) the agreement of the prosecution.
- (3) If an application by the prosecution under this section is dismissed, the prosecution may make no further application under this section without—
  - (a) the consent of the court which made the order, or
  - (b) the agreement of the offender.
- (4) The power to vary an order includes power—
  - (a) to include an additional prohibition or requirement in the order, or
  - (b) to extend the period for which a prohibition or requirement has effect.
- (5) Section 333 applies to additional requirements included under subsection (4) as it applies to requirements included in a new order.
- (6) In the case of a criminal behaviour order made by a magistrates’ court, the references in this section to the court which made the order include a reference to any magistrates’ court acting in the same local justice area as that court.

### **337 Review of orders: offenders aged under 18**

- (1) If—

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- (a) an offender subject to a criminal behaviour order will be under the age of 18 at the end of a review period (see subsection (2)),
  - (b) the term of the order runs until the end of that period or beyond, and
  - (c) the order is not discharged before the end of that period,
- a review of the operation of the order must be carried out before the end of that period.
- (2) The “review periods” are—
- (a) the period of 12 months beginning with—
    - (i) the day on which the criminal behaviour order takes effect, or
    - (ii) if during that period the order is varied under section 336, the day on which it is varied (or most recently varied, if the order is varied more than once);
  - (b) a period of 12 months beginning with—
    - (i) the day after the end of the previous review period, or
    - (ii) if during that period of 12 months the order is varied under section 336, the day on which it is varied (or most recently varied, if the order is varied more than once).
- (3) A review under this section must include consideration of—
- (a) the extent to which the offender has complied with the order;
  - (b) the adequacy of any support available to the offender to help the offender comply with it;
  - (c) any matters relevant to the question whether an application should be made for the order to be varied or discharged.
- (4) Those carrying out or participating in a review under this section must have regard to any relevant guidance issued by the Secretary of State under section 341 when considering—
- (a) how the review should be carried out;
  - (b) what particular matters the review should deal with;
  - (c) what action (if any) it would be appropriate to take as a result of the findings of the review.

### **338 Carrying out and participating in reviews**

- (1) A review under section 337 is to be carried out by the chief officer of police of the police force maintained for the police area in which the offender resides or appears to be residing.
- (2) The chief officer, in carrying out a review under section 337, must act in co-operation with the council for the local government area in which the offender resides or appears to be residing; and the council must co-operate in the carrying out of the review.
- (3) The chief officer may invite the participation in the review of any other person or body.
- (4) In this section “local government area” means—
  - (a) in relation to England, a district or London borough, the City of London, the Isle of Wight and the Isles of Scilly;
  - (b) in relation to Wales, a county or a county borough.

For the purposes of this section, the council for the Inner and Middle Temples is the Common Council of the City of London.

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### **339 Breach of order**

- (1) It is an offence for a person without reasonable excuse—
  - (a) to do anything he or she is prohibited from doing by a criminal behaviour order, or
  - (b) to fail to do anything he or she is required to do by a criminal behaviour order.
- (2) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine, or both.
- (3) If a person is convicted of an offence under this section, an order for conditional discharge under section 80 is not available to the court by or before which the person is convicted.
- (4) In proceedings for an offence under this section, a copy of the original criminal behaviour order, certified by the proper officer of the court which made it, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those things is admissible in those proceedings.
- (5) In relation to any proceedings for an offence under this section that are brought against a person under the age of 18—
  - (a) section 49 of the Children and Young Persons Act 1933 (restrictions on reports of proceedings in which children and young persons are concerned) does not apply in respect of the person;
  - (b) section 45 of the Youth Justice and Criminal Evidence Act 1999 (power to restrict reporting of criminal proceedings involving persons under 18) does so apply.
- (6) If, in relation to any proceedings mentioned in subsection (5), the court does exercise its power to give a direction under section 45 of the Youth Justice and Criminal Evidence Act 1999, it must give its reasons for doing so.

