



Home Office

# Guidance on Part 2 of the Sexual Offences Act 2003

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# Contents

Introduction.....	3
Overview.....	4
<b>Chapter One: Notification Requirements.....</b>	<b>6</b>
Section One: Becoming Subject to the Notification Requirements .....	6
Section Two: Travel Outside the United Kingdom .....	17
Section Three: Young Offenders (aged under 18) .....	19
Section Four: Provision of Passport (or Identity Document) Details.....	21
Section Five: Provision of Bank Account, Credit and Debit Card Details.....	22
Section Six: Residing or Staying with a Child for 12 hours .....	23
<b>Chapter Two: Civil Orders.....</b>	<b>24</b>
Section One: Introduction and General Principles .....	24
Section Two: Sexual Harm Prevention Orders (SHPOs).....	33
Section Three: Sexual Risk Orders (SROs).....	42
Section Four: SHPOs and SROs: Foreign Travel Restrictions .....	50
Section Five: Notification Orders.....	51
<b>Chapter Three: Miscellaneous Provisions.....</b>	<b>56</b>
“Verification” (sections 94 and 95).....	56
Information about release and transfer (section 96).....	57
Procedure for ending notification requirements for abolished homosexual offences (Schedule 4).....	57
Offences outside the United Kingdom (section 72) .....	58
<b>Chapter Four: Other Issues: MAPPA and Disqualification Orders.....</b>	<b>59</b>
The Multi-Agency Public Protection Arrangements (MAPPA) .....	59
Disqualification Orders & the Disclosure and Barring Service.....	60

## Introduction

This document contains guidance on Part 2 of the Sexual Offences Act 2003 (as amended) (“the 2003 Act”) and will be referred to as such in this guidance. If there is any doubt as to the application or interpretation of the legislation and this guidance does not assist you to resolve the query, you should seek legal advice.

This guidance has been updated to reflect changes made to the 2003 Act by the Anti-social Behaviour, Crime and Policing Act 2014. This guidance also reflects recent changes to the notification requirements under the 2003 Act made by the Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012.

It should be noted that Part 1 of the 2003 Act is the responsibility of the Ministry of Justice, and separate guidance on this is available from that department. The important provisions contained in Part 1 include those which seek to clarify issues surrounding consent in rape and sexual assault cases, modernise the law to give children the greatest possible protection against sexual abuse, including online; provide specific protection for persons with a mental disorder; and tackle the commercial exploitation of people for sexual purposes through prostitution and trafficking.

This guidance applies to England and Wales.

Recipients of this guidance should:

- Note the changes to Part 2 of the 2003 Act made by the Anti-social Behaviour, Crime and Policing Act 2014.
- Consider whether any changes to their established procedures are required as a result and, if so, to communicate these to staff.

If you have any queries regarding this guidance then you should contact:

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## Overview

The 2003 Act contains the following provisions in relation to notification requirements:

- A conditional discharge given following conviction is still considered a conviction for the purposes of the notification requirements.
- The notification period for a caution is for two years.
- Offenders have to notify a change to their notified details (such as name or address) within three days of the change taking place.
- Offenders have to notify any address in the United Kingdom at which they have resided or stayed for at least seven days, whether for seven consecutive days or for a cumulative period of seven days in any 12 month period.
- All offenders have to confirm annually the details they have previously notified (“periodic notification”).
- All notifications have to be made in person and the police may take fingerprints and photographs at initial notification, whenever offenders notify any changes to their details and at any periodic notification.
- Offenders must notify their national insurance number.
- It is possible to notify a change of details in advance of the change taking place. However, offenders should be aware that it is incumbent on them to inform police within six days of the anticipated date that the expected change did not occur within three days of the anticipated date.
- Schedule 3 to the 2003 Act, which lists the offences which trigger the notification requirements of Part 2 of that Act, includes most of the sexual offences contained in Part 1 of the 2003 Act (some have disposal or other thresholds that must be met before they trigger the notification requirements).
- Where a disposal threshold has to be met before the notification requirements are triggered for a specific offence, the offender does not have to comply with the notification requirements unless given a sentence which meets that threshold.
- The Secretary of State has a power to amend Schedule 3, which includes a power to amend the thresholds.

Recent revisions to the 2003 Act have seen the introduction of the following notification requirements:

- Offenders must notify all foreign travel outside the United Kingdom (previously only travel of three days or more was subject to notification).
- Offenders must notify weekly where they have no sole or main residence in the United Kingdom.
- Offenders must notify when residing or staying in a household with a child for a period of at least 12 hours.
- Offenders must notify to the police information contained in, or in relation to, their passport, bank account, credit card or debit card at each notification.

The following civil preventative orders are found in Part 2 of the 2003 Act (as amended by the Anti-social Behaviour, Crime and Policing Act 2014):

**Sexual Harm Prevention Orders:** A Sexual Harm Prevention Order (SHPO) can be made by a court in respect of an individual who has been convicted, or cautioned ('cautioned' for the purposes of this Guidance includes those who have received a reprimand, final warning or youth caution) for a relevant offence and who poses a risk of sexual harm to the public in the UK or children or vulnerable adults abroad.

A SHPO may impose any restriction the court deems necessary for the purpose of protecting the public from sexual harm, and makes the offender subject to the notification requirements for the duration of the order. SHPOs are available to the court at the time of sentencing for a relevant offence, or on free-standing application to the magistrates' court by the police or National Crime Agency after the time of the conviction or caution.

**Sexual Risk Orders:** A Sexual Risk Order (SRO) can be made by a court in respect of an individual who has done an act of a sexual nature and who, as a result, poses a risk of harm to the public in the UK or children or vulnerable adults abroad. For a SRO to be imposed, the individual does not need to have committed a relevant (or any) offence.

An SRO may impose any restriction the court deems necessary for the purposes of protecting the public from harm (this includes harm from the defendant outside the United Kingdom where those to be protected are children and vulnerable adults), and requires the individual to notify the police of their name and address, including where this information changes. An SRO is available on free-standing application to a magistrates' court by the police or National Crime Agency.

**Notification Orders:** A Notification Order can be made by the court, on application by a chief officer of police, in relation to individuals who have been convicted, cautioned or had a relevant finding made against them for specified sexual offences in a country outside the United Kingdom. The effect of the order is broadly to make such offenders subject to the notification requirements of Part 2 of the 2003 Act as if they had been convicted of or cautioned for a relevant offence in the United Kingdom.

# Chapter One: Notification Requirements

## Section One: Becoming Subject to the Notification Requirements

### Basic principles

The notification requirements of Part 2 of the 2003 Act are an automatic requirement for offenders who receive a conviction or caution for certain sexual offences. The requirements also apply to individuals 'found not guilty by reason of insanity' or to have been 'under a disability but to have done the acts charged against him in respect of such offence'. The notification requirements are not a punishment for a sexual offence and are not part of the system of penalties.

The notification requirements are not dependent on an order of the court. An offender who becomes subject to the requirements does so automatically because he has been convicted, cautioned, reprimanded or warned for a 'relevant offence'. There is no discretion, exercised by either the courts or the police, in imposing the notification requirements on relevant offenders and, similarly, the requirements cannot be imposed at the discretion of the courts or police on a person who is not a relevant offender as specified in the 2003 Act.

In addition, discretion is not exercised by the courts or the police over the duration of the notification period. This is set out in the legislation and is based upon whether the offender has received a caution, conviction or finding in respect of a relevant offence and, where applicable, the type and duration of the sentence or disposal received. The court should not reduce a sentence in order that an offender is subject to the notification requirements for a lesser period.

An offender cannot be subject to more than one set of notification requirements (for example, where the offender is convicted of different Schedule 3 offences at different times) and he only needs to make one initial notification and annual notification thereafter of the requisite details (assuming these details do not change). A certificate should, however, be issued each time he is convicted etc. of a relevant offence and forwarded to the local police's Public Protection Unit so that the correct period of notification can be established by the police.

### Persons becoming subject to the notification requirements

Section 80 sets out the categories of person who become subject to the notification requirements under the 2003 Act:

- a person convicted (see below) of an offence listed in Schedule 3 to this Act
- a person found not guilty by reason of insanity of such an offence
- a person found to be under a disability and to have done the act charged
- a person who has been cautioned in England, Wales or Northern Ireland by the police after that person has admitted committing the offence. In these cases, the offender must be informed of the notification requirements before the caution is administered in order that "informed consent" has been given.

Civil orders made under the 2003 Act which give rise to a person becoming subject to the notification requirements are (see Chapter Two for specific guidance on these orders):

- Notification Orders and Interim Notification Orders
- Sexual Harm Prevention Orders and Interim Sexual Harm Prevention Orders
- individuals convicted of or cautioned for breach of a Sexual Risk Order.

A person who is subject to the notification requirements is known as a 'relevant offender'. The notification requirements extend to the whole of the United Kingdom.

Offenders who have been conditionally discharged in respect of an offence listed in Schedule 3 on or after the commencement of the 2003 Act have to comply with the notification requirements.

A conviction includes one made by a Court Martial or a Standing Civilian Court.

The offences in Schedule 3 are exclusively sexual offences. They are set out in separate lists for England and Wales, Scotland, Northern Ireland and under service law. Age and sentence thresholds have been applied to some of the offences to ensure that only the most serious offending will trigger the requirements. For example, in the case of the offence of sex with an adult relative, an offender will only be required to register if they are sentenced to a term of imprisonment or detained in hospital. Where a person is convicted, cautioned etc. in relation to an offence, any applicable thresholds have to be met for the notification requirements to be triggered. Where a threshold refers to a 12 month community sentence, this is equivalent to a period of 112 days service detention.

## Persons who were previously subject to the notification requirements of the 1997 Act

Section 81 provides that offenders who were subject to the notification requirements under Part 1 of the Sex Offenders Act 1997 at the date of commencement of Part 2 of the 2003 Act continue to be subject to the notification requirements. This includes the revised requirements as set out in the 2003 Act, provided the notification had not ended before commencement.

Schedule 3 includes the list of offences that were previously listed in Schedule 1 of the Sex Offenders Act 1997.

## Retrospective application of the notification requirements

The 2003 Act includes provisions which replicate the partially retrospective provisions of the 1997 Act so that, save in specified circumstances, convictions, cautions etc. that pre-date 1 September 1997 (the date of commencement of the 1997 Act) will not trigger the notification requirements.

However, the 2003 Act provides that a person convicted of a Schedule 3 offence prior to 1st September 1997 will be subject to the requirements if, on 1 September 1997, that person had not been dealt with in respect of the offence or was still serving a sentence of imprisonment or a term of service detention, or was subject to a community order or supervision following release from prison or was detained in a hospital, or subject to a guardianship order. This should not be read as catching an offender with a previous conviction for a sexual offence, who served a term of imprisonment for that offence and was subsequently released but on 1 September 1997 was detained in a hospital for a reason completely unrelated to the previous sexual offending.

The 2003 Act makes it clear that the notification requirements only apply to an offender detained in a hospital on 1 September 1997 if the offender was detained in a hospital in respect of a relevant offence.

## The notification period (section 82)

Section 82 provides that the period of time an offender is required to comply with the notification requirements depends on how that offender was dealt with in respect of the relevant offence, as set out below.

Where the offender:	They will be subject to the notification requirements for:
Is sentenced to 30 months or more imprisonment (inc. life)	An indefinite period
Is admitted to a hospital subject to a restriction order	An indefinite period
Is sentenced to imprisonment for a term of more than 6 months but less than 30 months	10 years
Is sentenced to imprisonment for 6 months or less	7 years
Is admitted to hospital without a restriction order	7 years
Is cautioned	2 years
Is given a conditional discharge	The duration of the conditional discharge
Received any other disposal (such as a community punishment or fine)	5 years

The notification period for a caution of two years applies only to cautions administered on or after the commencement of the Sexual Offences Act 2003.

The notification periods apply to relevant offenders aged 18 years or over. Section 82(2) provides that for those aged under 18 on the date of conviction, caution etc., the notification periods of 10, 7, 5 and 2 years are halved.

It should also be noted that the civil law equivalent of a period of service detention received at a court-martial is a community punishment. Therefore, the notification period for offenders who receive such a penalty is five years.

Following careful consideration, the Home Office responded to the Supreme Court decision that the indefinite notification requirements were incompatible with Article 8 (right to family and private life) of the European Convention on Human Rights (ECHR) in so far as offenders who were on the sex offenders' register for life could not apply for a review of whether they should remain on the register. On 30 July 2012 the Sexual Offences Act 2003 was amended by the Sexual Offences Act 2003 (Remedial) order 2012 so as to introduce a mechanism for individuals to seek a review of their indefinite notification requirements. Offenders who have been subject to notification requirements for a period of 15 years (eight years for juveniles) are eligible to make an application to the police for review. A range of prescribed factors will be considered in determining the application and where the police consider an offender to remain a

risk they will continue to be subject to notification. Offenders can make an application to the magistrates' court following an adverse decision by the police. Further guidance pertaining to indefinite notification requirements and applications for review can be found within the Home Office 'guidance on review of indefinite notification requirements issued under section 91F of the Sexual Offences Act 2003', available [here](#).

## **Notification periods: offenders already subject to the notification requirements**

An offender may be convicted, cautioned or made subject to a finding for a relevant offence whilst he is already subject to the notification requirements. If an offender is convicted and sentenced for a relevant offence whilst he is serving a sentence for an earlier offence, the sentences may become "partly concurrent" (see below). In any other case, the offender must comply with the notification requirements for the notification period which ends the latest. For example:

- An offender has a notification period of five years which is due to end on 1 December 2011. On 1 August 2009, the offender is convicted of another relevant offence and sentenced to 12 months community punishment. Therefore, another five year notification period applies and the offender must comply with the requirements until that period expires on 1 August 2014.
- An offender is subject to the requirements for an indefinite period because of a previous conviction which resulted in a 30 month prison sentence. Sometime after the end of this sentence (on 1 June 2010), the offender is cautioned for another relevant offence. This would mean that the notification period runs until 1 June 2012 but, because the offender is already subject to the requirements for an indefinite period, the offender will have to comply with the requirements indefinitely.

It is important that the police (who are responsible for managing compliance with the notification requirements and the information provided under them) update notification periods to reflect any further conviction, caution etc. and ensure that the offender is fully aware of how long compliance with the notification requirements is required. In some circumstances, it may be appropriate for the police to write to offenders informing them of the duration of the notification period which applies to them.

## **Notification periods: concurrent/consecutive sentences**

Subsections (3) and (4) of section 82 set out how to calculate the notification period where an offender is sentenced for more than one Schedule 3 offence and these sentences are terms of imprisonment running consecutively or partly concurrently. Where the terms are consecutive, they are to be added together. For example, where an offender is sentenced to three months' imprisonment for one relevant offence and four months' imprisonment for another such offence, to run consecutively, the sentence would be treated as seven months' imprisonment for the purposes of working out the notification period (in this case, 10 years).

Terms will be partly concurrent when they are imposed on different occasions. An example would be where an offender is sentenced to 20 months imprisonment for a Schedule 3 offence, and 12 months into this term he is sentenced to 22 months years' imprisonment for a second Schedule 3 offence. Where this is the case, the notification period is based on the combined length of the terms minus any overlapping period. In the example given, the combined length of the sentences would be 42 months and the overlapping period would be the remaining eight months of the 20-month sentence. So the sentence for the purposes of working out the notification period would be 34 months from the date of the first conviction. If such a situation

arises, it may be considered appropriate for the police to contact the offender to explain the duration of his notification period. In cases where an offender receives sentences totalling 30 months or longer, he will be required to notify for an indefinite period.

Occasionally, a situation may arise where there is an initial finding that a person is under a disability and has done the act charged and he is later tried for the offence. An example would be where such a finding was made, the person was admitted to hospital under a restriction order and the notification requirements would therefore apply for an indefinite period. Where such a person was subsequently tried for the offence, the indefinite notification period will cease to apply as from the end of the trial. If the person is convicted and sentenced to, say, 12 months' imprisonment for the offence, the new notification period would be 10 years, starting from the date of the conviction. If the person is acquitted at trial, the person ceases to be subject to the notification requirements in respect of that matter.

