



# Sexual Offences Act 2003

## 2003 CHAPTER 42

### PART 2

#### NOTIFICATION AND ORDERS

##### *Foreign travel orders*

#### **114 Foreign travel orders: applications and grounds**

- (1) A chief officer of police may by complaint to a magistrates' court apply for an order under this section (a "foreign travel order") in respect of a person ("the defendant") who resides in his police area or who the chief officer believes is in or is intending to come to his police area if it appears to the chief officer that—
  - (a) the defendant is a qualifying offender, and
  - (b) the defendant has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.
- (2) An application under subsection (1) may be made to any magistrates' court whose commission area includes any part of the applicant's police area.
- (3) On the application, the court may make a foreign travel order if it is satisfied that—
  - (a) the defendant is a qualifying offender, and
  - (b) the defendant's behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom.

#### **115 Section 114: interpretation**

- (1) Subsections (2) to (5) apply for the purposes of section 114.
- (2) "Protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom" means protecting persons under 16 generally or any particular person under 16 from serious physical or psychological harm caused

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by the defendant doing, outside the United Kingdom, anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom.

- (3) Acts and behaviour include those occurring before the commencement of this Part.
- (4) “Qualifying offender” has the meaning given by section 116.
- (5) “Appropriate date”, in relation to a qualifying offender, means the date or (as the case may be) the first date on which he was convicted, found or cautioned as mentioned in subsection (1) or (3) of section 116.
- (6) In this section and section 116 as they apply to Northern Ireland, references to persons, or to a person, under 16 are to be read as references to persons, or to a person, under 17.

## **116 Section 114: qualifying offenders**

- (1) A person is a qualifying offender for the purposes of section 114 if, whether before or after the commencement of this Part, he—
  - (a) has been convicted of an offence within subsection (2),
  - (b) has been found not guilty of such an offence by reason of insanity,
  - (c) has been found to be under a disability and to have done the act charged against him in respect of such an offence, or
  - (d) in England and Wales or Northern Ireland, has been cautioned in respect of such an offence.
- (2) The offences are—
  - (a) an offence within any of paragraphs 13 to 15, 44 to 46, 77, 78 and 82 of Schedule 3;
  - (b) an offence within paragraph 31 of that Schedule, if the intended offence was an offence against a person under 16;
  - (c) an offence within paragraph 93 of that Schedule, if—
    - (i) the corresponding civil offence is an offence within any of paragraphs 13 to 15 of that Schedule;
    - (ii) the corresponding civil offence is an offence within paragraph 31 of that Schedule, and the intended offence was an offence against a person under 16; or
    - (iii) the corresponding civil offence is an offence within any of paragraphs 1 to 12, 16 to 30 and 32 to 35 of that Schedule, and the victim of the offence was under 16 at the time of the offence.
  - (d) an offence within any other paragraph of that Schedule, if the victim of the offence was under 16 at the time of the offence.
- (3) A person is also a qualifying offender for the purposes of section 114 if, under the law in force in a country outside the United Kingdom and whether before or after the commencement of this Part—
  - (a) he has been convicted of a relevant offence (whether or not he has been punished for it),
  - (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity,

- (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or
  - (d) he has been cautioned in respect of a relevant offence.
- (4) In subsection (3), “relevant offence” means an act which—
- (a) constituted an offence under the law in force in the country concerned, and
  - (b) would have constituted an offence within subsection (2) if it had been done in any part of the United Kingdom.
- (5) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (4), however it is described in that law.
- (6) Subject to subsection (7), on an application under section 114 the condition in subsection (4)(b) above (where relevant) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice—
- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met,
  - (b) showing his grounds for that opinion, and
  - (c) requiring the applicant to prove that the condition is met.
- (7) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (6).

#### **117 Foreign travel orders: effect**

- (1) A foreign travel order has effect for a fixed period of not more than 6 months, specified in the order.
- (2) The order prohibits the defendant from doing whichever of the following is specified in the order—
  - (a) travelling to any country outside the United Kingdom named or described in the order,
  - (b) travelling to any country outside the United Kingdom other than a country named or described in the order, or
  - (c) travelling to any country outside the United Kingdom.
- (3) The only prohibitions that may be included in the order are those necessary for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom.
- (4) If at any time while an order (as renewed from time to time) has effect a defendant is not a relevant offender, the order causes him to be subject to the requirements imposed by regulations made under section 86(1) (and for these purposes the defendant is to be treated as if he were a relevant offender).
- (5) Where a court makes a foreign travel order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.
- (6) Section 115(2) applies for the purposes of this section and section 118.

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### **118 Foreign travel orders: variations, renewals and discharges**

- (1) A person within subsection (2) may by complaint to the appropriate court apply for an order varying, renewing or discharging a foreign travel order.
- (2) The persons are—
  - (a) the defendant;
  - (b) the chief officer of police on whose application the foreign travel order was made;
  - (c) the chief officer of police for the area in which the defendant resides;
  - (d) a chief officer of police who believes that the defendant is in, or is intending to come to, his police area.
- (3) Subject to subsection (4), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the foreign travel order, that the court considers appropriate.
- (4) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).
- (5) In this section “the appropriate court” means—
  - (a) the court which made the foreign travel order;
  - (b) a magistrates' court for the area in which the defendant resides; or
  - (c) where the application is made by a chief officer of police, any magistrates' court whose commission area includes any part of his police area.

### **119 Foreign travel orders: appeals**

- (1) A defendant may appeal to the Crown Court—
  - (a) against the making of a foreign travel order;
  - (b) against the making of an order under section 118, or the refusal to make such an order.
- (2) On any such appeal, the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.
- (3) Any order made by the Crown Court on an appeal under subsection (1)(a) (other than an order directing that an application be re-heard by a magistrates' court) is for the purposes of section 118(5) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court).

### **120 Appeals in relation to foreign travel orders: Scotland**

In Scotland—

- (a) an interlocutor granting, refusing, varying, renewing or discharging a foreign travel order is an appealable interlocutor; and
- (b) where an appeal is taken against an interlocutor so granting, varying or renewing such an order the order shall, without prejudice to any power of the

court to vary or recall it, continue to have effect pending the disposal of the appeal.

## **121 Sections 114 to 118: Scotland**

- (1) Sections 114 to 118 apply to Scotland with the following modifications—
  - (a) references to a chief officer of police and to his police area are to be read, respectively, as references to a chief constable and to the area of his police force;
  - (b) references to the defendant are to be read as references to the person in respect of whom the order is sought or has effect;
  - (c) an application for a foreign travel order is made by summary application to any sheriff within whose sheriffdom lies any part of the area of the applicant's police force (references to "the court" being construed accordingly);
  - (d) for paragraphs (a) to (c) of section 118(5) there is substituted—
    - (a) the sheriff who made the foreign travel order; or
    - (b) where the application is made by a chief constable, a sheriff whose sheriffdom includes any part of the area of the applicant's police force."
- (2) A record of evidence shall be kept on any summary application made by virtue of subsection (1)(c) above.
- (3) The clerk of the court by which, by virtue of that subsection, a foreign travel order is made, varied, renewed or discharged shall cause a copy of, as the case may be—
  - (a) the order as so made, varied or renewed; or
  - (b) the interlocutor by which discharge is effected,to be given to the person named in the order or sent to him by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate).

## **122 Offence: breach of foreign travel order**

- (1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by a foreign travel order.
- (2) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- (3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge (or, in Scotland, a probation order).