### **340 Special measures for witnesses**

- (1) Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (special measures directions in the case of vulnerable and intimidated witnesses) applies to criminal behaviour order proceedings as it applies to criminal proceedings, but with—
  - (a) the omission of the provisions of that Act mentioned in subsection (2) (which make provision appropriate only in the context of criminal proceedings), and
  - (b) any other necessary modifications.
- (2) The provisions are—
  - (a) section 17(4) to (7);
  - (b) section 21(4C)(e);
  - (c) section 22A;
  - (d) section 27(10);
  - (e) section 32.
- (3) Rules of court made under or for the purposes of Chapter 1 of Part 2 of that Act apply to criminal behaviour order proceedings—

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- (a) to the extent provided by rules of court, and
  - (b) subject to any modifications provided by rules of court.
- (4) Section 47 of that Act (restrictions on reporting special measures directions etc) applies with any necessary modifications—
- (a) to a direction under section 19 of that Act as applied by this section;
  - (b) to a direction discharging or varying such a direction.

Sections 49 and 51 of that Act (offences) apply accordingly.

- (5) In this section “criminal behaviour order proceedings” means proceedings in a magistrates’ court or the Crown Court so far as relating to the issue whether to make a criminal behaviour order.

### **341 Guidance**

- (1) The Secretary of State may issue guidance to—
- (a) chief officers of police, and
  - (b) the councils mentioned in section 338(2),
- about the exercise of their functions under this Chapter.
- (2) The Secretary of State may revise any guidance issued under this section.
- (3) The Secretary of State must arrange for any guidance issued or revised under this section to be published.

### **342 Offender aged under 18: parenting order where criminal behaviour order made**

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

## **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.

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#### **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
  - (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”).



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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).

- (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;

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- (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
  - (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

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- (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
  - (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.

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- (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.
- (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

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- (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—
    - (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.

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- (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.
- (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.

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### **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.

## **CHAPTER 3**

### **PROTECTION FROM HARASSMENT**

### **359 Restraining order**

- (1) In this Code “restraining order” means an order made under section 360 against a person which prohibits the person from doing anything described in the order.
- (2) A restraining order may have effect—
  - (a) for a period specified in the order, or
  - (b) until further order.

### **360 Restraining order: availability**

- (1) This section applies where a court is dealing with an offender for an offence.
- (2) The court may make a restraining order under this section against the offender for the purpose of protecting the victim or victims of the offence, or any other person mentioned in the order, from conduct which—
  - (a) amounts to harassment, or
  - (b) will cause a fear of violence.
- (3) But the court may make a restraining order under this section only if it does so in addition to dealing with the offender for the offence.

### **361 Procedure for varying or discharging restraining order**

- (1) Where a person is subject to a restraining order—
  - (a) that person,
  - (b) the prosecution, or
  - (c) any other person mentioned in the order,may apply to the court which made the order for it to be varied or discharged by a further order.

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- (2) Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (1).

### **362 Evidence in proceedings relating to restraining orders**

- (1) This section applies to—
- (a) proceedings under section 360 for the making of a restraining order;
  - (b) proceedings under section 361 or 363(6) for the variation or discharge of a restraining order.
- (2) In any such proceedings, both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under section 3 of the Protection from Harassment Act 1997 (civil remedy).

### **363 Offence of breaching restraining order**

- (1) It is an offence for a person who is subject to a restraining order without reasonable excuse to do anything prohibited by the restraining order.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine, or both.
- (3) Subsection (1) does not apply to conduct of a person on a particular occasion if the Secretary of State certifies that, in the opinion of the Secretary of State, anything done by that person on that occasion related to—
- (a) national security,
  - (b) the economic well-being of the United Kingdom, or
  - (c) the prevention or detection of serious crime,
- and was done on behalf of the Crown.
- (4) A certificate under subsection (3) is conclusive evidence that subsection (1) does not apply to conduct of that person on that occasion.
- (5) A document purporting to be a certificate under subsection (3) is to be received in evidence and, unless the contrary is proved, to be treated as being such a certificate.
- (6) A court dealing with a person for an offence under this section may vary or discharge the restraining order by a further order.