## Extended sentences

The Court of Appeal in *R v Wiles* [2004] considered extended sentences and whether the extended sentence an offender was given should be added to the original sentence of imprisonment to determine the length of time for which the offender is subject to the notification requirements. The effect of the decision in *R v Wiles* [2004] is that, where an offender receives a period of imprisonment together with an extended supervision licence, both should be taken into account when calculating the period notification, and that the term "sentence of imprisonment or detention" therefore includes the extension period and is not confined to the custodial term. For example, where it was previously considered that six months' imprisonment plus six months' extended sentence equalled to six months' imprisonment for the purposes of the notification requirements, *R v Wiles* [2004] had the effect that six months' imprisonment plus six months' extended sentence equalled to 12 months' imprisonment for the purposes of the notification requirements. The decision in *R v Wiles* [2004] was upheld in *R (Minter) v Chief Constable of Hampshire and Secretary of State for the Home Department* [2011].

## Detention and training orders (DTOs)

In determining the length of time that notification requirements will apply to an individual who has been given a Detention and Training Order (DTO), section 131 of the 2003 Act is relevant. This provides that section 82 applies to 'a period of detention which a person is liable to serve [under a detention and training order] as it applies to an equivalent sentence of imprisonment. This means that it is the detention element of the DTO only which is equivalent to the term of a sentence of imprisonment sentence in relation to an adult offender which will determine the scope of the notification requirements.

The courts can only impose a DTO for certain lengths of time: 4, 6, 8, 10, 12, 18 or 24 months. Only half of the period of the DTO is served in detention (referred to as detention element). It is the detention element which is the equivalent to the length of the term of a sentence of imprisonment, and which determines the notification requirements. For example:

- If an offender is subject to a DTO of 24 months, the detention element will be half of this i.e. 12 months. This 12 month period is equivalent to a 12 month sentence of imprisonment. Therefore, the offender with the DTO will become subject to the notification requirements in the same way as a person sentenced to imprisonment for a term of 12 months.

Section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a DTO can only apply in relation to a child or young person (aged under 18). This means that section 82 (2) of the Act, which provides that where a person is under 18 on the relevant date, subsection (1)

has effect as if for any reference to a period of 10, 7, 5, or 2 years there were substituted a reference to one half that period, will always apply to an offender who has been made subject to the notification requirements by virtue of receiving a DTO.

## Establishing the “relevant date”

For most offenders, the “relevant date” is the date of conviction, caution, finding etc. for an offence listed in Schedule 3. The notification period begins at the relevant date. However, section 132 clarifies that where an offence in Schedule 3 has a sentence (or other disposal, e.g. hospital order) threshold, the offender is to be regarded as having a conviction or a relevant finding for the offence only when a threshold is met.

Essentially, the notification requirements will only apply where the thresholds are met and this may not be known until the offender is dealt with by the court. Therefore, a person should only be treated as convicted for a relevant offence when any applicable sentence threshold is met.

For example, paragraph 18 of Schedule 3 specifies that an adult offender only becomes subject to the notification requirements for the offence of sexual assault (section 3 of the 2003 Act) when:

- The victim was under 18, or
- The offender is, in respect of the offence, sentenced to a term of imprisonment, detained in a hospital or sentenced to a 12 month community sentence.

For example, three adult offenders are convicted of sexual assault on 1 June. The first offender committed the offence against a child under the age of 18; therefore his “relevant date” would be 1 June regardless of the sentence he subsequently receives (other than an absolute discharge) on that or a later date. The second offender committed the offence against someone aged 18 or over and on 1 July he is sentenced to a term of imprisonment; therefore his “relevant date” would be 1 July. The third offender also committed the offence against someone aged 18 or over and he too is sentenced on 1 July but only receives a six months community punishment for the offence; therefore he does not meet the threshold and does not become subject to the notification requirements.

There exists the possibility that an offender is convicted of an offence for which there is no sentence or disposal threshold and on a later date is given an absolute discharge by the court. Absolute discharges do not trigger the notification requirements. If this happens, the offender will have to comply with the notification requirements from the relevant date but will cease to have to comply when he receives an absolute discharge.

## Initial notification

Section 83 sets out the information which an offender must notify to the police upon initial notification. This includes (but is not limited to) the offender's:

- date of birth
- national insurance number
- name and any other names used on the date of conviction, caution etc. and on the date of notification
- home address on the date of conviction, caution etc. and on the date of notification. This means the offender's sole or main residence in the United Kingdom, or where the offender has no such residence, the location of a place in the United Kingdom where he can regularly be found and if there is more than one such place, such one of those

places as the person may select. Therefore, an offender cannot simply register as “no fixed abode” (although the term “regularly” has not been defined)

- address of any other premises in the United Kingdom which, at the time of notification, the offender regularly resides or stays
- passport, bank account and credit card details (including joint and business accounts), and
- details of any residence with a child.

The offender is required to notify this information within three days beginning with the relevant date (see above). However, an offender does not have to make an initial notification if, because of another sexual offence, the offender is already subject to the notification requirements.

In addition, when determining the period of three days there is to be disregarded any time when the relevant offender is:

- remanded in or committed to custody
- in custody due to a sentence of imprisonment or a term of service detention
- detained in a hospital, or
- outside the United Kingdom.

This means that such an offender must make the initial notification within three days of the offender's:

- release from custody
- release from imprisonment or service detention
- release from hospital, or
- return to the United Kingdom.

For example, two offenders are convicted of sexual assault on 1 June and are subsequently sentenced on 1 July to three years' imprisonment. The first offender, who is remanded on bail, committed the offence against a child under the age of 18 and therefore his relevant date is 1 June. If bailed before sentence, he must make his initial notification within three days beginning with this date and comply with the notification requirements until he goes to prison and then again on his release. The second offender committed the offence against an adult aged 18 or over and therefore his relevant date is 1 July (the date of sentence). However, since he is sent to prison immediately, he does not (and could not) make his initial notification until he is released from prison and then must make the initial notification within three days.

## Changes to notified details

Should the notified details change (for example, by moving address or assuming an alias), an offender must notify the police within three days of the change as set out in Section 84.

Therefore, an offender must notify the police of new details within three days of:

- The offender using a name that he has not already notified to the police.
- A change to the offender's home address.
- The offender staying at an address in the United Kingdom, that has not previously been notified, for a “qualifying period” (this is a period of seven days or two or more periods in any 12 months which taken together amount to seven days).

- The offender residing or staying in a household with a child for a period of at least 12 hours (whether this is the offender's household or that of another).
- Any changes to the offender's bank account or credit card details, including the opening or closure of accounts (personal, business and joint accounts) and the cancellation, expiry or issue of credit cards.
- Any changes to certain details contained in the offender's passport or other identity documents.
- The offender's release from detention in a prison, service detention or a hospital.

The 2003 Act is clear that if an offender made a notification and was subsequently imprisoned or detained in a hospital and was then released with the same name, address etc., the offender will be required to re-notify the police even if the details on release have not changed since his last notification. This should be made clear to an offender at their initial notification (please note in this instance 'etc.' refers to all of the remaining information required under notification)

When offenders notify a change to their details, they must also re-confirm the other details they are required to provide at initial notification. The police will need to note that the offender has reconfirmed their details because this will change the date on which he is required to make his annual notification (see below).

A notification may be made in advance of the actual date of the change in details, in which case, the offender is also required to notify the date of the expected change. However, if an advance notification is made but the change takes place more than two days before the anticipated date, the offender must make a further notification to fulfil his obligations. If an advance notification is made and the change has not taken place within three days beginning with the date notified in advance, the offender must, within six days of the anticipated date, notify the police that the change has not happened, and then must comply with the duty to notify changes to their details. For example, an offender intends to move house and informs the police that the change is anticipated to occur on 10 July. In the event, the change of address occurs on:

- 7 July – this is more than 2 days before the date given at the advance notification and therefore the advance notification is insufficient. The offender must notify this change as he would any other i.e. within the period of three days of the change having occurred.
- 8 July – since this is two days before the date notified in advance, the advance notification is sufficient and the offender has complied with the requirements.
- 12 July – since this is within three days beginning with the date notified in advance, the advance notification is sufficient and the offender has complied with the requirements.
- 13 July or later, the offender must notify the police on or before 15 July that the change did not take place.

The period during which the offender must notify any change cannot include any period when the offender is in prison (whether remanded to custody or serving a sentence), detained in a hospital or abroad.

## Periodic notification

Section 85 provides that a relevant offender must notify the required details on initial notification within 'the applicable period'. 'The applicable period' means a period of one year or, where the offender has no sole or main residence, the period prescribed by regulations made by the Secretary of State. This period has been prescribed as one week. Section 85(1) sets out a series of eventualities, within a year (or a week in the case of offenders with no sole or main residence) of the latest notification of which an offender must notify his details, which comprise:

- the commencement of this Part (for the first year only)
- an initial notification
- the most recent notification of a change in details
- the most recent annual notification.

It is important to note that the above does not include a notification of foreign travel and that any such notification does not impact on the periodic notification.

The periodic notification requirement is suspended while an offender is overseas, in prison or detained in a hospital until his release or return, as the case may be, following which he must comply within three days. For example, an offender notifies to the police his new home address on 1 June 2009 and re-confirms all of his notified details. It is anticipated that he would have to make his periodic notification before 1 June 2010. However, the offender is abroad on that date and does not return to the United Kingdom until 1 July 2010. In this case, he must make his periodic notification within three days of 1 July 2010.

It should also be noted that an offender can confirm his notified details at any point in advance of the day on which he is required to do so – it does not have to be related to a change of his details. If the offender is required to make an annual re-notification on 12 June but does so on the 5 March that is sufficient – the next annual notification simply moves to the 5 March the following year.

## Method of notification: Registration at prescribed police stations and related matters

The police stations listed in the most recent issue of The Sexual Offences Act 2003 (Prescribed Police Stations) Regulations are those which have been prescribed for the purposes of the notification requirements. Offenders are required to notify at one of the prescribed police stations in their area (see foreign travel section below for an exception to this). A police station for these purposes should be given its ordinary, plain meaning and does not include offices or other premises which are not ordinarily identifiable as a police station. Any changes to the addresses of these stations will require a new statutory instrument and it is therefore imperative that police forces inform the Home Office of any changes via the National Policing Lead's office to allow the statutory instrument to be updated annually. Where a prescribed police station is closed, explicit signage must be displayed detailing the address of the nearest prescribed police station. Courts may wish to give relevant offenders the list of prescribed stations on conviction and the police should provide the offender with the list when they issue a caution. In addition, there may be changes to this list while offenders are in prison for lengthy periods so the Prison Service should consider giving offenders a list of the prescribed police stations when they are released. It should be made clear to the offender that the details of police stations may change and should be checked – a station's change of address will not be a defence for failing to register.

Section 87(4) provides that when an offender (a) makes their initial notification, (b) notifies any changes to their previously notified details (including an advance notification) or (c) makes their periodic notification, the police may require the offender to allow them to take fingerprints and photograph any part of that offender (i.e. photographs may be taken of an offenders face as well as distinguishing features, such as a tattoo). This definition also means that iris scanning technology may be used. However, the purpose for taking fingerprints and photographs must be to verify the identity of the sex offender.

## Certificates for the purposes of Part 2

Courts may issue a certificate where a person is convicted of a Schedule 3 offence or found not guilty by reason of insanity or unfit to plead to such an offence but to have done the act charged against him. The certificate will be evidence that an offender was convicted, or subject to such other finding as the court certifies in relation to the relevant offence on the stated date. The 2003 Act also provides for the police to certify that an offender has been given a caution, reprimand or final warning for a relevant offence, and such a certificate has similar effect.

## Breach of the notification requirements

Section 91 of the Act provides that a person who is subject to the notification requirements commits a criminal offence if that person fails, without reasonable excuse, to:

- Make an initial notification in accordance with section 83(1).
- Notify a change of details in accordance with section 84(1).
- Make an annual re-notification in accordance with section 85(1).
- Comply with any requirement imposed by regulations in relation to the notification of foreign travel under section 86(1).
- Notify the fact that a change did not happen as predicted when it had been notified in advance in accordance with section 84(4)(b).
- Allow a police officer to take his photograph or fingerprints (section 87(4)).
- Ensure that a young offender on whose behalf he is required by a parental direction to comply with the notification requirements attends a police station when a notification is made (section 89(2)(b)).
- In the first four cases set out above, if the offender knowingly provides false information.

A 'reasonable excuse' for failing to comply with the notification requirements could arise, for example, where the offender is in hospital. However, it will be for a court to decide what constitutes a reasonable excuse in a particular case.

An offender convicted of such an offence on summary conviction (in the magistrates' court) will be liable to a term of imprisonment of up to six months or to a fine or both; an offender convicted on indictment (in the Crown Court) will be liable to a term of imprisonment of up to five years.

An offence is committed on the first day on which he fails to make an initial notification, periodic notification, to notify a change of details, to comply with any of the foreign travel notification

requirements or periodic notification where registered as having no sole or main residence. The person continues to commit an offence for as long as he fails to comply with the notification requirements but he cannot be prosecuted more than once for the same failure. A prosecution for an offence may be started in any youth (where applicable), magistrates' or sheriff's court in the United Kingdom in a place where the subject lives or has otherwise come to the attention of the police once approval from the Crown Prosecution Service (CPS) has been obtained.

## Definitions

For the purpose of this guidance, terms referenced within this document are defined in the following way:

- Child: a person under the age of 18.
- Police station: for these purposes this term should be given its ordinary, plain meaning and does not include offices or other premises which are not ordinarily identifiable as a police station.

## Section Two: Travel Outside the United Kingdom

The purpose of requiring offenders subject to Part 2 of the 2003 Act to notify the police of their intention to travel abroad is three-fold. First, it enables local police to know the whereabouts of sex offenders and, in doing so, avoids sex offenders claiming that they have not complied with the notification requirements of the 2003 Act because they were overseas. Second, it enables the police, where appropriate, to inform other jurisdictions that a sex offender is intending to visit their country. The information provided by the foreign travel notification requirements assist the police in making sensible proportionate judgements about whether to pass information about the risk an offender poses to other jurisdictions in order to prevent an offence from being committed overseas. Third, it gives the police the opportunity to decide whether to apply for a Sexual Harm Prevention Order to prevent the offender travelling abroad. However, it is important to note that notification requirements do not prohibit an offender from travelling overseas – a SHPO would be required.

The 2003 Act requires offenders to provide the details set out in the Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004. These regulations apply to any relevant sex offender in England and Wales, and require that notification must be given of all foreign travel outside of the United Kingdom. Separate regulations cover offenders in Scotland. The required information must be provided in person, at a prescribed police station, no less than seven days prior to departure (where the offender holds the information). The details required of the offender (if he holds such information except in relation to the first and second bullets which apply in every case) are:

- the date of departure from the United Kingdom
- the destination country
- the point of arrival in that country
- the points of arrival in any other countries being visited
- dates of intended stay in any country being visited
- the identify of carrier(s) he intends to use to leave and return to the United Kingdom, or to travel to any other point(s) of arrival outside the United Kingdom
- details of his accommodation arrangements in any country being visited
- date of return to the United Kingdom
- point of arrival on return to the United Kingdom.

Where the offender has given a notification but the information notified has become an inaccurate or incomplete statement of the information required, the offender must report in person and give a further notification to the police of his intentions no later than 12 hours before his departure. This further notification can, however, be given at any police station in the United Kingdom prescribed for notification purposes and does not have to be in the offender's local area. This is because he may already have commenced his journey and, therefore, have left his local police area although still in the United Kingdom. When giving such further notification, the offender must disclose his name and address as currently notified to the police and details of the police station at which he originally gave notice of his intention to travel.

