

Relevant Sentencing Code provisions on sexual harm prevention orders (with prospective amendments to be made by the Police, Crime, Sentencing and Courts Bill in red)

s343 Sexual harm prevention order

- ~~(1) In this Code “sexual harm prevention order” means an order under this Chapter made in respect of an offender which prohibits the offender from doing anything described in the order.~~
- (1) In this Code a “sexual harm prevention order” means an order made under this Chapter in respect of an offender.
- (1A) A sexual harm prevention order may—
- (a) prohibit the offender from doing anything described in the order;
 - (b) require the offender to do anything described in the order.
- (2) The only prohibitions **or requirements** that may be included in a sexual harm prevention order are those necessary for the purpose of—
- (a) protecting the public or any particular members of the public from sexual harm from the offender, or
 - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the offender outside the United Kingdom.
- (3) The prohibitions or requirements which are imposed on the offender by a sexual harm prevention order must, so far as practicable, be such as to avoid—
- (a) any conflict with the offender’s religious beliefs,
 - (b) any interference with the times, if any, at which the offender normally works or attends any educational establishment, and
 - (c) any conflict with any other court order or injunction to which the offender may be subject (but see section 349).”

s344 Meaning of “sexual harm”

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

(b) (in the context of harm outside the United Kingdom) by the person doing, outside the United Kingdom, anything which would constitute an offence listed in that Schedule if done in any part of the United Kingdom.

(2) Where an offence listed in that Schedule is listed subject to a condition that relates—

(a) to the way in which the offender is dealt with in respect of an offence so listed,
or

(b) to the age of any person,

that condition is to be disregarded in determining for the purposes of subsection (1) whether the offence is listed in that Schedule.

s345 Sexual harm prevention order: availability on conviction

(1) Where a person is convicted of an offence listed in Schedule 3 or 5 to the Sexual Offences Act 2003 (sexual offences, and other offences, for the purposes of Part 2 of that Act), the court dealing with the offender in respect of the offence may make a sexual harm prevention order.

(2) Where an offence listed in Schedule 3 to that Act is listed subject to a condition that relates—

(a) to the way in which the offender is dealt with in respect of an offence so listed,
or

(b) to the age of any person,

that condition is to be disregarded in determining for the purposes of subsection (1) whether the offence is listed in that Schedule.

s346 Exercise of power to make sexual harm prevention order

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

(a) protecting the public or any particular members of the public from sexual harm from the offender, or

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

s347 Sexual harm prevention orders: matters to be specified

(1) A sexual harm prevention order must specify—

(a) the prohibitions **and requirements** included in the order, and

- (b) for each prohibition or requirement, the period for which it is to have effect (the “~~prohibition period~~ specified period”).

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

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

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

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

s347A Sexual harm prevention orders: requirements included in order etc.

- (1) A sexual harm prevention order that imposes a requirement to do something on an offender must specify a person who is to be responsible for supervising compliance with the requirement. The person may be an individual or an organisation.
- (2) Before including such a requirement in a sexual harm prevention order, the court must receive evidence about its suitability and enforceability from—
 - (a) the individual to be specified under subsection (1), if an individual is to be specified;
 - (b) an individual representing the organisation to be specified under subsection (1), if an organisation is to be specified.
- (3) Subsections (1) and (2) do not apply in relation to electronic monitoring requirements (see instead section 348A(5) and (6)).
- (4) It is the duty of a person specified under subsection (1)—
 - (a) to make any necessary arrangements in connection with the requirements for which the person has responsibility (“the relevant requirements”);
 - (b) to promote the offender’s compliance with the relevant requirements;
 - (c) if the person considers that—
 - (i) the offender has complied with all the relevant requirements, or
 - (ii) the offender has failed to comply with a relevant requirement,to inform the appropriate chief officer of police.
- (5) In subsection (4)(c) the “appropriate chief officer of police means—

- (a) the chief officer of police for the police area in which it appears to the person specified under subsection (1) that the offender lives, or
 - (b) if it appears to that person that the offender lives in more than one police area, whichever of the chief officers of police of those areas the person thinks it is most appropriate to inform.
- (6) An offender subject to a requirement imposed by a sexual harm prevention order must—
- (a) keep in touch with the person specified under subsection (1) in relation to that requirement, in accordance with any instructions given by that person from time to time, and
 - (b) notify that person of any change of the offender's home address.
- These obligations have effect as requirements of the order.
- (7) In this section "home address", in relation to an offender, means—
- (a) the address of the offender's sole or main residence in the United Kingdom, or
 - (b) where the offender has no such residence, the address or location of a place in the United Kingdom where the offender can regularly be found and, if there is more than one such place, such one of those places as the offender may select.

s348 Sexual harm prevention orders: prohibitions on foreign travel

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

(5) Any passports surrendered must be returned as soon as reasonably practicable after the offender ceases to be subject to a sexual harm prevention order containing a prohibition within subsection (3)(c) (unless the offender is subject to an equivalent prohibition under another order).