### **364 Restraining orders: meaning of “conduct” and “harassment”**

For the purposes of this Chapter—

“conduct” includes speech;

“harassment”, in relation to a person, includes—

- (a) alarming the person, or
- (b) causing the person distress.



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## CHAPTER 4

### PARENTING ORDERS

#### *What a parenting order is*

#### **365 Parenting order**

- (1) A parenting order under this Chapter is an order which requires the person in respect of whom it is made (“the parent”)—
  - (a) to comply, for a period of not more than 12 months, with requirements specified in the order, and
  - (b) to attend, for a concurrent period of not more than 3 months, such counselling or guidance programme as may be specified in directions given by the responsible officer (see section 372).
- (2) But a parenting order need not include a requirement under subsection (1)(b) if a parenting order (whether under this Chapter or any other enactment) has been made in respect of the parent on any previous occasion.
- (3) If the parenting order provides this in accordance with section 366(7), 368(5) or 369(5), a counselling or guidance programme specified under subsection (1)(b) may be or include a residential course.

#### *Parenting order for parent or guardian of offender aged under 18*

#### **366 Parenting order where offender is under 18**

- (1) A parenting order under this section is available to a court by or before which an offender aged under 18 is convicted of an offence.

This is subject to section 370.

- (2) Subsections (3) and (4) apply where a parenting order under this section is available.
- (3) If the offender is aged under 16 at the time of conviction, the court must—
  - (a) make a parenting order under this section in respect of a parent or guardian of the offender if it is satisfied that the order would be desirable in the interests of preventing the commission of any further offence by the offender, or
  - (b) state in open court that it is not so satisfied, and why not.

But this does not apply if the court makes a referral order in respect of the offender.

- (4) If the offender is aged 16 or 17 at the time of conviction, the court may make a parenting order under this section in respect of a parent or guardian of the offender if it is satisfied that the order would be desirable in the interests of preventing the commission of any further offence by the offender.
- (5) Subsections (6) and (7) apply where a court makes a parenting order under this section in respect of a parent or guardian of an offender.
- (6) The requirements that the court may specify in the order under section 365(1)(a) are requirements that it considers desirable in the interests of preventing the commission of any further offence by the offender.

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- (7) If the order contains a requirement under section 365(1)(b) and the court is satisfied that—
- (a) the attendance of the parent or guardian at a residential course is likely to be more effective than that person’s attendance at a non-residential course in preventing the commission of any further offence by the offender, and
  - (b) any interference with family life which is likely to result from the parent’s or guardian’s attendance at a residential course is proportionate in all the circumstances,
- the court may provide in the order that a counselling or guidance programme which the parent or guardian is required to attend by virtue of the requirement may be or include a residential course.
- (8) Before making a parenting order under this section in respect of a parent or guardian of an offender aged under 16, the court must obtain and consider information about—
- (a) the offender’s family circumstances, and
  - (b) the likely effect of the order on those circumstances.
- (9) Where a parenting order is made under this section, the person in respect of whom it is made has the same right of appeal against it as if—
- (a) that person had committed the offence mentioned in subsection (1), and
  - (b) the order were a sentence passed on that person for the offence.

### **367 Report where court proposes both parenting order and referral order**

- (1) This section applies if a court proposes to make both—
- (a) a referral order in respect of an offender, and
  - (b) a parenting order under section 366 (parenting order on conviction of a person aged under 18) in respect of a parent or guardian of the offender.
- (2) Before making the parenting order the court must obtain and consider a report by an appropriate officer—
- (a) indicating the requirements which that officer proposes should be included in the parenting order;
  - (b) indicating the reasons why the officer considers that those requirements would be desirable in the interests of preventing the commission of any further offence by the offender;
  - (c) if the offender is aged under 16, containing the information required by section 366(8).
- (3) In subsection (2) “an appropriate officer” means—
- (a) an officer of a provider of probation services,
  - (b) a social worker of a local authority, or
  - (c) a member of a youth offending team.