Where an offender does not hold the required information seven days prior to his intended departure date from the United Kingdom (because, for example, he needs to travel at short notice due to an emergency), he must notify the police at least 12 hours prior to his departure of the date of departure and destination country. The offender must also notify the other information required by the regulations where it is held.

In the event of emergency travel, offenders should provide police with sufficient information to enable them to satisfy compliance with the notification requirements. Police are permitted, in

certain cases, to request information pertaining to the circumstances necessarily giving rise to the emergency in question.

If an offender is required to travel on a regular basis (because, for example, he is required to work overseas), he can provide police with advance notification of his intention to travel for up to six months in advance of the intended date of travel. Where the notified information changes, the offender must notify police of the amendments to his travel seven days prior to his intended departure date as outlined above.

An offender who has given notice of his intention to leave the United Kingdom as described above must, within three days of his return to the United Kingdom, report in person to a prescribed police station and notify the police of the date of his return and his point of arrival in the United Kingdom. However, an offender will not have to notify the police of his return if, on notifying his intention to depart the United Kingdom, he provided details of his expected date and point of re-entry to the United Kingdom and then returned as previously notified.

It should be noted that a relevant offender cannot be prevented from travelling simply because he does not hold the range of information specified. An offender is, however, in breach of the requirements of the legislation where he holds the relevant information and fails without reasonable cause to disclose it. In situations where notified information changes for reasons beyond his control, for example, his accommodation arrangements are altered by the travel company on his arrival, this would not constitute a failure to meet the requirements of the 2003 Act.

Failure to notify foreign travel (or making a false notification) is an offence. An offender convicted of such an offence on summary conviction will be liable to a term of imprisonment of up to six months or to a fine or both; an offender convicted on indictment will be liable to a term of imprisonment of up to five years.

## Section Three: Young Offenders (aged under 18)

Offenders under the age of 18 are subject to the notification requirements if convicted of a Schedule 3 offence and any relevant thresholds set out in it are met.

For the most serious offences in Schedule 3, there is no sentence threshold to registration for young offenders and adult offenders alike. The notification requirements will apply to young offenders who receive a youth caution and for those convicted by a court, regardless of the disposal that is given. These offences include:

- rape (section 1)
- assault by penetration (section 2)
- causing sexual activity without consent (section 4)
- rape of a child under 13 (section 5)
- sexual assault of a child under 13 by penetration (section 6)
- offences against persons with a mental disorder (sections 30 to 38)
- administering a substance with intent (section 61).

For the purposes of those offences in Schedule 3 that contain a threshold regarding the offender's age, it is their age at the time that the offence was committed that the court should consider when deciding whether the threshold is met..

As stated in section one, for those under 18 when convicted or cautioned the notification periods of 10, 7, 5 and 2 years are halved.

### Parental directions

Section 89 provides that a court may direct a person with parental responsibility for a juvenile offender to comply with the notification requirements on behalf of the juvenile offender. Parental directions can be made at the time the court deals with the juvenile offender by recording a conviction or finding for one of the trigger offences, when it makes an order which triggers the notification requirements or following an application from the police.

A court may only make such a direction when the juvenile offender is under the age of 18 in England, Wales and Northern Ireland or under 16 in Scotland. The direction will apply to a person who has parental responsibility (or in Scotland, parental responsibilities) for the juvenile offender.

The effect of a direction under this section will be that the notification requirements that would otherwise have fallen on the juvenile offender will instead fall upon the parent or, in some cases, the local authority. The parent must ensure that the juvenile offender attends the police station with him when making a notification.

A chief officer of police may apply to any youth or magistrates' court whose commission area includes part of his police area for a direction under this section in relation to offenders who are under eighteen in England, Wales and Northern Ireland. Such an application may be made in respect of juvenile offenders who reside in a chief officer's police area or whom the chief officer believes to be in or coming to his police area.

Section 90 allows for a parent who is the subject of a parental direction, the police or juvenile offender to apply for a parental direction to be varied, renewed or discharged. A variation or discharge may be required where a parent who is subject to a parental direction dies or

divorces and moves away, or where a parent no longer has control of the juvenile offender and is unable to ensure that he attends with the parent to notify.

Parental directions do not require the consent of the parent but the courts may wish to seek the views of the parent prior to making such an order.

Section 91(a) provides that a person subject to the notification requirements only commits an offence if he breaches the requirements "without reasonable excuse". A reasonable excuse may include (although it is for the court to decide) a situation where the parent has made every effort to ensure the juvenile offender attends at the police station but is unable to do so.

Where a parent can no longer ensure that the juvenile offender attends with him or her at the police station, the police should consider, with the parent, discharging or varying the parental directions. For example, the police, in consultation with the parent, may feel that it would be appropriate if a different adult were to take on this responsibility (such as the mother, rather than the father). The police may also consider applying for a discharge of the direction altogether so that the juvenile offender becomes responsible for their own compliance. This would mean that any further breaches would result in the juvenile offender being prosecuted.

Breach by a parent of a parental direction is an offence and carries the same penalties as breach of the notification requirements by a sex offender. Breach of the notification requirements can considerably compromise the local police and national probation services' efforts to manage the sex offenders within the community. The mere fact that a breach was not actually committed by the convicted sex offender does not mean that the police should consider the offence as less serious. The police have been denied the information they need to prevent and detect sexual crimes and protect the community they serve.

### **Definition of "parental responsibility"**

In the Children Act 1989, "parental responsibility" means; "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property". The army or a head teacher may be *in loco parentis* but they do not have, under this Act, "parental responsibility".

## Section Four: Provision of Passport (or Identity Document) Details

Section 83 requires relevant offenders to give initial notification to the police of certain details contained in their passport (or passports in the case of those with dual nationality), other forms of identity document or other document in which their name appears. Section 84 requires offenders to notify to the police if they obtain a passport, identity document or other document which has not previously been notified, or to notify if they cease to hold a passport, identity document or other document which they have previously notified.

If the relevant offender holds one or more passports, the information comprises the passport number(s) and offender's full name as set out in the passport(s).

If the relevant offender does not hold a passport, but holds an alternative form of identity document, the information comprises:

- the description of the identity document
- the issue number (if applicable) of the identity document, and
- the offender's full name as set out in the document.

An identity document has the same meaning as in the Identity Documents Act 2010, but does not include a stamp or label. It may, therefore, include a registration card, a document that can be used instead of a passport and a driving licence.

If the offender does not hold either a passport or identity document, the information comprises:

- the description of the document (including details of the issuing authority);
- the issue number (if any) of the document, and
- the offender's full name as set out in the document.

Information provided by the offender should be recorded and updated onto ViSOR.

It remains the responsibility of the relevant offender to ensure that all information provided to the police is verifiable; production of the actual passport or document is encouraged to ensure details can be verified. It is an offence to notify information which the relevant offender knows to be false. A conviction for this offence on summary conviction can result in imprisonment for up to six months or a fine or both; an offender convicted on indictment will be liable to a term of imprisonment of up to five years.

## Section Five: Provision of Bank Account, Credit and Debit Card Details

Section 83 requires relevant offenders to give initial notification to the police of certain information about their bank accounts, credit or debit cards where held by them. This information will include (where applicable) account numbers, sort codes, card validation numbers and expiry dates. Section 84 requires offenders to notify to the police if certain information changes, including when an account is opened or closed or a card is obtained or no longer held by an offender or information previously notified in respect of these matters has altered or become inaccurate or incomplete.

Details of the information which must be notified to the police are set out in regulations 12 and 13 of the Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2013. These can be found [here](#).

Details provided by the offender should be recorded and updated onto ViSOR.

It remains the responsibility of the relevant offender to ensure that all information provided to the police is verifiable; production of relevant documents is encouraged to ensure details can be verified. It is an offence to notify information which the relevant offender knows to be false. A conviction for this offence on summary conviction can result in imprisonment for up to six months or to a fine or both; an offender convicted on indictment will be liable to a term of imprisonment of up to five years.

A person subject to notification requirements is required to notify information about all accounts held with a banking institution, including cash and stocks and shares ISAs. The definition of 'banking institution' includes an institution which is a deposit-taker. A person is not required to notify information about an account which is held with an institution which is not a banking institution.

## Section Six: Residing or Staying with a Child for 12 hours

Notification is required where an offender resides, or stays for a period of at least 12 hours, at a relevant household. The period of 12 hours is not cumulative and only applies to each single occasion on which an offender stays for that period at the relevant household.

For these purposes, the Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012 define a 'relevant household' as a household or other place at which a person under the age of 18 years resides or stays (whether with parent, guardian or carer, with another child or alone) and to which the public do not have access. Short term stays at B&B or hotels are not included.

'Residing' or 'staying' should for these purposes be given its ordinary, plain meaning. If a person is residing or staying at a household, the fact that they may physically leave the property for short periods of time during their stay does not mean that that stay or period of residence ends. The 12 hour period should be calculated from the point at which the person arrives at the property for their stay and the point at which their stay or period of residence ends.

# Chapter Two: Civil Orders

## Section One: Introduction and General Principles

There are three civil orders available under Part 2 of the 2003 Act which can be applied to relevant sex offenders and those who pose a risk of harm: Sexual Harm Prevention Orders, Sexual Risk Orders, and Notification Orders.

The Anti-social Behaviour, Crime and Policing Act 2014 amended the 2003 Act to repeal three civil orders (Sexual Offences Prevention Order, Foreign Travel Order, and Risk of Sexual Harm Order), and replace them with two new orders in England and Wales:

- Sexual Harm Prevention Orders can be applied to anyone convicted or cautioned for a sexual or violent offence who poses a risk of sexual harm to the public in the UK and/or children or vulnerable adults abroad.
- Sexual Risk Orders can be applied to any individual who poses a risk of harm to the public in the UK and/or children or vulnerable adults abroad, including individuals without a relevant conviction or caution.

Both types of order can place a range of restrictions on individuals depending on the nature of the case, such as limiting their internet use or preventing travel abroad.

Notification Orders are provided for by section 97 of the Sexual Offences Act 2003. They are intended to protect the public in the UK from the risks posed by sex offenders in the UK who have been convicted or cautioned for sexual offences which have been committed overseas. A Notification Order makes the offender subject to notification requirements in the same way as if they had been convicted in the UK for an offence under Schedule 3 to the 2003 Act.

### Applying for a civil order under the 2003 Act – general principles

Whilst each of these orders has different purposes and effects, much of the application processes are similar. This section should be read alongside the guidance on the relevant order and with the specific provisions in the 2003 Act in relation to each order.

The Anti-social Behaviour, Crime and Policing Act 2014 amended the 2003 Act to allow the Director General of the National Crime Agency (NCA), as well as a chief officer of police, to apply for such orders. This power may be delegated as appropriate. References to the police and police forces in this guidance should therefore be taken to include the NCA, unless stated otherwise.

The general provisions governing applications for orders in the magistrates' courts are set out in accordance with the Magistrates' Courts Act 1980. However, it should be noted that section 132A of the 2003 Act makes clear that section 127 of the Magistrates' Court Act 1980 does not apply to any application by way of complaint under Part 2 of the 2003 Act (i.e. an application for a civil order under that Part). This means that it is not necessary for the evidence in support of an application to relate to conduct which has occurred within the six month period preceding the application being made (for example where an offender has been abroad or in prison).

An application for an order is made by way of complaint to a magistrates' court. This means the court will act in its civil capacity and the civil rules of evidence apply and hearsay is admissible

(however, the standard of proof remains akin to the criminal standard). An application may only be made in relation to a single individual, even if that person may be a member of a larger group. In order to expedite the process, we recommend that the police consider alerting the court prior to making an application to help in its scheduling.

It is recommended that the police first consult the force solicitor who may assist or may suggest obtaining legal advice from private solicitors to complete the forms. It is worth bearing in mind that, should any case come up for review, it will be helpful to have access to as much information as possible relating to the reasons and justifications for the original application. It would therefore be a matter of good practice to record all relevant information in relation to applications at the time that they are made.

There is a financial cost associated with applying to the court for an order

The summons should be sent by first class post to the defendant's last known address or given to the defendant in person.

Where a child or young person is the subject of the application, the parent or guardian should also receive a copy of the summons unless no such person is readily available. 'Parent' has the same meaning as in section 1 of the Family Law Reform Act 1987 and 'guardian' is defined in section 107 of the Children and Young Persons Act 1933. It is suggested that, prior to the hearing, the police consider visiting the defendant to ensure that he or she understands the seriousness of the summons and the need to attend court.

## Children and young people under the age of 18

Orders may apply to those under the age of 18 (see guidance on specific orders). Children and young people aged from 10 years old up to their 18<sup>th</sup> birthday will be subject to the same procedure, and their cases will similarly be dealt with by the youth courts. Part III of the Children and Young Persons Act 1933 applies to children and young persons in such summary proceedings in youth courts and magistrates' courts.

Under section 34A of the 1933 Act, the court must in relation to a child under 16 (or may otherwise in any other case) require the attendance of a parent or guardian (which may include the local authority social services department), except in limited circumstances. Every effort should be made in advance of a hearing to ensure a parent or guardian attends, so that the court does not need to require their attendance. When assigning magistrates for hearings involving those under the age of 18, justices' clerks should consider magistrates with relevant experience (in, for example, the Youth Court) or qualifications to deal with applications for orders against children and young persons.

Section 37 of the Crime and Disorder Act 1998 (the 1998 Act) requires courts and all those working in the youth justice system to have regard to the principal aim of preventing offending by children and young people, including at the sentencing stage (section 142A of the Criminal Justice Act 2003). This duty to consider the welfare of the child or young person, as required by section 44 of the Children and Young Persons Act 1933 must be read in the context of section 37 of the 1998 Act. Under section 39 of the Children and Young Persons Act 1933, a court must prevent the publication of any details which may reveal the identity of any child concerned in the proceedings before it, unless it decides to allow specific details to be published in the public interest. Therefore a balance has to be achieved between the interests of the young person and those of the public. Where that balance lies will depend on the circumstances of a particular case. There is a presumption against publication.

Where an order is made and one of the consequences of that order is that the offender becomes subject to the notification requirements under the 2003 Act, the court which makes the order may also direct the parent of a juvenile defendant to comply with the notification requirements on his behalf (see the section on the section on Parental Directions in Chapter One of this guidance).

When applying for a SHPO or a SRO in relation to a young person, the following principles should apply:

- The early consultation and participation of the Youth Offending Team in the application process.
- That 14-17 year olds made subject to civil injunctions in relation to harmful sexual behaviour are offered appropriate interventions to reduce their harmful behaviour
- That the nature and extent of that support is based on a structured assessment that takes into account the needs of the young person and the imminent risk.
- That the welfare of the child or young person is the paramount consideration, in line with local safeguarding procedures.
- That the requirements of all other orders and sentences that may already be in existence are taken into account to ensure that any requirements made by these orders to not restrict a young person's ability to complete other current orders or sentences, and the combined burden of requirements is taken into account to ensure the young person has the capacity to comply.

## Safeguarding Children and Young People

Section 44 of the Children and Young People Act 1933 states:

*"Every court in dealing with a child or young person who is brought before it, either as ... an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training."*

Under section 11 of the Children Act 2004, Local Authorities and the police must ensure they promote the welfare of and safeguard children when carrying out their duties, and the 'no order' principle should apply in all cases.

Applicants should liaise with children services partners and the YOT to ensure that arrangements for the application of these powers are aligned with any existing safeguarding and protection plans.

For more information on safeguarding young people, applicants should refer to Working Together to Safeguard Children (2013), which can be found [here](#).

## Gangs

Both the SHPO and the SRO have been designed to be applied flexibly to address sexual risk in a range of contexts. This includes in a gang context where there may be an element of sexual violence or exploitation involved, but where this may not necessarily have been the principal issue that has brought the gang activity to the police's attention.