(6) Subsection (5) does not apply in relation to—

- (a) a passport issued by or on behalf of the authorities of a country outside the United Kingdom if the passport has been returned to those authorities;
- (b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

(7) In this section “passport” means—

- (a) a United Kingdom passport within the meaning of the Immigration Act 1971;
- (b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;
- (c) a document that can be used (in some or all circumstances) instead of a passport.

s349 Making of sexual harm prevention order: effect on other orders

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

- (a) a sexual harm prevention order, or
- (b) an order under section 103A of the Sexual Offences Act 2003 (sexual harm prevention orders under that Act),

the earlier order ceases to have effect.

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

- (a) a sexual offences prevention order under section 104 of the Sexual Offences Act 2003, or
- (b) a foreign travel order under section 114 of that Act,

the earlier order ceases to have effect (whichever part of the United Kingdom it was made in) unless the court orders otherwise.

s350 Sexual harm prevention orders: variations, renewals and discharges

(1) Where a sexual harm prevention order has been made in respect of an offender, a person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging the sexual harm prevention order.

(2) The persons are—

- (a) the offender;
- (b) the chief officer of police for the area in which the offender resides;

(c) a chief officer of police who believes that the offender is in, or is intending to come to, that officer's police area.

(3) An application under subsection (1) may be made—

- (a) where the appropriate court is the Crown Court, in accordance with rules of court;
- (b) in any other case, by complaint.

(4) Subsection (5) applies where an application under subsection (1) is made.

(5) After hearing—

- (a) the person making the application, and
- (b) if they wish to be heard, the other persons mentioned in subsection (2),

the court may make any order, varying, renewing or discharging the sexual harm prevention order, that it considers appropriate.

This is subject to subsections (6) and (7).

(6) An order may be renewed, or varied so as to impose additional prohibitions **or requirements** on the offender, only if it is necessary to do so for the purpose of—

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

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

(6A) Any additional prohibitions or requirements that are imposed on the offender must, so far as practicable, be such as to avoid—

- (a) any conflict with the offender's religious beliefs,**
- (b) any interference with the times, if any, at which the offender normally works or attends any educational establishment, and**
- (c) any conflict with any other court order or injunction to which the offender may be subject.**

(7) The court must not discharge an order before the end of the period of 5 years beginning with the day on which the order was made, without the consent of the offender and—

- (a) where the application is made by a chief officer of police, that chief officer, or
- (b) in any other case, the chief officer of police for the area in which the offender resides.

(8) Subsection (7) does not apply to an order containing a prohibition on foreign travel and no other prohibitions **or requirements**.

(9) In this section “the appropriate court” means—

- (a) where the Crown Court or the Court of Appeal made the sexual harm prevention order, the Crown Court;
- (b) where a magistrates’ court made the order and the offender is aged 18 or over—
 - (i) the court which made the order, if it is an adult magistrates’ court,
 - (ii) a magistrates’ court acting in the local justice area in which the offender resides, or
 - (iii) if the application is made by a chief officer of police, any magistrates’ court acting for a local justice area that includes any part of the chief officer’s police area;
- (c) where a youth court made the order and the offender is aged under 18—
 - (i) that court,
 - (ii) a youth court acting in the local justice area in which the offender resides, or
 - (iii) if the application is made by a chief officer of police, any youth court acting for a local justice area that includes any part of the chief officer’s police area.

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

(10) For circumstances in which a sexual harm prevention order ceases to have effect when a court in the United Kingdom makes another order, see the following provisions of the Sexual Offences Act 2003—

- (a) section 103C(6) (sexual harm prevention order under that Act);
- (b) section 136ZB(2) (certain orders made by a court in Northern Ireland or Scotland).

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