### **368 Parenting order where parent or guardian of offender fails to attend meetings of youth offender panel**

- (1) A parenting order under this section is available to a youth court where—
- (a) an offender has been referred to a youth offender panel (see section 83), and

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- (b) a parent or guardian of the offender is referred by the panel to the youth court under section 93 in respect of a failure to comply with an order under section 90 (order requiring attendance at meetings of panel).

This is subject to section 370.

- (2) Where a parenting order under this section is available, the youth court may make such an order if it is satisfied that—
  - (a) the parent or guardian has failed without reasonable excuse to comply with the order under section 90, and
  - (b) the parenting order would be desirable in the interests of preventing the commission of any further offence by the offender.
- (3) Subsections (4) and (5) apply where the court makes a parenting order in respect of a parent or guardian of an offender.
- (4) The requirements that the court may specify under section 365(1)(a) in an order under this section are requirements that it considers desirable in the interests of preventing the commission of any further offence by the offender.
- (5) If the order contains a requirement under section 365(1)(b) and the court is satisfied that—
  - (a) the attendance of the parent or guardian at a residential course is likely to be more effective than that person's attendance at a non-residential course in preventing the commission of any further offence by the offender, and
  - (b) any interference with family life which is likely to result from the parent's or guardian's attendance at a residential course is proportionate in all the circumstances,the court may provide in the order that a counselling or guidance programme which the parent or guardian is required to attend by virtue of the requirement may be or include a residential course.
- (6) Before making a parenting order under this section where the offender is aged under 16, the court must obtain and consider information about—
  - (a) the offender's family circumstances, and
  - (b) the likely effect of the order on those circumstances.
- (7) Where a parenting order is made under this section, the person in respect of whom it is made may appeal against it to the Crown Court.
- (8) On an appeal under subsection (7) the Crown Court—
  - (a) may make such orders as may be necessary to give effect to its determination of the appeal, and
  - (b) may also make such incidental or consequential orders as appear to it to be just.
- (9) An order of the Crown Court made on an appeal under subsection (7) is to be treated for the purposes of section 374 as having been made by the youth court.

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*Parenting order in case of certain offences related to school attendance*

**369 Parenting order in respect of certain offences under Education Act 1996**

- (1) A parenting order under this section is available to the court by or before which an offender is convicted of an offence under—
- (a) section 443 of the Education Act 1996 (failure to comply with school attendance order), or
  - (b) section 444 of that Act (failure to secure regular attendance at school of registered pupil).

This is subject to section 370.

- (2) Where a parenting order under this section is available, the court may make such an order in respect of the offender if satisfied that the order would be desirable in the interests of preventing the commission of any further offence under section 443 or 444 of the Education Act 1996.
- (3) Subsections (4) and (5) apply where a court makes a parenting order under this section.
- (4) The requirements that the court may specify under section 365(1)(a) are requirements that it considers desirable in the interests of preventing the commission of any further offence under section 443 or 444 of the Education Act 1996.
- (5) If the order contains a requirement under section 365(1)(b) and the court is satisfied that—
- (a) the attendance of that offender at a residential course is likely to be more effective than the offender’s attendance at a non-residential course in preventing the commission of any further offence under section 443 or 444 of the Education Act 1996, and
  - (b) any interference with family life which is likely to result from that person’s attendance at a residential course is proportionate in all the circumstances,
- the court may provide in the order that a counselling or guidance programme which the offender is required to attend by virtue of the requirement may be or include a residential course.
- (6) Before making a parenting order under this section in a case where the offence related to a person aged under 16, the court must obtain and consider information about—
- (a) that person’s family circumstances, and
  - (b) the likely effect of the order on those circumstances.