Most incidents of gang-related sexual violence and exploitation take place between young people who are known to each other. Such individuals may not consider themselves perpetrators or victims of sexual violence, and many victims are unlikely to want to report these incidents to the police. Examples of scenarios where it applying for an SRO or SHPO might be considered could include:

- Individual or multiple males sexually assaulting a young woman who is associated with a rival gang.
- Young women being forced to have sex with multiple gang members as a means of initiation.
- Gang members distributing sexual images or videos of young women known to them.
- Gang members coercing and pressuring young women into having sex with multiple males by exploiting their fear or a lack of understanding of consent, or in exchange for (perceived) status or protection or for other tangible goods.
- Gang members forcing young men to strip or perform sex acts on film as punishment.

The age of perpetrators and victims in a gang-related context mean that safeguarding issues are likely to be a particularly high priority.

## Interim orders

It is possible to apply for interim orders (see guidance on specific orders). The purpose of an interim order is to protect the public, or any particular individuals, during any period between the application for a full order and its determination. Breach of any of the prohibitions of an interim order is a criminal offence carrying the same maximum penalty as breach of a full order.

The civil preventative orders in Part 2 of the 2003 Act are public protection tools. Any interference with the offender's right to a private and family life (protected by Article 8 of the European Convention on Human Rights (ECHR)) must be necessary and proportionate to the prevention or detection of crime, the rights and freedoms of others or the protection of health or morals. The risk factor may be of such a degree as to justify an interim order application at the same time as an application for a full order, but given that such an order will be made before the court has heard and tested all the evidence, great care must be taken to ensure that such a course of action is justified.

It is a matter for the courts to interpret whether or not it is just to make an interim order. If an application is properly made and supported, an interim order may be granted. The court may make an interim order if it considers it just to do so.

Whilst recognising that the defendant must be allowed adequate time to prepare, it will not normally be expected that interim hearings will be adjourned, since the purpose of an interim order is to provide a degree of public protection pending the determination of the main application.

## Role of the Crown Prosecution Service

The Crown Prosecution Service (CPS) would usually make the application for those orders applied at the point of conviction, based on information from the police. The CPS would not normally be consulted on individual cases, since the orders are civil. However, there may be exceptional circumstances where the police will wish to seek their advice (in particular, see the specific section on the Sexual Harm Prevention Order). For example, it may be necessary to

establish whether any of the conduct or behaviour is subject to ongoing criminal proceedings or should be prosecuted as a criminal matter.

In addition, it is important to remember that the CPS will be involved if an order is breached and the breach prosecuted. It may also be sensible to seek CPS advice on the wording of unusual or complex prohibitions to ensure that any breaches will be capable of being proved to the criminal standard of proof.

## Time limits on use of evidence

Section 132A of the 2003 Act confirms that evidence provided in support of an application does not have to relate to matters occurring during the six month period preceding the application being made.

## Procedure in court

The main provisions for making and serving an order are set out under the Magistrates' Courts Act 1980 (save that section 127 of the Magistrates' Court Act 1980 does not apply to applications for civil orders under Part 2 of the 2003 Act, as described above).

## Legal aid

Under Part 2 of the 2003 Act, proceedings relating to the application for full orders/interim orders, applications to vary or discharge an order, appeals against an order, and breaches of an order are potentially eligible for criminal legal aid. Where any of these proceedings are taking place at a magistrates' court or the Crown Court, the application for criminal legal aid should be submitted to the relevant magistrates' court.

For proceedings under Part 2 of the 2003 Act which are taking place before the magistrates' court, the legal aid application is subject to the 'Interests of Justice' test and is means tested.

For proceedings under Part 2 of the 2003 Act which are heard before the Crown Court, the legal aid application is also subject to the 'Interests of Justice' test and means tested. However, if the individual was previously granted a legal aid representation order in relation to the main proceedings at the Crown Court, that representation order can usually be extended to cover any subsequent proceedings brought under Part 2 of the 2003 Act as those subsequent proceedings would be incidental to the main proceedings.

Appeal proceedings under Part 2 of the 2003 Act which are brought before the High Court by way of case stated or before the Criminal Court of Appeal are also potentially eligible. Criminal legal aid for such appeal proceedings is not means tested but is subject to the 'Interests of Justice' Criteria.

Breach proceedings under Part 2 of the 2003 Act are also in scope of criminal legal aid. Applications in relation to breach proceedings are also subject to the 'Interests of Justice' test and the means test.

Where an application for a representation order is refused, the applicant will be given written reasons for the refusal and details of the relevant appeal and review processes.

Further details on the provision of legal aid can be obtained [here](#).

## Reporting restrictions

It is a basic principle of the justice system in this country that justice is dispensed in public and restrictions should only be imposed where it is in the interests of justice to do so. However, concerns have been expressed about the likelihood of an application for an order under Part 2 of the 2003 Act drawing attention to the presence of sex offenders in the community. These concerns can be magnified if the application is for an order that can only be made in respect of convicted sex offenders if the police have concerns about the immediate risk they pose to the community. Whilst the police and the courts are, in fact, acting together to secure improved protection of the public (including protecting the offender from the criminal activity of others), any increase in public disorder not only diverts police resources but could encourage and allow the defendant to abscond from the arrangements the public protection agencies have put in place to manage the risks he or she poses.

Therefore, it has become normal practice in some police areas, when applying for an order of this type, for an application to be made to the court at the outset of proceedings (in general with the support of the defendant) for an order under section 11 of the Contempt of Court Act 1981 prohibiting the publication of the defendant's name and address. It is for the court to decide whether such a prohibition is necessary. Police forces may consider adopting similar practice where appropriate.

## Procedure on hearing an application for an order

The procedure for hearing an application for an order is set out in section 53 of the Magistrates' Courts Act 1980. On hearing the complaint, the court, if the defendant appears, states to him the substance of the complaint, and, if the complaint is contested, after hearing the evidence and the parties' representations, the court proceeds to make an order or to dismiss the complaint.

It is not necessary for such applications to be heard by a district judge.

## Adjournment and non-attendance at court

Sections 54 to 57 of the Magistrates' Courts Act 1980 contain various provisions for adjournment and to cover non-attendance at court and the issue of a warrant for arrest. It is important that there should be no unnecessary delay in hearing these cases and adjournments should only be granted where the interests of justice require it. Nevertheless, the courts should think carefully before proceeding in a defendant's absence, although there will undoubtedly be some cases where this is necessary. Where prohibitions and/or the notification requirements are being imposed, the breach of which is a criminal offence, it is preferable for the defendant to be present to know what the order is about. However a defendant must not be allowed to use his absence to delay an outcome, especially in relation to an interim order, the very purpose of which is to avoid such delays leading to gaps in public protection. If the case is adjourned through non-attendance, it may be appropriate to write to the defendant explaining that the court may proceed in his absence if he fails to attend on the next occasion.

## Oral evidence

Under section 98 of the Magistrates' Courts Act 1980, evidence will ordinarily be given on oath. The evidence of a child under 14 will be given unsworn.

Rule 14 of the Magistrates' Courts Rules 1981 makes provision for the order of evidence and speeches. In relation to evidence from children and vulnerable witnesses, it is recommended

that, due to the strain such a case will place upon them, they should only be called to give evidence in exceptional circumstances. If such evidence is necessary, the court should, as far as possible, ensure that appropriate measures used in criminal proceedings, such as separate waiting facilities, are provided.

## Reciprocal enforceability and variation of orders in Northern Ireland

It will be possible for a court in Northern Ireland to vary and/or enforce a SHPO or a SRO which has been made in England or Wales. It must be shown that the individual who is the subject of the order is resident in Northern Ireland or is intending to come to Northern Ireland.

Both the new orders, the SHPO and the SRO, are enforceable throughout the UK. A breach of either order can be prosecuted in any other part of the UK unless the order specifies that it is only enforceable in a specific locality.

## Service and notification of order

It is recommended that, whenever possible, an order should be served on the defendant in person. It is advised that, where appropriate, a copy of the “Notice of requirement to register” should be given to the defendant. Where a child or young person is concerned, a copy should also be given to his parent or guardian. The defendant should be expected to wait at court until the order is drawn up and served on him. If this is not possible, first class special delivery post must be used.

Any process for appeal must be made clear to the individual. He or she must also be clear that a breach of any of the prohibitions or conditions contained in the order and/or the notification requirements is a criminal offence.

## Notification of orders to others concerned

It would be good practice for a copy of the order to be given to the police, together with a copy of the “Notice of requirement to register” form (where appropriate).

## Variation, renewal, and discharge of orders

For Sexual Harm Prevention Orders and Sexual Risk Orders, it is possible to apply by complaint to the court for an order to be varied, renewed, or discharged. An application can be made by either the police or the defendant to the court which made the order or to any court in the area where the applicant resides or, where the application is made by the police, to any court whose area includes any part of the police area of the chief officer concerned. Copies of the order dismissing the application or the variation order or the order for discharge should be given or sent by first class post to the defendant. If the order requires the defendant to comply with the notification requirements, copies should go to all persons who were given notice of the defendant’s obligation to comply with the notification requirements.

It is not possible for a defendant to be subject to more than one of the same type of order (although it is possible to be subject to two or more of the different types of order). If a court makes a new order in respect of a defendant, any previous order of the same type ceases to have effect.

## Recording of information – Police National Computer (PNC)

These orders are not a criminal conviction and should not be recorded as such. The orders will not comprise a criminal record.

The PNC Policy & Prioritisation Group has issued instructions on how to record these orders on the PNC within the Wanted Missing Orders category and the minimum information required. The National PNC manual Volume 2 contains the full guidance on the PNC arrangements. Local arrangements should be made to ensure the necessary information is updated on PNC and available to all operational police officers/staff.

In addition, some of the orders require a subject/offender to register under the Sexual Offences Act 2003 and a ViSOR marker will appear on the PNC indicating the subject is a ViSOR nominal and their risk status. The markers are generated on the PNC by inputting the PNCID number into the ViSOR record denoting that the defendant is a sex offender.

## Appeal against an order

Where appropriate, provisions exist for a defendant to appeal against the making of an order. Rules 74 and 75 of the Magistrates' Courts Rules 1981, and Rules 6 to 11 of the Crown Court Rules 1982 apply.

Where an appeal may be brought by a defendant in relation to an order, the appeal is to the Crown Court.

Appeal proceedings are in scope of criminal legal aid, as outlined above. The 'Interests of Justice' test and means test apply. Applications should be made to the relevant magistrates' court.

At the hearing of an appeal, the Crown Court may make such further orders as give effect to its determination of the appeal, including incidental or consequential orders. Any order made by the Crown Court on appeal shall be treated for the purpose of any later application for variation or discharge as if it were the original magistrates' court order, unless it is an order directing that the application be reheard by the magistrates' court.

There is no provision for automatic stay of an order pending appeal. However, at the hearing of an appeal, it is open for the Crown Court to make any incidental order, for example to suspend the operation of a prohibition pending the outcome of the appeal, where this appears to the Crown Court to be just.

By virtue of section 79(3) of the Senior Courts Act 1981, any appeal would be by way of a re-hearing. In determining an appeal, the Crown Court should have before it a copy of the original application by complaint for an order, the full order, and the notice of appeal.

Any challenge against the ruling of the Crown Court to the High Court by way of case stated or by application for judicial review falls outside the scope of criminal funding. Legal representation would have to be applied for in accordance with the Funding Code procedures to the Legal Services Commission. This work is funded through the Community Legal Service although it falls within the scope of the General Criminal Contract.

## Breach of an order

A breach of any aspect of a civil order made under Part 2 of the 2003 Act and/or the notification requirement imposed as a result of such an order is a criminal offence.

Prosecutions for breaches will be conducted by the CPS. Cases will be reviewed in the normal way in accordance with the Code for Crown Prosecutors, and sufficient evidence will need to be gathered before breach proceedings are commenced.

Cases are triable either summarily in a magistrates' court or on indictment in the Crown Court. Any cases against children and young people will normally be heard in the Youth Court.

The standard of proof will be the criminal standard i.e. 'beyond reasonable doubt'.

Under the 2003 Act, the maximum penalty on summary conviction (for either breach of an order or for a breach of the notification requirements) is a term not exceeding six months imprisonment or a fine not exceeding the statutory maximum, or both. On indictment, the maximum penalty is imprisonment for five years. Juveniles are usually dealt with in the Youth Court where the maximum custodial sentence for a young person aged 12–17 years (inclusive) is two years.

For breach of all orders and the notification requirements, provision is made for a defence of reasonable excuse.

Breach proceedings are in scope of criminal legal aid, as outlined above. The 'Interests of Justice' test and means test apply. Applications should be made to the relevant magistrates' court.

## Applications made by the National Crime Agency

The National Crime Agency (NCA) may apply to the magistrates' court for a Sexual Harm Prevention Order or Sexual Risk order to be made. The test is the same as for an application by a chief officer of police, with the difference that the geographical limitation placed on the chief officer (i.e. to his police area) does not apply. Where the NCA identifies that it would be appropriate for an application for an SHPO or SRO to be made, the matter may be referred to the relevant police force, given the force's responsibility for managing risks in that locality. However, where it is more expedient the NCA will make the application itself.

Where the NCA applies for a Sexual Harm Prevention Order (or interim SHPO), section 103A(7) requires the NCA to notify the chief officer of the relevant force area(s) as soon as practicable. Likewise, where the NCA applies for a Sexual Risk Order (or interim SRO), section 122A(5) requires the NCA to notify the chief officer of the relevant force area as soon as practicable. The NCA may not apply for a SHPO or SRO to be varied, renewed, or discharged.

## Section Two: Sexual Harm Prevention Orders (SHPOs)

### Summary

Sexual Harm Prevention Orders (SHPOs) and interim SHPOs are intended to protect the public from offenders convicted of a sexual or violent offence who pose a risk of sexual harm to the public by placing restrictions on their behaviour. The SHPO and interim SHPO also require the offender to notify their details to the police (as set out in Part 2 of the 2003 Act) for the duration of the order.

A SHPO can be made either:

- By a court when it deals with the defendant following a conviction for an offence listed in Schedule 3 or Schedule 5 to the 2003 Act or a finding that the defendant is not guilty of such an offence by reason of insanity or that the defendant is under a disability but has done the act charged in respect of the offence.
- On a free standing application made to a magistrates' court by a chief officer of police or the Director General of the National Crime Agency (NCA) in respect of a defendant with a previous conviction for an offence listed in Schedule 3 or Schedule 5 to the 2003 Act or a finding that the defendant is not guilty of such an offence by reason of insanity or that the defendant is under a disability but has done the act charged or a caution received in respect of the offence.

In both cases, the court must be satisfied that an order is necessary to protect the public (or any particular members of the public) in the UK, or children or vulnerable adults (or any particular children or vulnerable adults) abroad, from sexual harm from the offender. In the case of an order made on a free standing application by a chief officer or the NCA, the chief officer/NCA must be able to show that the offender has acted in such a way since their conviction as to make the order necessary.

### Service Courts

Section 137 of the Act extends to Service Courts the power to make a SHPO when dealing with a defendant in respect of a relevant offence. An appeal against the making of a SHPO by a Service Court or an application for such an order to be varied, renewed or discharged, will be made to a civilian court where the offender is no longer in the Services. If a Service Court does not make an order and a SHPO is considered necessary after a person has left the forces, the application can only be made by a chief officer of police or the NCA to a magistrates' court.

### Effect of the Sexual Harm Prevention Order

An order, whether full or interim, prohibits the offender from doing anything described in it. The prohibitions must be necessary to protect the public in the UK, or children or vulnerable adults abroad, from sexual harm perpetrated by the offender. The order cannot require the offender to comply with conditions requiring positive action, although it does have the effect of requiring the defendant to become subject to the notification requirements under Part 2 of the 2003 Act (if not already subject to them) while the order has effect. The minimum duration for a full order is five years. The lower age limit is 10, which is the age of criminal responsibility, but where the defendant is under the age of 18 an application for an order should only be considered exceptionally.

