

**EXPLANATORY MEMORANDUM TO**  
**THE SEXUAL OFFENCES ACT 2003 (AMENDMENT OF SCHEDULES 3 AND 5)**  
**ORDER 2007**

**2007 No.**

**1.** This explanatory memorandum has been prepared by Home Office and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 This Order adds offences to Schedules 3 and 5 to the Sexual Offences Act 2003 (“the Act”). A person convicted or cautioned or made subject to a finding for an offence listed in Schedule 3 becomes subject to the notification requirements of Part 2 of the Act. A Schedule 3 offence may also lead to a person becoming subject to a foreign travel order. An offence under Schedule 3 or 5 may lead to a person becoming subject to a sexual offences prevention order.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Background**

4.1 This is the first use of the power in section 130 of the Act to amend Schedules 3 and 5 by Order.

4.2 The notification requirements of Part 2 of the Act, and the provisions of the Act about sexual offences prevention orders and foreign travel orders, build upon and replace earlier provisions in the Sex Offenders Act 1997. A review of the operation of the Act has been undertaken by the Home Office and the offences added to Schedules 3 and 5 of the Act by this Order are those which are considered should be added, in the light of that review, in order to assist in the prevention and detection of sexual offences and the management of risks posed by offenders.

4.3 Assurances were given during the passage of the Police and Justice Act 2006 when Sir Paul Beresford and Baroness Anelay tabled amendments to move the offences under sections 48, 49 and 50 from Schedule 5 to Schedule 3 to the Act. At the time, the Home Office resisted the amendments stating that we were undertaking a wider review of the Act and Schedules 3 and 5 with a view to laying an Order amending Schedules 3 and 5, if appropriate, in the autumn.

**5. Extent**

5.1 This instrument applies to England, Wales and Northern Ireland.

## **6. European Convention on Human Rights**

The Home Secretary has made the following statement regarding Human Rights:

In my view the provisions of the Sexual Offences Act 2003 (Amendment of Schedules 3 and 5) Order 2006 are compatible with the Convention rights.

## **7. Policy background**

7.1 The Act amended and replaced previous sex offences legislation and considerably amended the notification requirements placed on those who are convicted of certain sex offences.

7.2 The notification requirements contained in Part 2 of the Act are not a punishment, and arise as a matter of law. They are intended to ensure that the police are kept informed of the whereabouts of those individuals subject to the notification requirements. This helps the police and the probation services to manage the risks posed by such offenders and also helps in the prevention and detection of sexual crime.

7.3 Most offenders become subject to the notification requirements as an automatic consequence of their conviction or caution for one of the sexual offences listed in Schedule 3 to the Act. These notification requirements apply for a set period as set out in section 82 of the Act.

7.4 A person who has been convicted of or cautioned for an offence listed in Schedule 3 may also be a person in respect of whom an application for a foreign travel order can be made (section 114 of the Act), subject to the other conditions for such an order being satisfied. A foreign travel order restricts a person's ability to travel outside of the United Kingdom for a fixed period of not more than six months.

7.5 Schedule 5 to the Act lists other offences which, whilst not inherently sexual, could have had a sexual motive, such as murder.

7.6 A person who has been convicted or cautioned for an offence listed in Schedule 3 or 5 to the Act may become subject to a sexual offences prevention order (section 106 of the Act) or interim sexual offences prevention order (section 109 of the Act), subject to the other conditions for such an order being satisfied. A (interim) sexual offences prevention may prohibit the person from doing certain things providing those prohibitions are necessary for the purpose of protecting the public or any particular members of the public from serious sexual harm from the subject of the order. A person subject to a (interim) sexual offences prevention order must also comply with the notification requirements of Part 2 of the Act whilst the order has effect. The minimum duration of a sexual offences prevention order is five years.

7.7 An offender who becomes subject to the notification requirements of Part 2 of the Act must, within 3 days of conviction or caution, notify the police, in person and at a prescribed police station, of his name, address, date of birth and national insurance number. If the offender is in prison on the day that this requirement falls due then he must make his notification within 3 days of his release. Changes to name or address must be notified to the police within 3 days of such change. Offenders must also

notify the police 7 days in advance of any intended overseas travel for a period of 3 days or more. All offenders must now ensure that they re-confirm their notified details at least once every 12 months. The police have the power to take fingerprints and photographs to confirm that an offender is who he says he is when attending to make a notification.

7.8 Failure to comply with the notification requirements without reasonable excuse, or providing information in purported compliance with those requirements which the offender knows is false, is an offence punishable by a maximum penalty, of up to 5 years' imprisonment if convicted on indictment. Breach of a (interim) sexual offences prevention order or foreign travel order are also offences, in each case punishable by maximum penalties of up to 5 years' imprisonment if convicted on indictment.

7.9 Earlier this year the Home Office carried out a review of the way in which the Act was operating. Over 130 organisations were consulted including law enforcement agencies and legal and judicial bodies. Specific questions were asked in relation to whether Schedules 3 and 5 needed to be amended to include other offences. Nine organisations responded to these questions, including the Association of Chief Police Officers and three local Multi-Agency Public Protection Arrangements (MAPPAs). In the light of those comments the Home Office undertook a careful review of the lists of offences in both Schedules, and the amendments contained in the Order represent the outcome of that review. We have not agreed the amendments with those bodies who originally expressed their concerns as they already gave their views during the initial consultation. There was a mixed response from the Association of Chief Police Officers in relation to whether 'kerb crawling' should have been included in Schedule 5 but we have taken the decision that it should not be included.

7.10 The three offences being added by the Order to Schedule 3 are sexual offences which, in the light of the review, the Home Office now considers should be listed in Schedule 3. The original decision to place those three offences in Schedule 5 was taken because it was considered that these were not strictly sexual offences. They could, it was argued, be motivated by simple greed rather than a sexual interest in children. However, we are now persuaded that whilst these are not strictly sexual offences, those convicted of them have, at the very least, displayed a callous disregard for the sexual well-being of children and so they should be listed in Schedule 3 and removed from Schedule 5.

7.11 The offences being added to Schedule 5 are offences which, like the others currently listed in Schedule 5, are not inherently sexual in nature, could have a sexual motive. The list of offences in Schedule 5 were originally drafted to be consistent with the list of violent offences in Schedule 15 of the Criminal Justice Act 2003. However, we have since formed the view that it is not necessary that these Schedules need to mirror each other particularly as they serve two different functions. With the experience of how the Sexual Offences Act 2003 has worked in practice, we are keen to ensure that the courts and police have appropriate powers to deal with sex offenders. The offences to be added to Schedule 5 reflect what stakeholders have asked for during the review.

7.12 The Order will assist in fulfilling the policy objectives of the Act in that it will assist in public protection and the prevention and detection of sexual offences and the monitoring and management of risk posed by sex offenders.

7.13 We do not envisage that all of the measures would receive wide usage but there is considerable concern politically and from members of the public regarding the risk posed by sex offenders. We need to ensure that courts and police have all the tools necessary to protect the public and that is why we are amending Schedules 3 and 5.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The Order will primarily affect the police and HM Courts Service. Any impact is being treated as de minimis in resource terms.

## **9. Contact**

Matthew Laxton at the Home Office Tel: 0207 035 0495 or e-mail: [matthew.laxton2@homeoffice.gsi.gov.uk](mailto:matthew.laxton2@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.