*Provisions applying generally to parenting orders under Code*

**370 Parenting order: availability**

A court may not make a parenting order under this Chapter in respect of a person unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area in which it appears to the court that the person resides or will reside (and the notice has not been withdrawn).

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### **371 Parenting order: references where local authority has parental responsibility**

Section 404 (certain references to parent or guardian to be read as references to local authority) does not apply to this Chapter.

### **372 Making a parenting order**

- (1) This section applies where a court makes a parenting order under this Chapter in respect of a person (“the parent”).
- (2) Requirements specified in a parenting order under this Chapter must, as far as practicable, be such as to avoid—
  - (a) any conflict with the parent’s religious beliefs, and
  - (b) any interference with the times, if any, at which the parent normally works or attends an educational establishment.
- (3) Before making a parenting order, a court must explain to the parent in ordinary language—
  - (a) the effect of the order and of the requirements proposed to be included in it;
  - (b) the consequences which may follow (under section 375) if the parent fails to comply with those requirements, and
  - (c) that the court has power (under section 374) to review the order on the application either of the parent or of the responsible officer.
- (4) The parenting order must specify the responsible officer.
- (5) The responsible officer must be—
  - (a) an officer of a provider of probation services acting in the local justice area in which it appears to the court that the parent resides or will reside,
  - (b) a social worker of the local authority in whose area it appears to the court that the parent resides or will reside,
  - (c) a person nominated by—
    - (i) a person appointed as director of children’s services under section 18 of the Children Act 2004, or
    - (ii) a person appointed as chief education officer under section 532 of the Education Act 1996, or
  - (d) a member of a youth offending team established by the local authority in whose area it appears to the court that the parent resides or will reside.
- (6) For the purposes of this Chapter, the Inner Temple and the Middle Temple form part of the City of London.

### **373 Directions by the responsible officer**

Directions given by a responsible officer under a parenting order under this Code must, as far as practicable, be such as to avoid—

- (a) any conflict with the parent’s religious beliefs, and
- (b) any interference with the times, if any, at which the parent normally works or attends an educational establishment.

For this purpose, “parent” means the person in respect of whom the parenting order is made.

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### **374 Discharge and variation of parenting order**

- (1) This section applies where—
  - (a) a parenting order made under this Chapter is in force, and
  - (b) an application is made under this section by—
    - (i) the responsible officer, or
    - (ii) the person in respect of whom it is madeto the court which made the order.
- (2) The court may make an order—
  - (a) discharging the parenting order, or
  - (b) varying the parenting order—
    - (i) by cancelling any provision included in it, or
    - (ii) by inserting in it (either in addition to or in substitution for any of its provisions) any provision that the court could include, if it were now making the order.
- (3) Where an application under this section for the discharge of a parenting order is dismissed, no-one may make a further application under this section for its discharge except with the consent of the court which made the order.

### **375 Offence of failure to comply with a requirement of a parenting order**

- (1) It is an offence for a person in respect of whom a parenting order made under this Chapter is in force to fail to comply with any requirement—
  - (a) included in the order, or
  - (b) specified in directions given by the responsible officer.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **CHAPTER 5**

### **BINDING OVER**

### **376 Binding over of parent or guardian**

- (1) This section applies where—
  - (a) a person aged under 18 is convicted of an offence, and
  - (b) a court is sentencing the offender for the offence.
- (2) The court has the following powers—
  - (a) the court may, with the consent of the offender's parent or guardian, order the parent or guardian to enter into a recognizance to take proper care of the offender and exercise proper control over the offender, and
  - (b) if—
    - (i) the parent or guardian refuses consent, and
    - (ii) the court considers the refusal unreasonable,the court may order the parent or guardian to pay a fine not exceeding £1,000.