## Purpose and scope of Sexual Harm Prevention Orders

When considering applying for a SHPO or interim SHPO, the following should be borne in mind:

- a) Orders can be made in relation to a person who has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged, or cautioned etc. for an offence listed in either Schedule 3 or Schedule 5 to the 2003 Act either in the UK or overseas (see below). This includes offenders whose convictions etc. pre-date the commencement of the 2003 Act.
- b) Given that the fundamental purpose of a SHPO is to protect the public from sexual harm, a key factor to be considered is the risk presented by the defendant. Risk in this context should include reference to:
  - 1) the likelihood of the offender committing a sexual offence
  - 2) the imminence of that offending, and
  - 3) the potential harm which may result from it.

To obtain an order, the police will need to establish that there is a reasonable cause to believe that an order is necessary to protect the public (or individual members of the public) in the UK, or children or vulnerable adults (or individual children or vulnerable adults) abroad from sexual harm.

- c) Care needs to be taken that the prohibitions in the order can be justified by the assessment of risk. The questions that need to be asked when considering the terms of order are:
  - 1) would an order minimise the risk of harm to the public or to any particular members of the public?
  - 2) is it proportionate?
  - 3) can it be policed effectively?
- d) While there is need to strike a careful balance between the rights of the defendant and the need to protect the community, the need for such orders is dictated by the importance of protecting the public, in particular children and vulnerable adults. As a prohibitive rather than a punitive measure, the SHPO enables this to be done without recourse to the criminal law.

It must be remembered that the only prohibitions which can be imposed by a SHPO are those which are necessary for the purpose of protecting the public from sexual harm from the defendant. These can, however, be wide ranging. An order may, for example, prohibit someone from undertaking certain forms of employment such as acting as a home tutor to children. It may also prohibit the offender from engaging in particular activities on the internet. The decision of the Court of Appeal in *R v Smith and Others* [2011] EWCA Crim 1772 reinforces the need for the terms of a SHPO to be tailored to the exact requirements of the case. SHPOs may be used to limit and manage internet use by an offender, where it is considered proportionate and necessary to do so. The behaviour prohibited by the order might well be considered unproblematic if exhibited by another member of the public – it is the offender's previous offending behaviour and subsequent demonstration that they may pose a risk of further such behaviour, which will make them eligible for an order.

A SHPO or an interim SHPO is a serious measure and breach of any prohibition contained in it, without reasonable excuse, is a criminal offence. Every effort needs to be made to ensure the

defendant understands this position, and that the defendant attends the hearing of the application and is given the opportunity to state a case.

## Schedule 5: Violent and other dangerous offences

As stated above, in addition to the sexual offences listed in Schedule 3, a SHPO may be made in relation to a defendant with a conviction, caution or finding for an offence listed in Schedule 5 of the 2003 Act. These offences are primarily violent offences, including the offence of murder. A SHPO may only be made where it is necessary for the purposes of protecting the public from sexual harm – so it is not possible to take out a SHPO in relation to a violent offender if there is only a risk of the offender committing a violent offence. In such cases, a Violent Offender Order may need to be considered instead.

### Imposing a SHPO at the point of conviction

A SHPO can be made by a court to impose restrictions on the offender from the point of conviction, in cases where this is necessary in order to protect the public from sexual harm from that offender.

A SHPO may be made in respect of an offender convicted etc. of an offence listed in Schedule 3 or Schedule 5 to the 2003 Act. Any sentence or age thresholds found in Schedule 3 (which apply for the purposes of the notification requirements) are disregarded for the purposes of making a SHPO.

No application is necessary for the court to make a SHPO at the point of sentence although the prosecutor may wish to invite the court to consider making an order in appropriate cases. The court may also ask Pre-Sentence Report writers to consider the suitability of a SHPO on a non-prejudicial basis.

In order to make a SHPO in this way, the court must be satisfied that the offender presents a risk of sexual harm to the public (or particular members of the public) and that an order is necessary to protect against this risk. The evidence presented at the trial is likely to be a key factor in the court's decision, together with the offender's previous convictions and the assessment of risk presented by the national probation service in any pre-sentence report.

In coming to that decision, the court may take into consideration the range of other options available to it in respect of protecting the public. The restrictions contained in a SHPO must be included in the court's committal warrant provided to the Prison Service. The restrictions must also be detailed in the certificate part of the notice to the police (and others) issued by the court. The court may also consider issuing the defendant with a notice of requirement to register (which should be copied to the police).

### Criteria for seeking a Sexual Harm Prevention Order on free standing application

The police and other agencies should keep under constant review whether a SHPO is appropriate for the sex offenders, and also the violent offenders, that they manage. Where an offender is behaving in a way that suggests they might commit a sexual offence, the police must actively consider whether to apply for an order. The police must demonstrate two things to the court in order to make a valid application:

- that the person is a "qualifying offender". That is to say that they have been convicted, cautioned, received a reprimand or final warning, found not guilty by reason of insanity,

or found to be under a disability and to have done the act charged, in respect of an offence listed in Schedule 3 or Schedule 5 to the 2003 Act. Spent convictions can also be relied on by the police in applying for a SHPO; and

- that, since the “appropriate date” the person has acted in such a way as to give reasonable cause to believe that an order is necessary to protect the public, or any member of the public in the UK, or children or vulnerable adults abroad, from sexual harm from the offender.

The SHPO may also be made against defendants with convictions, cautions etc. received in respect of equivalent offences overseas. The terminology used in the legislation of the other country does not have to match precisely the terminology used in the legislation of England and Wales or Northern Ireland.

Section 106(10) and (11) relate to the procedures to be adopted in satisfying the court that the criteria for an application for a SHPO are met where the offence was committed abroad: the act in question must have ‘constituted an offence under the law in force in that country or territory’. It will be assumed that this criterion is met unless the defendant serves a notice three days before the hearing on the applicant (i.e. the police) that this condition has not been met, together with his reasons for claiming this, and a requirement that the applicant proves the condition is met. In addition, the court may permit the defendant to require this without any such notice.

“Appropriate date” means the first date on which the defendant received a conviction, caution, or was subject to a finding etc. for a relevant sexual offence listed in Schedule 3 or Schedule 5. The SHPO provides that the behaviour must have occurred since the first conviction for a relevant offence. As section 127 of the Magistrates’ Court Act 1980 does not apply to applications for these orders, the evidence can come from any time after the date of the conviction to satisfy the test that the order is necessary to protect the public.

## “Sexual harm”

“Sexual harm” is defined in the Anti-social Behaviour Crime & Policing Act (2014) as meaning:

*“...physical or psychological harm caused—*

- a) by the person committing one or more offences listed in Schedule 3, 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 Schedule 3 if done in any part of the United Kingdom; “*

The fact that the legislation refers to “sexual harm” does not mean that the police must prove beyond reasonable doubt that the offender intends death or serious physical or psychological injury by his actions. What must be proved is that the offender has acted, since the appropriate date, in such a way as to make it necessary that a SHPO is made to protect the public or any particular members of the public from sexual harm from them. The police do not have to call for evidence from any potential victim and hearsay evidence is admissible.

## Decision to apply for an order

Where the police (or others such as probation or prison staff) have concerns about a sexual, violent or dangerous offender in the community, either arising from their own observations or from concerns expressed by another agency, they will need to conduct an assessment of the risk posed by the offender in order to decide whether to apply for an order. The police can apply to a court in a given police area for a SHPO in relation to an offender who may not yet reside in

that area but is intending to come there. The offender may, for example, be in prison but due to be released and is expected to live in a particular area. Likewise, the application does not have to rely on 'risky' behaviour taking place in the applicant's police area. An application can be made in relation to such behaviour taking place anywhere.

Such an assessment will need to be done as quickly as possible, and in consultation as appropriate with other agencies, such as the national probation service and social services, or perhaps in the context of Multi-Agency Public Protection Arrangements (MAPPA). It has become standard practice in many areas to present to the court a report assessing the risk an offender poses. In some areas, it has also become standard practice for the police to engage the services of an 'independent' risk assessor because, on occasions, courts have questioned the independence of the risk assessment. There will be circumstances when it will be more appropriate to engage a risk assessor who specialises in particular areas e.g. children, or mentally ill offenders. However, probation officers adopt an advisory role to the courts in many other circumstances and it is therefore unnecessary to go to the additional expense of engaging other professionals. It will be for the defendant to challenge the partiality of any assessment of the risk he poses. The strategic MAPPA meeting may wish to consider whether a local protocol setting out the terms under which probation officers will carry out such assessments is necessary.

The police, if practicable, should explain to the offender at the earliest possible opportunity that:

- a decision has been made to apply for an order against them
- the reasons for that decision (including the meaning of the term "sexual harm"), and
- the offender should seek legal advice at the earliest possible opportunity in order that the police lawyer dealing with the application can contact the defendant's legal representative.

The defendant's cooperation with this process cannot be enforced, either by the police or the courts, and they are not required to instruct a lawyer to represent them. Any cooperation would be purely voluntary. Nevertheless, if an offender is prepared to receive some kind of support to help them avoid committing a sexual offence, and appropriate support can be identified and made available, this may be considered as an alternative to an application for a SHPO, or could run alongside such an order.

Before applying for an order in relation to a child or young person aged between 10 and 17 (inclusive), the police should consult the social services department and the relevant youth offending team, who may have assessed or supervised the child or young person following their earlier offending, or have other relevant contact with such individuals or their families.

Where an offender is known to have suffered from a mental disorder in the past, or appears to be suffering from a mental disorder at the time, advice should be sought through the relevant social services department. Any assessment of the need for an order should include consideration by psychiatric services of whether the defendant should be referred for admission to hospital, if necessary, under the Mental Health Act 1983. It should be noted, however, that these are practical considerations to be borne in mind and not obstacles to applying for an order. In some cases, such factors may strengthen the case for making an order.

## Assessment of present risk

In making an assessment of the present risk posed by a sex offender, a number of factors should be taken into account:

- the risk that a sexual offence will be committed – the purpose of a SHPO is to protect the public and this concern should be given primary consideration in any assessment
- the potential harm resulting from such an offence
- the date, nature and circumstances of the previous conviction or convictions and any pattern which emerges
- the current circumstances of an offender and how these might change e.g. work placements or environments, housing, family and other relationships, stress, drink or drugs, proximity to schools/ playgrounds etc.
- the disclosure implications if an order is sought; and how the court process might affect the ability to manage the offender in the community
- an assessment of the accuracy and relevance of the information about the individual (including an assessment of the status of those expressing concern and their reasons for doing so)
- the nature and pattern of the behaviour giving rise to concern, including any predatory behaviour which may indicate a likelihood of re-offending
- the extent of compliance, or otherwise, with previous sentences, court orders or supervision arrangements
- cooperation or otherwise with therapeutic help and its outcome.

Increasingly, as part of the MAPPA, the responsibility for the management of sex and violent offenders is a joint responsibility of the police and National Offender Management Service. However, it is the police who will apply for an order. In order to make an assessment of risk, they will need to consult other organisations and professionals as appropriate.

Where an offender poses a risk to children, the development of prohibitions to be included in an application for a SHPO must be made following reference to Local Safeguarding Children Boards (LSCBs) procedures and agencies.

Where vulnerable adults may be at risk, the local authority's Adult Protection Committee, where it exists, could be involved, or a nominated officer on the commissioning side of the Social Services Department (as of 1<sup>st</sup> April 2015 Local Safeguarding Adults Boards LSAB will be statutory). The Department of Health and Association of Directors of Social Services have worked together with other groups to produce a Code of Practice that will offer guidance to authorities on dealing with incidents of abuse of vulnerable adults. The Codes of Practice have now been developed by councils. A SHPO will affect the management of the offender in the community for all the various agencies involved and it is important that they are involved as far as is possible in the assessment process prior to the order being sought. There is a particular danger that disclosure may be difficult to control once an application is made to a court, and care will be needed over managing and handling this aspect of a case.

## Applying for a Sexual Harm Prevention Order or Interim SHPO

The general principles set out in section 1 of this guidance apply. It is for the court to decide what prohibitions are necessary in the light of the evidence it hears.

Section 103F of the 2003 Act allows the police to apply for an interim SHPO where an application for a full order has been made or is being made at the same time, but has not yet been determined.

SHPOs are a public protection tool involving a high degree of police resources and some interference with the offender's right to a private and family life (Article 8 of the ECHR). The risk factor may be of such a degree as to justify an interim order application at the same time as an application for a full order, but given that such an order will be made before the court has heard and tested all the evidence, great care must be taken to ensure that such a course of action is justified.

## Role of the Crown Prosecution Service

It is important to remember that the Crown Prosecution Service (CPS) will be involved if an order is breached. Where there are unusual circumstances or particular complexity, it may be sensible to seek CPS advice on the wording of the prohibitions in the proposed order to ensure they will be enforceable by way of a criminal prosecution for breach.

## What the courts have to be satisfied of to make a Sexual Harm Prevention Order

Although the SHPO is a civil order, the judgment of the House of Lords in the case of McCann - R (McCann & others) v Manchester Crown Court [2002] (on anti-social behaviour orders) means that a court must apply the criminal standard and therefore *be sure* that the defendant has carried out the relevant acts before making an order. This is due to the seriousness of the matter, in particular of the consequences of breaching the order. However, the next stage of deciding whether an order is necessary to protect the public from (in this context) sexual harm does not require the court to be sure to the criminal standard. This part of the decision making process was said in McCann to be an exercise of judgement or evaluation.

The applicable rules of evidence in relation to hearsay are the civil rules. The Civil Evidence Act 1995 and the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999 therefore apply and allow the introduction of hearsay evidence in hearings for applications for SHPOs.

## Service and notification of order

If the defendant is not already subject to notification requirements, the court when making an order should formally notify the defendant that, by reason of the provisions of section 107 of the 2003 Act, the defendant is now subject to the notification requirements as set out in Part 2 of that Act. This means that he is required to notify the police of his name(s), address, date of birth (and other information specified in accordance with section 83(5) of the 2003 Act), within three days of the date of service of the order, and of any in these details, whilst the order has effect. The registration provisions are set out fully in Chapter One of this guidance. It may be appropriate, particularly for SHPOs made on conviction, to complete a notice of requirement to register. A copy should be given to the police.

The minimum duration of an order is five years. It is not necessary to specify the duration of an order in it and, if no period is set, the order will continue to apply until it is successfully

appealed, discharged or a new order is made in respect of the same offender. The police should monitor each order actively to ensure that it continues to remain necessary to protect the community. Note that if an SHPO contains a foreign travel restriction, that aspect may last a maximum of five years.

The court will have discretion whether to impose a parenting order in certain cases. If a court decides to impose such an order, it will need to apply the provisions in sections 8 and 9 of the Crime and Disorder Act 1998. These include the need to obtain and consider information on family circumstances and the likely effect of the order on these circumstances before the court makes the order. A note on parenting orders and the relevant sections are attached to this guidance. It is, of course, also possible to make parental directions so that a person with parental responsibility must comply with the notification requirements for a juvenile offender (see section three of Chapter One of this guidance).

The calculation of the five year period during which no order shall be discharged except with the consent of both parties starts from the date the order is made.

We recommend that the police consider giving a copy of the order to those concerned in the protection of the public from the sex offender. The judgement on which other agencies need to be informed, for example, the head teacher of a school or any relevant local authority interest, needs to be based on the assessment of risk made by the police. Any disclosure to the wider community should be treated with great sensitivity, on a case by case basis, especially if a child or young person is concerned and reporting restrictions on the proceedings have been imposed. Disclosure must also only be made where it is in accordance with the Data Protection Act 1998, the person's Article 8 rights and the terms of any reporting restrictions.

## Variation, renewal, and discharge of Sexual Harm Prevention Orders

The general principles set out in section 1 of the guidance apply. An order cannot be discharged within five years of it being made without the agreement of both parties. Variation might be necessary for:

- deletion of unnecessary conditions, for example, if an offender moves to another area, or
- addition of supplementary conditions, for example, if an additional group needing protection from risk was identified, although there may be instances when a new order should be sought.

It must be necessary to impose the additional prohibition(s) for the purpose of protecting the public or any particular members of the public from sexual harm from the defendant.

The National Crime Agency may not apply for a SHPO to be varied, renewed or discharged.

A renewal may be needed where the original order is close to expiry and the police have cause to believe that the defendant continues to pose a risk and the order continues to be necessary. An order may only be renewed or varied so as to impose additional prohibitions if it is necessary to do so for the purpose of protecting the public or any particular members of the public from sexual harm from the defendant.

## Appeal against a Sexual Harm Prevention Order

The general principles set out in section 1 of this guidance apply. Section 103H of the 2003 Act provides a right of appeal to the Crown Court against the making of a SHPO. The defendant may appeal against either the making of an order; or against the making (or refusal to make) an order varying, renewing or discharging a SHPO.

## Breach of an order

Breach of a SHPO or an interim SHPO, without reasonable excuse, is a criminal offence. An offender convicted of such an offence on summary conviction (in the magistrates' court) will be liable to a term of imprisonment of up to six months or to a fine or both. An offender convicted on indictment (in the Crown Court) will be liable to a term of imprisonment of up to five years. The court cannot, by virtue of section 113(3), make an order for conditional discharge.

## Section Three: Sexual Risk Orders (SROs)

### Summary

A Sexual Risk Order (SRO) is a civil order which can be sought by the police against an individual who has not been convicted, cautioned etc. of a Schedule 3 or Schedule 5 offence but who is nevertheless thought to pose a risk of harm.

An SRO may be applied for on free standing application to the magistrates' court by the chief officer of police or the Director General of the National Crime Agency (NCA).

An SRO may be made in respect of an individual who has:

- done an act of a sexual nature, and
- as a result of which, there is reasonable cause to believe that it is necessary to make an order to protect the public from harm

### Effect of the Sexual Risk Order

An order, whether full or interim, prohibits the offender from doing anything described in it. The prohibitions must be necessary to protect the public in the UK or children or vulnerable adults abroad from harm from the offender. The order cannot require the offender to comply with conditions requiring positive action, although it does have the effect of requiring the individual to notify the police of their name and address (this information must be updated annually and whenever the information changes) while the order has effect. The minimum duration for a full order is two years (if an SRO contains a foreign travel restriction, that aspect may last a maximum of five years). The lower age limit is 10, which is the age of criminal responsibility.

### Purpose and scope of a Sexual Risk Order

#### Criteria for seeking a Sexual Risk Order

Where an individual has done an act of a sexual nature which suggests that they pose a risk of harm to the public in the UK or children or vulnerable adults abroad, the police or NCA may apply to the magistrates' court for a Sexual Risk Order.

#### “Act of a sexual nature”

“Acts of a sexual nature” are not defined in legislation, and therefore will depend to a significant degree on the individual circumstances of the behaviour and its context.

The term intentionally covers a broad range of behaviour. Such behaviour may, in other circumstances and contexts, have innocent intentions. It also covers acts that may not in themselves be sexual but which have a sexual motive and/or are intended to allow the perpetrator to move on to sexual abuse.

As an indication, it is expected that examples of such behaviour might include the following (note that this list is not exhaustive or prescriptive, and will depend on the circumstances of the individual case):

- Those specified acts that were set out for the purposes of the previous Risk of Sexual Harm Order (some of which may be criminal in their own right), which included:
  - engaging in sexual activity involving a child or in the presence of a child

- causing or inciting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual
- giving a child anything that relates to sexual activity or contains a reference to such activity
- communicating with a child, where any part of the communication is sexual
- Acts which may be suggestive of grooming (see section below), such as
  - contacting a child via social media
  - spending time with children alone
- Acts which may be suggestive of exploitation, such as
  - inviting young people to social gatherings that involve predominantly older men
  - providing presents, drink, and drugs to young people
  - persuading young people to do things that they are not comfortable with and which they had not expected.
- Acts which may be carried out in a gang or group of individuals of similar ages, ‘peer-on-peer’ (see section on gangs, above).
- Acts that do not involve children, but may generate a risk of harm to adults.

## Prevention of harm

The requirement that a Sexual Risk Order is necessary to prevent harm means that those with a genuine and benevolent interest in children (such as those providing advice on sexual health matters, for example) should not be caught by the legislation.

## Decision to apply for a Sexual Risk Order

Only the police or NCA are able to make an application for an SRO. The assessment process to be undertaken by the police will need to consider the degree of risk that the individual poses at that time. It is suggested that, where appropriate, the assessment should be carried out in consultation with other relevant agencies, such as the national probation service, social services and other child protection agencies. However, because a SRO may be sought in relation to a person without a previous criminal conviction (unlike the Sexual Harm Prevention Order), consideration may need to be given to using an external independent risk assessor.

The key factor in assessing whether an SRO is necessary is whether or not an individual’s actions indicate that they present a risk of harm to the public in the UK or children or vulnerable adults abroad.

## Assessment of risk

Assessment of how an individual’s safety can best be assured should be informed by consideration, where relevant, of:

- The nature of the behaviour giving rise to concern and any pattern associated with this behaviour. This may include behaviour that will always be wrong (for example, sending children indecent images), as well as behaviour that is not wrong by itself but may become so because of the intentions (such as spending time with children alone). Of potential relevance to this would be associates, previous complaints to the police, Child Abduction Warning Notices, and informal warnings.

- The nature and extent of the potential harm.
- An assessment of the accuracy and currency of the information about the individual (including an assessment of the status of those expressing concern and their reasons for doing so).
- The current circumstances of a potential subject and how these might change including employment, training, housing, who he lives with and where, any addictions, health problems etc.
- Whether, in appropriate cases, the child, vulnerable person, or other witness would be required to or able to give evidence.
- The relevance of any previous convictions, cautions, reprimands, or final warnings.
- Compliance or otherwise with any previous sentences, court orders or supervision arrangements (this does not necessarily have to be in relation to a sexual offence).
- Compliance or otherwise with therapeutic help and its outcome

The 2003 Act makes clear that the evidential time limit under section 127 of the Magistrates' Courts Act 1980 does not apply to the civil orders found in Part 2 of the 2003 Act, which include an SRO.

## Applications to protect children

An SRO may be used to deal with situations including but not restricted to where an adult has: engaged in sexual activity with, or in the presence of, a child; caused a child to look at sexual images; or given a child something relating to any sexual activity.

An SRO may also be used in situations where a child is being subjected to sexual communication from an adult. It may be that the adult intends to continue to communicate with the child in a sexual way and has no plan to meet them to commit a sexual offence against them. Alternatively, the adult may be planning to meet a child for this purpose but not yet have arranged this. Whatever the case, the behaviour triggering an application for an SRO does not depend on a meeting being either intended or arranged with a child. In circumstances where such a meeting has been arranged, and the adult has met the child or travelled to the meeting, the police will wish to consider bringing criminal proceedings under Section 15 of the 2003 Act.

An SRO should not be used as a substitute for prosecuting criminal behaviour, but applies in circumstances where the behaviour of the adult gives reason to believe that the child is (or other children are) at risk from the defendant's conduct and intervention at this earlier stage is necessary to protect the child (or children).

Examples of such behaviour could include the defendant phoning the child and talking about sexual acts he or she wants to engage in with the child, or sending sexual messages by text or via social media. It could involve the defendant sending pornographic images of adults engaging in sexual activity to the child through the post, or sending them a sex toy or condoms.

## Grooming

Whilst it is an offence to meet a child following sexual grooming etc. (s15 of the 2003 Act), an SRO may be used to prevent behaviour that may be considered grooming but which may not

reach the threshold for that offence. "Grooming" is the name given to conduct whereby an adult will communicate with or behave towards a child with the ultimate aim of engaging them in unlawful sexual activity. This may include establishing a relationship with the child as a confidante or friend. It may be done, for example, via a relationship with the child's parent, directly through a position of care or proximity to the child or online via the internet.

Grooming activity might include, but is not limited to, developing a relationship with the child in which an atmosphere of secrecy is encouraged, diverting the young person away from their family, friends, and daily life, sending children indecent images, and writing or talking to them about sexual matters. Normally, the offenders will ask the child, sometimes using inducements or threats, to keep the communication between them secret. This behaviour may be facilitated either through face to face contact, telephone, mobile phone, the internet and all manner of forms of written communication.

An example could involve an older man befriending a child or young teenager over the internet, perhaps with the older man assuming a fictional teenager's identity himself. The two would typically "meet" in an internet chat room, and then develop a one-to-one communication, by email, online chat, text messaging, and/or telephone. He will then arrange to actually meet the child for sexual activity.

In some cases, the communication towards the child may involve no explicit sexual contact, e.g. a piano teacher or swimming coach meeting a child. It is aimed at simply gaining the child's confidence. It is only when there is evidence that the adult intends to meet the child with the intent of committing a sexual offence against them, either then or subsequently, that a criminal charge under the offence of "meeting a child following sexual grooming etc" in section 15 of the 2003 Act 2003 can be brought.

In some instances, the grooming behaviour will always be sexual in nature, for example, sending children indecent images. In other cases, such as spending time with children alone, the behaviour is not sexual by itself but may become so because of the intentions of the adult. Simply befriending or sharing hobbies with a child (unless there is explicitly sexual content or other disturbing aspect to the behaviour such as excessive secrecy, activities taking place in a locked room etc.) is not sufficient to found a civil order.

In order to be convicted of the s15 criminal offence (meeting a child following sexual grooming etc.), the adult must intentionally meet with a child, the child or adult must travel with the intention of meeting each other or the adult must arrange to meet the child with the intent of committing a sexual offence against the child either at that meeting or later after communicating or meeting with that child. Note that the Criminal Justice and Courts Act 2015 amended the s15 offence, so that only one occasion of communicating or meeting with the child is necessary to prove the offence. The meeting or intended meeting with the child is, therefore, key to the offence.

In addition to behaviour that is not overtly sexual, an SRO may be used to prevent a defendant who has engaged in sexually explicit conduct or communication from causing harm to a child or children through further similar behaviour. The behaviour need not be directed against any one particular child as it must for the criminal offence, since the civil order is based on the risk posed by the defendant. In contrast to the criminal offence, the civil order does not turn on whether the adult intends to engage the child directly in sexual activity or even whether he intends to meet the child. He may simply intend to communicate with the child over the internet. In such an example, the harm comes from the actual content of such communication, not any underlying intention to commit a sex offence.

## Child Abduction Warning Notices

SROs and Child Abduction Warning Notices (CAWNs) are intended to be complementary. CAWNs are currently used by some forces as a deterrent for individuals thought to be grooming children. A CAWN states that the suspect has no permission to associate with the child and if they continue to do so they may be arrested for an abduction offence under the relevant legislation (section 2 of the Child Abduction Act 1984 and section 49 of the Children Act 1989).

A CAWN is not statutory, and failure to comply with the conditions set out in one is not an offence. Like SROs, CAWNs should not be used as a substitute for prosecuting criminal behaviour.

A CAWN can be issued as an early intervention to deter an individual from progressing towards more harmful behaviour. If they fail to comply with a CAWN and are judged by the police to pose a risk of harm, the police may decide to apply for an SRO which would carry the added deterrent of criminal sanctions if breached. Under these circumstances the individual's failure to comply with the CAWN may be used as evidence in support of an application for an SRO.

## Applying for a Sexual Risk Order or interim Sexual Risk Order

It is not necessary for the defendant to have a prior conviction for a sexual offence in order to apply for an SRO. The court can make an order if it is satisfied that it is necessary for the purpose of protecting the public in the UK or children or vulnerable adults abroad.

The order entitles the court to prohibit the defendant from doing anything described in it. The minimum duration of an order is two years. The order is intended as a preventative measure to protect the public in the UK, or children or vulnerable adults abroad, from harm.

Breach of an order, without reasonable excuse, is a criminal offence which may be tried either summarily or on indictment with a maximum penalty on indictment of five years' imprisonment. Breach of an order will also make the offender subject to the notification requirements.

## What the courts have to be satisfied of to make a Sexual Risk Order

The general principles set out in section 1 of the guidance apply.

The police may apply for an interim SRO either at the time they make the full application or where an application has been made for a SRO but it has not yet been determined. The purpose of an interim SRO is to protect the public, including children and vulnerable adults outside the UK, during any period between the making of the application for a SRO and its determination. To all intents and purposes, an interim SRO is a temporary SRO, imposing such prohibitions as the court considers appropriate. Breach of any of the prohibitions of an interim SRO without reasonable excuse is a criminal offence carrying the same maximum penalty as breach of a full SRO, and also triggers the notification requirements.

As with the SHPO, for the purposes of a SRO the judgment of the House of Lords in the case of *McCann - R (McCann & others) v Manchester Crown Court [2002]* (on anti-social behaviour orders) means that a court must apply the criminal standard and therefore *be sure* that the defendant has carried out the relevant acts before making an order. This is due to the seriousness of the matter, in particular of the consequences of breaching the order. Note however that the acts in question are not necessarily criminal in themselves.

The next stage of deciding whether an order is necessary to protect the public from (in this context) harm does not require the court to be sure to the criminal standard. This part of the decision making process was said in McCann to be an exercise of judgement or evaluation.

The applicable rules of evidence in relation to hearsay are the civil rules. The Civil Evidence Act 1995 and the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999 therefore apply and allow the introduction of hearsay evidence in hearings for applications for SROs.

The court will impose prohibitions on the defendant's behaviour in accordance with the terms of an order. In formulating these prohibitions, the court may be assisted by the prohibitions sought by the police in their application, but the decision is for the court. It is important to note that the prohibitions contained in the order must be only those which are necessary for the purpose of protecting the public, including children and vulnerable adults outside the UK from physical or psychological harm from the defendant. The prohibitions must be proportionate to the risk posed by the defendant. They should be specific wherever possible in time and place so that it is readily apparent to the defendant what does and does not constitute a breach. All restrictions under the order must be prohibitive, i.e. they cannot impose positive obligations on a person.

## Service and notification of order

The general principles set out in section 1 apply

The minimum duration for an order is two years. The police should monitor each order actively to ensure that it meets the need for protection of the community and is still necessary for this purpose.

## Effect of the Sexual Risk Order

An order, whether full, or interim, can only contain restrictions on the behaviour of the defendant, i.e. it can only require them not to do something. It cannot require them to comply with conditions requiring positive action. Neither the courts nor the police will, at any stage during the application process for the order, or as part of any order granted, be able to require the defendant to take any part in any assessment or receive any support or counselling. Any such actions would be on a purely voluntary basis.

The court may only impose prohibitions in the order that are necessary to protect the public from harm from the defendant. As a preventative rather than a punitive measure, the order is designed to address, without recourse to the criminal law, behaviour that puts the public at risk of harm. Only prohibitions necessary to protect the public from this harm can be included.

The activities prohibited by the order may include those that, if carried out in respect of those over the age of consent, might be unremarkable. It is the court's assessment whether such activities would cause physical or psychological harm to children in general or to a specific child under 16 so as to make these prohibitions necessary. The prohibitions in the order will be tailored to the particular case and to the specific harm the defendant poses. They could, for example, require the offender to have no further contact with a particular child, either in person or over the internet, or to not go to a particular place at which he has previously engaged in, for example sexually explicit conduct or communication towards a child.

Note that if an SRO contains a foreign travel restriction, that aspect may last a maximum of five years.

## Notification Requirement

The Sexual Risk Order does not make the individual subject to the notification requirements for registered sex offenders, however, it does require the individual to notify to the police:

- Their name
- Their home address

This information must be notified within three days of the order being made or whenever the information changes.

## Variation, renewal and discharge of a Sexual Risk Order

Variation or discharge of an order is sought by way of an application by complaint to the court. Such application can be made by either the police, or by the defendant. The NCA cannot apply to vary, renew, or discharge an SRO.