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- (3) For the purposes of this section—
  - (a) taking “care” of a person includes giving the person protection and guidance, and
  - (b) “control” includes discipline.
- (4) If the offender is aged under 16 when sentenced, the court must—
  - (a) exercise its powers under subsection (2), if satisfied, having regard to the circumstances of the case, that doing so would be desirable in the interests of preventing the offender from committing further offences, or
  - (b) state in open court that it is not so satisfied, and why not.
- (5) Subsections (2) and (4) are subject to section 37(8) of the Mental Health Act 1983 (order under this section not to be made where hospital or guardianship order is made) and to—
  - (a) section 89(4)(b), and
  - (b) paragraph 16(2) of Schedule 4,(restrictions on the powers of a court making or extending a referral order).
- (6) If the court makes a youth rehabilitation order, a recognizance under this section may include a provision that the offender’s parent or guardian ensure that the offender complies with the requirements of that order.
- (7) The period of a recognizance under this section—
  - (a) may not be more than 3 years, and
  - (b) must end before the offender reaches the age of 18.
- (8) A recognizance under this section may not be for an amount of more than £1,000.
- (9) In fixing the amount of a recognizance under this section, the court must take into account, in particular, the means of the parent or guardian so far as they appear or are known to the court (whether doing so has the effect of increasing or reducing the amount).
- (10) Section 120 of the Magistrates’ Courts Act 1980 (forfeiture of recognizances) applies in relation to a recognizance under this section as it applies in relation to a recognizance to keep the peace.
- (11) A fine imposed under subsection (2)(b) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.
- (12) Section 404 (certain references to parent or guardian to be read as references to local authority) does not apply to this section.

### **377 Binding over of parent or guardian: appeals, variations and revocations**

- (1) A parent or guardian may appeal to the Crown Court against an order under section 376 made by a magistrates’ court.
- (2) A parent or guardian may appeal to the Court of Appeal against an order under section 376 made by the Crown Court as if—
  - (a) the parent or guardian had been convicted on indictment, and
  - (b) the order were a sentence passed on the conviction of the parent or guardian.

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- (3) A court may vary or discharge an order made by it under section 376 if, on the application of the parent or guardian, it appears to the court, having regard to any change in the circumstances since the order was made, to be in the interests of justice to do so.

### **378 Other powers of the court to bind over to keep the peace**

- (1) For powers to bind over to keep the peace exercisable on conviction see, in particular—
- (a) section 1 of the Justices of the Peace Act 1361;
  - (b) section 1(7) of the Justices of the Peace Act 1968.
- (2) This section does not affect the exercise of those powers in other circumstances, or of other powers to bind over.

## **CHAPTER 6**

### OTHER ORDERS

### **379 Other behaviour orders etc**

- (1) For further orders available to a court dealing with an offender for particular offences in particular circumstances, see the following—

<i>Provision</i>	<i>Type of order</i>	<i>Type of offence</i>
Criminal Justice and Police Act 2001		
section 33	travel restriction order	sentence of imprisonment for certain drug-trafficking offences
Licensed Premises (Exclusion of Certain Persons) Act 1980		
section 1	exclusion order	certain offences committed on licensed premises
Football Spectators Act 1989		
section 14A(3)	banning order under Part 2	relevant offence within the meaning of that Part
Serious Crime Act 2007		
section 19	serious crime prevention order	serious offence in England and Wales
Modern Slavery Act 2015		
section 14	slavery and trafficking prevention order	slavery or human trafficking offence (see Schedule 1)
Psychoactive Substances Act 2016		
section 19	prohibition order	offence under section 4 to 8 of that Act and related offences.



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- (2) Part 2 of the Sexual Offences Act 2003 makes provision about notification requirements in the case of a person convicted of an offence listed in Schedule 3 to that Act (sexual offences for the purposes of that Part of that Act).