The police who can make the application are the police whose original application gave rise to the SRO, the police for the area in which the defendant resides or the police who believe that the defendant resides in their area or is intending to come to it. Copies of the order dismissing the application, or the variation order or the order for discharge should be given or sent to the defendant, and a copy provided to the police.

### Discharge of an SRO

An order cannot be discharged within two years of it being made without the agreement of the police and the defendant.

### Variation of an SRO

Variation might be necessary for deletion of unnecessary prohibitions, for example, if the individual moved area; or addition of supplementary prohibitions, for example, if an additional group needing protection from risk was identified. However, there may be instances when a new order should be sought.

### Renewal of an SRO

A renewal may be needed where the original order is close to expiry and the police have cause to believe that the defendant continues to pose a risk and the order continues to be necessary. An order may only be renewed or varied so as to impose additional prohibitions if it is necessary to do so for the purpose of protecting the public in the UK or children or vulnerable adults abroad from harm from the defendant. Only prohibitions that are necessary for this purpose may be imposed.

### Appeal against an order

The general principles, set out in section 1 of the guidance, apply. Any appeal by the defendant against the making of a SRO, an interim order or an order renewing, varying or discharging an order under or a refusal to make such an order is to be made to the Crown Court.

## Breach of a Sexual Risk Order

Breach of a SRO or an interim SRO, without reasonable excuse, is a criminal offence. An offender convicted of such an offence on summary conviction (in the magistrates' court) will be liable to a term of imprisonment of up to six months or to a fine or both; an offender convicted on indictment (in the Crown Court) will be liable to a term of imprisonment of up to five years. The court may not, by virtue of section 122H(4), make an order for conditional discharge.

A conviction, caution etc. for breach of a SRO or an interim SRO will render the defendant subject to the notification requirements in Part 2 of the 2003 Act. These requirements will remain in place for the duration of the SRO the breach of which gave rise to the conviction etc.

## Section Four: SHPOs and SROs: Foreign Travel Restrictions

Both the Sexual Harm Prevention Order and the Sexual Risk Order may contain foreign travel prohibitions, where this is necessary for the purpose of protecting children or vulnerable adults abroad. Restrictions may include:

- A prohibition on travelling to any country outside the UK named or described in the order
- A prohibition on travelling to any country outside the UK, other than a country named or described in the order, or
- A prohibition on travelling to any country outside the UK

An offender subject to a SHPO or SRO prohibiting them from travelling to all countries outside the UK will be required to surrender their passport(s) at a police station specified in the order. It will be an offence for an offender to fail to surrender their passport as required by the order.

It is important to note that the activity abroad which would constitute causing harm to the child or vulnerable adult does not have to be illegal in the foreign country where it is intended to take place. For example, a SHPO or SRO can prevent an offender from travelling to a foreign country to engage in sexual activity with a child aged 14 even if sexual activity with a child aged 14 is not an offence in the country concerned.

It is not necessary to establish or specify the type of sexual activity which a defendant intends to engage in.

### Duration of restrictions and orders with additional conditions

Foreign travel restrictions contained within either a SHPO or an SRO MAY have a maximum duration of five years. If an individual continues to pose a risk, the police may apply to the court for the SHPO or SRO to be renewed.

Where an order contains additional (i.e. non-travel related) restrictions with a duration longer than five years:

- if the individual does not pose an ongoing risk which requires foreign travel restrictions, no further action is necessary and the individual should continue to comply with the remaining conditions set out in the order.
- if the individual does continue to pose a risk which warrants foreign travel restrictions, the police may apply to the court to vary the order for these restrictions to continue

### Notification requirements – notification of foreign travel

Where an offender is subject to the notification requirements of Part 2 of the 2003 Act, information on foreign travel must be supplied to the police in compliance with the foreign travel notification requirements set out in section 86 (and Regulations made under it).

## Section Five: Notification Orders

### Summary

Notification Orders and interim Notification Orders are intended to protect the public in the UK from the risks posed by sex offenders who have been convicted, cautioned, warned or reprimanded for sexual offences committed overseas. Such offenders may be British or foreign nationals convicted, cautioned etc. abroad of a relevant offence. Essentially, a Notification Order requires the offender to notify certain information to the police (covered by Part 2 of the 2003 Act) as if they had been convicted in the UK. An application for a Notification Order is made to the magistrates' court.

A chief officer of police may apply to a magistrates' court whose area includes any part of the police area for an order in relation to an offender who resides in that police area, or if the chief officer believes that the offender is in, or is intending to come to, that police area.

### Effect of the Notification Order

Offenders who are subject to Notification Orders become subject to the notification requirements of Part 2 of the 2003 Act as if they had been convicted, cautioned and reprimanded in the UK. Offenders are required to make an initial notification within three days of the Notification Order being served and (subject to the requirement under section 84 to notify any change in their details) annually thereafter. They are expected to comply with all other notification requirements of Part 2 of the Act as if they had been convicted in the UK (such as foreign travel notification, notification of any changes to their details etc.). If an offender breaches these requirements after a Notification Order has been made, he should be treated as any other offender subject to the notification requirements.

### Criteria for an application for a Notification Order

Three conditions must be met before an application can be made for a Notification Order:

- a) Under the law of a country outside the UK, the defendant has been:
  - convicted of a relevant offence (whether or not he has been punished for it),
  - the subject of a finding in respect of a relevant offence equivalent to a finding in the UK that the defendant is not guilty by reason of insanity,
  - the subject of a finding in respect of a relevant offence equivalent to a finding in the UK that the defendant is under a disability and did the act charged against him
  - cautioned in respect of a relevant offence (it is important to note that section 133 of the 2003 Act states that "cautioned" means cautioned by a police officer after the person has admitted the offence, and an overseas caution must be equivalent to this).
  
- b) The defendant:
  - received the conviction, caution or finding on or after 1 September 1997,
  - received a conviction or was the subject of a finding before the 1 September 1997 and had yet to be dealt with in respect of the offence i.e. the defendant was on that date:
    - serving a term of imprisonment,
    - serving a community sentence
    - under supervision having been released from prison after having served the whole or part of a sentence
    - detained in hospital.

- c) The notification order may only be applied for in respect of a defendant if the notification period would not have expired if the offence had been committed in the UK.

Section 99 defines “relevant offence” for the purposes of a Notification Order. A Notification Order can only be made in relation to an offence committed abroad which is a “relevant offence”. This is:

- an act which constituted an offence under the law in force in the country concerned; and
- an act which would have constituted an offence listed in Schedule 3 (other than paragraph 60) if it had been done in the United Kingdom.

Any thresholds which apply under Schedule 3 must be met but the description of the offence in the law of the overseas country does not need to match precisely the description of the offence in the United Kingdom (see below).

If it is proved to the court that the three conditions described above are met, the court must make a Notification Order. This means that the police making the application do not have to establish that the defendant poses a risk to the public nor that an order is necessary to protect the public from harm from the defendant.

If an offender convicted, cautioned etc. overseas meets the first and second condition but not the third (the notification period has expired), consideration should be given as to whether a Sexual Harm Prevention Order could be appropriate (see below).

## Calculating the notification period

An offender who is the subject of a Notification Order will be required to comply with the notification requirements set out in Part 2 of the 2003 Act for the period set out in section 82 (the “notification period”), subject to the following modifications.

The “relevant date” for an offender subject to a Notification Order will be the date of the conviction, finding or caution for a relevant offence. The relevant date is the date from which the notification period begins. Therefore, the actual period during which a defendant will have to comply with the notification requirements will be from the date that the Notification Order is made to the end of the notification period set out in section 82. For example, an offender is convicted and sentenced overseas to six months’ imprisonment for an offence of rape. Two years later, he arrives in the UK and a Notification Order is made. The notification period will be calculated from the date of conviction and, because two years has already passed, the offender will be subject to the notification requirements for the remaining five years of what would have been a seven year notification period.

## Offences in Schedule 3

The list of offences in Schedule 3 includes several offences repealed by the 2003 Act as well as the sexual offences introduced in Part 1 of that Act. For acts committed abroad before the coming into force of Part 1 of the 2003 Act (1 May 2004), the chief officer of police must be satisfied that the act committed abroad would have constituted one of the “old” offences which were repealed in the 2003 Act (paragraphs 1 to 12 and 16). For acts committed abroad after such offences were repealed, these acts must have constituted one of the “new” offences being introduced in the 2003 Act (paragraphs 17 to 35).

In all cases, any threshold to registration as set out in Schedule 3 must be met.

## Establishing that a person is a sex offender

The police must prove that the subject of the application is a sex offender. This means that the offender must have been convicted, cautioned or found not guilty by reason of insanity, or found to be under a disability and to have done the act charged, in respect of a relevant offence.

Section 99 of the 2003 Act provides that an act punishable under the law in force outside the United Kingdom which is the equivalent of Schedule 3 offence in this country need not be described in the same terms as the 2003 Act offence to qualify. Section 99 also provides that the court may assume that the defendant has been convicted, cautioned etc. overseas for an equivalent offence to one listed in Schedule 3, unless the defendant serves a notice on the applicant (i.e. the police) stating that this condition has not been met, together with his reasons for claiming this, and requiring the applicant to show that it has been met. The Magistrates' Courts (Notification Orders) Rules 2004 provide for this notice to be served at least three days before the hearing. But the court may require this to be proved without any such notice.

## Decision to apply for an order

A decision to apply for an order will be made on intelligence that an individual with a conviction, caution etc. for a sexual offence overseas is in, or is intending to come, to the UK and is likely to remain resident in it.

Such intelligence could come from a variety of sources. For example:

- A British citizen is being released from custody overseas, after conviction for a sexual offence, and the authorities in the relevant country or the diplomatic service are organising return to the UK.
- A British citizen is returning to the UK after receiving a caution for a sexual offence overseas. During his dealings with the authorities in the foreign country, he was assisted by the authorities overseas or the diplomatic service.
- A British citizen is being repatriated to a UK prison to serve his sentence received overseas for a sexual offence.
- Authorities in the UK have been informed by a foreign country that one of their citizens, who has previous convictions for sexual offences, is intending to come to the UK.
- An individual comes to the attention of the police, and on investigation of his criminal history it becomes apparent that he has convictions for relevant sexual offences overseas.

For offenders already in the UK, the chief officer of police for the area in which the offender resides or is believed to be resident should apply for the order. Or this could be the area of the police force in which the offending history was discovered. Where an offender is currently overseas but is anticipated to return to the UK, the chief officer of police who believes that the offender is intending to come to his police area may consider applying for an order. For example, this could be the police force for the area in which the airport into which the offender will arrive is located or, the police area in which the prison a British citizen is being repatriated to is located.

It is expected that wherever it comes to the attention of the police that an offender meets all of the conditions for a Notification Order, an order will be sought. As stated above, there is no

additional test that the order is necessary, for example, to protect the public from harm. If the conditions are met, then the order is appropriate and should be sought.

It is not anticipated that the police will apply for an order in respect of, for example, offenders travelling from abroad for a short visit to the UK. However, where a person is expected to spend a considerable amount of time in the UK, it may be considered appropriate to apply for a Notification Order.

Where an offender is found to be in the UK illegally or where the previous offending history may be sufficient for the Secretary of State to request that the offender is deported or removed, it will be appropriate for UKVI and Border Force to be contacted as routine. However, regardless of what approach is taken by such authorities, the chief officer of police may continue to seek to obtain a Notification Order in anticipation of a delay in removal or a decision that the offender should remain in the UK.

The defendant's co-operation with this process cannot be enforced, either by the police or the courts. Any co-operation would be purely voluntary.

Forms are provided for application and summons in the Magistrates' Courts (Notification Orders) Rules 2004.

## Interim Notification Orders

Section 100 provides that the police may apply for an interim Notification Order. An application for an interim Notification Order can be made at the same time as an application for a full order ('the main application') or, where the main application has already been made, by complaint to the same court by the person who made the main application. A court may make an interim Notification Order where it considers it just to do so and an interim Notification Order will last for the period which is specified in the order or, if sooner, until the application for the full order is determined.

A person subject to an interim Notification Order will be subject to the notification requirements from the date of service of the order until the order ceases to have effect.

## Notification Order or Sexual Harm Prevention Order?

A Sexual Harm Prevention Order (SHPO) can be made in respect of offenders who are convicted, cautioned etc. for a "relevant offence" overseas. This means that, if an offender meets all of the conditions for a Notification Order but it is also believed by the police, perhaps through an assessment in consultation as appropriate with other agencies, that prohibitions are necessary to protect the public from sexual harm, the police could consider a SHPO instead of a Notification Order.

The Sexual Harm Prevention Order imposes prohibitions on an offender and makes the offender subject to the notification requirements for its duration. Therefore, a SHPO potentially has more utility than a Notification Order. However the threshold to be met before a SHPO can be made is higher than for a Notification Order: as well as being convicted of a qualifying offence abroad, the police must also satisfy the court that the offender's behaviour since his conviction gives reasonable cause to believe that a SHPO is necessary to protect the public from sexual harm. If the police believe that such an order is necessary, it may be more appropriate to pursue a SHPO rather than a Notification Order. However, when a SHPO expires a Notification Order may be required so that the offender continues to be subject to the notification requirements.

## Service and notification of order

In making an order, the court should formally notify the defendant that he or she is subject to the notification requirements set out in Part 2 of the 2003 Act. This means that the defendant is required to notify the police of information including (but not limited to) the defendant's name(s) and address(es) within three days, and of any change to this information whilst the order has effect. The court will provide a summary of the requirements on the offender but the court may also provide a copy of the "Notice of requirement to register". A copy of the order and the "Notice of Requirement to register" should be provided to the police.

## Variation, renewal, and discharge of Notification Orders

It is not possible to vary, renew or discharge a Notification Order, in the same way that it is not possible to vary, renew or discharge the notification requirements of Part 2 of the 2003 Act as they apply to offenders convicted in the UK (subject to the right to make an application for review of the indefinite notification requirements under section 91A of the 2003 Act).

Offenders who, by virtue of a conviction in a foreign jurisdiction, have received a Notification Order making them subject to the notification requirements indefinitely, may make an application for review of those requirements after 15 years (eight years if convicted as a juvenile) under section 91A of the 2003 Act.

Either the defendant or the applicant may apply for an interim Notification Order to be varied, renewed or discharged.

## Appeal against an order

Provisions for an appeal against the making of an order are set out in section 101 of the 2003 Act. The defendant may appeal against the making of Notification Order or interim Notification Order to the Crown Court. The applicant cannot appeal against a decision not to make a Notification Order.

## Penalty

The Notification Order makes the defendant subject to the notification requirements as if they had been convicted of a relevant sexual offence in the UK. Breach of the notification requirements is covered under Chapter One of this Guidance.

# Chapter Three: Miscellaneous Provisions

## “Verification” (sections 94 and 95)

Sections 94 and 95 of the 2003 Act help the police to verify that an offender has notified accurate information and that the offender is not omitting any details (such as another name or address he uses) when notifying information under sections 83, 84 or 85 of the 2003 Act. This will be done by comparing the information given at notification to the information those offenders have provided to:

- The various agencies which perform social security, child support, employment and training functions on behalf of the Secretary of State for the Department of Work and Pensions and the equivalent Northern Ireland Department (including Jobcentre Plus, the Disability and Carers Service, the Pension Service and the Child Support Agency) which hold the details of anyone who receives any social security payments, and/or is obliged to make payments for child support against National Insurance numbers.
- The department which issues passports on behalf of the Home Secretary - i.e. HM Passport Office, which holds the details of any UK passport holders and anyone whose application is being considered.
- The agency which performs functions under Part 3 of the Road Traffic Act 1998 on behalf of the Secretary of State for the Department of Transport - i.e. the Driver and Vehicle Licensing Agency (DVLA) - or Part 2 of the Road Traffic (Northern Ireland) Order 1981, who hold information on everyone with a driving licence (note that it is an offence not to inform the DVLA of a change to this information).

The information notified to the police by registered sex offenders can be compared against the information held in relation to these three functions of Government. The powers cover England, Wales, Scotland and Northern Ireland.

Section 94 enables the police, and policing organisations stated at subsection (3), to supply information previously notified by offenders to the Secretary of State, Northern Ireland Department or person providing services to the Secretary of State in connection with a “relevant function” i.e. an executive agency or private company. Subsection (8) defines “relevant function” to mean the social security, child support, employment and training functions of the DWP and Northern Ireland Department, a function relating to passports (fulfilled by HM Passport Office) or a function under Part 3 of the Road Traffic Act 1988 (fulfilled by the Driver and Vehicle Licensing Agency (DVLA)).

The details the police may provide to the DWP, HMPO and DVLA include an offender’s:

- date of birth
- national insurance number
- any names the offender has notified
- home address and any other addresses the offender has notified.

This information may have been supplied by an offender at the initial notification, when notifying a change or at a periodic notification.

Subsection (4) provides that this information may only be shared for the purpose of verifying that the information supplied to the police etc. by the offender is accurate. It could not, for

example, be used by DWP to pursue someone for a child support payment. The information supplied by the police etc. will be compared against the information held by the DWP, HMPO and DVLA and a report of discrepancies compiled.

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

Section 95 provides that the report compiled under section 94(4) may be provided to the police (and police organisations stated in subsection (2)). The report may contain information from the DWP, DVLA and HMPO and the police may retain this information and use it for the prevention, detection, investigation or prosecution of offences but for no other purpose. This would include an offence under section 91 of failing to comply with the notification requirements or by providing false information at notification (subsection (4)(a)). In addition, the information may be used to prevent, detect, investigate or prosecute other offences (which are not set out in Part 2 of the 2003 Act); for example, information that identified the possible whereabouts of an offender who was wanted for robbery could be used by the police in investigating that offence.

The prime information system that makes the procedure possible is ViSOR.

It is anticipated that, in future, the police will use this information provided by the verification process to help ensure that offenders are complying with the notification requirements. If an offender appears to be in breach of those requirements, this intelligence should be used to investigate and if necessary take appropriate action against those who have breached the requirements. However, for some offenders, their notified details on ViSOR will be correct – it will be the other systems that are incorrect. In this case, no criminal offence may have occurred and obviously no further action may be necessary.

## **Information about release and transfer (section 96)**

Section 96 allows the Secretary of State to make regulations requiring those who are responsible for a registered sex offender while they are in detention to notify other relevant authorities of their release or transfer to another institution.

The regulations may define the person responsible for the offender (for example, the Chief Executive of a NHS Trust or a Prison Governor) and the person who must be informed about release and transfer. An example might be that the governor of a prison is required to inform the local chief officer of police when a relevant offender is about to be released from prison.

No regulations have yet been made under section 96.

## **Procedure for ending notification requirements for abolished homosexual offences (Schedule 4)**

Schedule 4 allows the Secretary of State to end the notification requirements for offenders convicted of buggery and indecency between men where it appears the conviction was received in respect of consensual sexual activity with a person aged 16 or over (or, in Northern Ireland, 17 or over). The offences of buggery and indecency between men were repealed by the 2003 Act, removing the final elements of the criminal law which discriminated specifically against male homosexual sexual activity.

However, there may be some men who may remain subject to the notification requirements for consensual activity which is no longer a criminal offence.

The Sex Offenders Act 1997 made all offences of buggery and indecency between men (gross indecency) subject to the notification requirements where the offender was aged 20 or over and the victim was aged under 18. This means that some men, who were aged 20 or over at the time of the offence, are subject to the notification requirements for:

- Consensual homosexual activity with a man aged 16 or 17 – the offences of buggery and indecency between men were amended in 2000 to lower the age of consent to 16 but there may be offenders convicted before this time who remain subject to the notification requirements.
- Consensual homosexual activity with a man aged 16 or 17 where there was more than one person present – homosexual “group sex” in private is no longer a criminal offence under the 2003 Act.
- Consensual homosexual activity with a man aged 16 or 17 in a public toilet – sexual activity in a public lavatory remains an offence under section 71, but the new offence does not trigger the notification requirements.

However, the offences of buggery and indecency between men also cover serious sexual crimes against children under 16 as well as non-consensual activity with an adult. Therefore, it is not possible for the notification requirements to be automatically removed from all offenders convicted for these offences.

The application form and guidance notes for anyone seeking to make an application to the Home Secretary to have one or more of their convictions for such offences formally disregarded are available [here](#).

## Offences outside the United Kingdom (section 72)

Under section 72 of the 2003 Act, it is an offence for a British citizen or UK resident to commit in a foreign country an offence against a child aged under 18 listed in Schedule 2 to the Act.

The exact description of the offence does not have to be the same in both the UK and the foreign country in which the offence was committed. For example, the offence of rape could apply to a UK national who raped a child in another country although that offence was described differently under the law in that country or in the case of a UK national, was not an offence in that country at all.

Section 72(6) and (7) have the effect that it will be assumed the act did constitute an offence in the country in which it took place unless the defendant serves on the prosecution a notice three days before the hearing stating that the condition is not met, giving reasons for this opinion, and requiring the police to show that it has been met. The court may require the prosecution to prove the condition is met even if the notice is not given.

Section 72 is intended to cover, for example, an offender who commits an offence against a child family member or a child living in the foreign country while they are on holiday and the offence goes undetected until the offender returns to the UK.

# Chapter Four: Other Issues: MAPPA and Disqualification Orders

## The Multi-Agency Public Protection Arrangements (MAPPA)

All registered sexual offenders in England and Wales are eligible for the MAPPA (Multi-Agency Public Protection Arrangements). The current version of the national MAPPA Guidance (version 4) is available [here](#) - and sets out the arrangements in detail; including when and how registered sexual offenders should be referred for active multi-agency oversight.

The MAPPA were introduced in 2001 under the Criminal Justice and Court Services Act 2000, and were strengthened by sections 325 to 327B of the Criminal Justice Act 2003. The legislation places a statutory duty on police, probation and prisons, working jointly as the Responsible Authority in each area, to establish arrangements for the assessment and management of the risk posed by sexual and violent offenders. It also requires a number of other agencies, such as children's services, housing, health and youth offending teams to co-operate with the Responsible Authority in this work. These arrangements are monitored and reviewed by a strategic management board led by the Responsible Authority and including senior representatives from the other "duty to co-operate" agencies, with two local lay advisers.

The aim of the MAPPA is to:

- ensure more comprehensive risk assessments are completed, taking advantage of co-ordinated information sharing across the agencies; and
- direct the available resources to best protect the public from serious harm.

Offenders eligible for MAPPA are identified and information is obtained and shared about them across relevant agencies. The nature and level of the risk of harm they pose is assessed and a risk management plan is implemented to protect the public. In most cases, the offender will be managed under the ordinary arrangements applied by the agency or agencies with supervisory responsibility. A number of offenders, though, require active multi-agency management and their risk management plans will be formulated and monitored via MAPP meetings attended by various agencies. It is important to be clear that the MAPPA is a set of administrative arrangements and not an agency. MAPPA does not make decisions; agencies will make decisions on how to implement their own statutory and other duties in the light of information garnered via the MAPPA or at MAPP meetings.

There are three categories of offender eligible for MAPPA (plus those offenders subject to Disqualification Orders):

- Registered sexual offenders (Category 1) – i.e. sexual offenders who are subject to the notification requirements described in this guidance.
- Violent offenders (Category 2) – offenders serving sentences of imprisonment/ detention for 12 months or more, or subject to hospital orders (in relation to murder or offences specified in schedule 15 of the Criminal Justice Act 2003). (This category also includes a small number of sexual offenders who do not qualify for registration).

- Other Dangerous Offenders (Category 3) – offenders who do not qualify under categories 1 or 2 but who currently pose a risk of serious harm, there is a link between the offending and the risk posed, and they require active multi-agency management.
- Offenders subject to Disqualification Orders (see below).

There are also three levels of management which are based upon the level of multi-agency co-operation required to implement the risk management plan effectively. Offenders will be moved up and down levels as appropriate:

- Level 1 – Ordinary Management – These offenders are subject to the usual management arrangements applied by whichever agency is supervising them. But this does not rule out information sharing between agencies, via ViSOR and other routes.
- Level 2 – Active Multi-agency Management – The risk management plans for these offenders require the active involvement of several agencies via regular multi-agency public protection (MAPP) meetings.
- Level 3 – Active Multi-agency Management – As with level 2, but these cases additionally require the involvement of senior officers to authorise the use of special resources, such as police surveillance or specialised accommodation, and/or to provide ongoing senior management oversight.

## Disqualification Orders & the Disclosure and Barring Service

Disqualification Orders are part of the measures to protect children from those convicted of sexual or violent offences against them and who may pose a continuing risk to them. They disqualify certain offenders from broadly defined work with children. The provisions were introduced in the Criminal Justice and Court Services Act 2000 (CJCSA).

Offenders given a Disqualification Order are prevented from working in a regulated position. This includes working with children in paid or unpaid positions whose normal duties involve caring for, training, supervising or being in sole charge of children, and positions whose normal duties involve unsupervised contact with children under arrangements made by a responsible person, for example, a parent. The positions covered are specified in section 36 of the Act and are broadly defined. Examples of “working with children” extends from babysitting to working as a school teacher and from working in a local authority education or social services department to voluntary work at a boys’ football club. They also included positions whose normal duties include the supervision or management of another individual who works directly with children, for example a member of a school governing body.

A Disqualification Order applies for life. It is possible to appeal against the making of an order by means of an appeal against sentence. It is also possible, after a specified period (10 years for adults and five years for juveniles), to apply for a review of the Disqualification Order by the Care Standards Tribunal, set up under Section 9 of the Protection of Children Act 1999. Where a Disqualification Order is made, the Court must ensure that an official transcript of the judge’s sentencing remarks is passed to the Tribunal, for use should the disqualification come up for review.

A person who is given a Disqualification Order commits an offence if he knowingly applies for, offers to do, accepts or does any work with children. It is also an offence for an individual knowingly to offer work with children to, or procure work with children for, an individual who is disqualified from working with children, or to allow such an individual to continue in such work.

Both offences are triable summarily and on indictment and have a maximum penalty of five years imprisonment, and/or a fine.

An earlier version of this guidance gives further information on Disqualification Orders. However, as Disqualification Orders are being replaced by the barring provisions established under the Safeguarding Vulnerable Groups Act 2006 (SVGA), this section will only provide information in relation to the impact of the SVGA on existing measures.

The SVGA established a central state barring body – the Independent Safeguarding Authority – which would operate a Vetting and Barring Scheme (VBS). That scheme would have provided that anyone wishing to work closely with vulnerable people would need to register and be monitored for any new convictions, and that people who represented a risk to vulnerable people would be barred from working with them. As such, it provided that the legislation relating to Disqualification Orders would be fully repealed. The previous Government's intention was to commence that full repeal when relevant provisions of the VBS came into force, making Disqualification Orders redundant. Because implementation of the VBS was to have been phased, repeal of Disqualification Orders was also to be phased. Therefore from 12 October 2009 when the barring provisions of the VBS commenced, Disqualification Orders remained available to the court in certain circumstances.

Schedule 10 of the Safeguarding Vulnerable Groups Act 2006 (SVGA) makes provision for the repeal of: sections 26-38 of the Criminal Justice and Courts Services Act 2000 (CJCSA); s42(1); schedule 4; and schedule 7 paragraphs 155, 157 and 158. Also s299 Criminal Justice Act 2003 and Schedule 30.

Article 3 of the Safeguarding Vulnerable Groups Act 2006 (Commencement Order No 6, Transitional Provisions and Savings) Order 2009, which came into force on 12th October 2009, provides for the partial repeal only of some of the provisions of the CJCSA listed above.

With effect from 12 October 2009, sections 24, 26 to 38, and 42(1) of, and Schedule 4 to, the CJCSA ceased to have effect for the purposes of enabling a Disqualification Order to be made in relation to a person who is barred from regulated activity by virtue of s3(2) of the SVGA.

Also, the offence in section 35 of the CJCSA (of applying for, offering to do, accepting or working in a regulated position) ceased to have effect where an individual who is subject to a disqualification order:

- a) is barred from regulated activity by virtue of section 3(2) of the SVGA; or
- b) was so barred but no longer is; or
- c) is removed from the children's barred list in accordance with paragraph 2(4) of the SVGA (Transitional Provisions) Order 2008 (i.e. after receiving representations from that person under the 2008 Order, the Independent Safeguarding Authority (ISA) decide to remove him or her from the children's barred list).

Where paragraph (b) or (c) above applies, section 35 of the CJCSA ceased to have effect but only in relation to a Disqualification Order to which the relevant individual was subject immediately before being included in the children's barred list and where the ISA (referred to in the SVGA as the Independent Barring Board or IBB) knows of that Disqualification Order.

This means that:

- where a person is already barred by the ISA no Disqualification Order can be made in respect of that individual, and

- where a person who is already subject to a Disqualification Order is barred by the ISA (now known as the Disclosure & Barring Service, DBS), any breach of that Disqualification Order will not be enforceable under the CJCSA provisions. Instead, where a person is barred from regulated activity, the barring offences in sections 7 and 9 of the SVGA will apply if that person seeks/offers to or engages in regulated activity or where another person knowingly permits the barred person to engage in regulated activity

Where a person is not barred from regulated activity by virtue of s.3(2) or is no longer barred from such activity, disqualification orders in relation to that person are still available under the CJCSA provisions and, in relevant cases, prosecutors should continue to apply for such orders to be made, for the time being. However, where a person is removed from the children's barred list, section 35 of the CJCSA will cease to have effect in relation to any disqualification order to which a person was subject immediately before he or she was barred but only if the Disclosure & Barring Service (DBS), knew of that order before that person was barred.

The Safeguarding Vulnerable Groups Act 2006 (Commencement No. 6, Transitional Provisions and Savings (Amendment)) and (Commencement No. 7) Order 2010 provided for the next stage of the repeal of relevant provisions in the CJCSA. Article 5 of that Order provided that as of 30th March 2010, the offences in section 35 of the CJCSA (offering work in a regulated position, procuring work in a regulated position or failure to remove an individual from a regulated position) were repealed in relation to persons who had been barred from regulated activity by the DBS under section 3(2) of the SVGA or who had been barred from regulated activity under the Transitional Provisions Order 2008 but was then removed from the list as a result of representations received. This provision is only effective when the DBS knew of the person's Disqualification Order at the time the DBS included the person in the children's barred list.

In June 2010, the current Government suspended the parts of the SVGA relating to registration and monitoring – or the 'vetting' part of the Vetting and Barring Scheme – before they were commenced, pending a review of the scheme. That review was published in February 2011 and recommended, amongst other things, the repeal of the registration and monitoring parts of the VBS. Provision for that repeal was included within the Protection of Freedoms Bill, published at the same time as the review. The Protection of Freedoms Act which received Royal Assent on 1st May 2012 does not change the full repeal of the Disqualification Order regime provided for in the SVGA; further details about the commencement of the rest of that repeal will be provided in due course.

Please be aware that the fact that someone is fully confirmed on the children's barred list does not mean that the Disqualification Order is no longer in existence. What it means is that that person no longer commits an offence under section 35 of the CJCSA – they will commit an offence under section 7 of the SVGA if they seek/offer or engage in regulated activity whilst being barred from doing so under section 3(2) of the SVGA.

If someone was subject to a Disqualification Order immediately before they were barred from regulated activity under section 3(2) of the SVGA and the DBS was aware of the Disqualification Order before that person was barred, section 35 of the CJCSA continues to have no effect when that person is removed from the children's barred list but only in relation to that particular disqualification order. This means that once a person is removed from the children's barred list, further disqualification orders can be made in relation to that person and section 35 will have effect in relation to any further Disqualification Orders unless they are subsequently 're-barrred' under the SVGA.