

Status: Point in time view as at 08/03/2015.

Changes to legislation: Anti-social Behaviour, Crime and Policing Act 2014, Cross Heading: Sexual risk orders is up to date with all changes known to be in force on or before 04 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 5 U.K.

AMENDMENTS OF PARTS 2 AND 3 OF THE SEXUAL OFFENCES ACT 2003

Sexual risk orders

4 Before section 123 there is inserted—

“Sexual risk orders (England and Wales)

Sexual risk orders: applications, grounds and effect

- 122A(1) A chief officer of police or the Director General of the National Crime Agency (“the Director General”) may by complaint to a magistrates' court apply for an order under this section (a “sexual risk order”) in respect of a person (“the defendant”) if it appears to the chief officer or the Director General that the following condition is met.
- (2) The condition is that the defendant has, whether before or after the commencement of this Part, done an act of a sexual nature as a result of which there is reasonable cause to believe that it is necessary for a sexual risk order to be made.
 - (3) A chief officer of police may make an application under subsection (1) only in respect of a person—
 - (a) who resides in the chief officer's police area, or
 - (b) who the chief officer believes is in that area or is intending to come to it.
 - (4) An application under subsection (1) may be made to any magistrates' court acting for a local justice area that includes—
 - (a) any part of a relevant police area, or
 - (b) any place where it is alleged that the person acted in a way mentioned in subsection (2).
 - (5) The Director General must as soon as practicable notify the chief officer of police for a relevant police area of any application that the Director has made under subsection (1).
 - (6) On an application under subsection (1), the court may make a sexual risk order if it is satisfied that the defendant has, whether before or after the commencement of this Part, done an act of a sexual nature as a result of which it is necessary to make such an order for the purpose of—
 - (a) protecting the public or any particular members of the public from harm from the defendant, or

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- (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the defendant outside the United Kingdom.
- (7) Such an order—
 - (a) prohibits the defendant from doing anything described in the order;
 - (b) has effect for a fixed period (not less than 2 years) specified in the order or until further order.
- (8) A sexual risk order may specify different periods for different prohibitions.
- (9) The only prohibitions that may be imposed are those necessary for the purpose of—
 - (a) protecting the public or any particular members of the public from harm from the defendant, or
 - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the defendant outside the United Kingdom.
- (10) Where a court makes a sexual risk order in relation to a person who is already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

Section 122A: interpretation

122A(1) In section 122A—

“child” means a person under 18;

“harm” from the defendant means physical or psychological harm caused by the defendant doing an act of a sexual nature;

“the public” means the public in the United Kingdom;

“vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from physical or psychological harm is significantly impaired through physical or mental disability or illness, through old age or otherwise.

- (2) Where the defendant is a child, a reference in that section to a magistrates' court is to be taken as referring to a youth court (subject to any rules of court made under section 122K(1)).
- (3) In that section “relevant police area” means—
 - (a) where the applicant is a chief officer of police, the officer's police area;
 - (b) where the applicant is the Director General of the National Crime Agency—
 - (i) the police area where the person in question resides, or
 - (ii) a police area which the Director General believes the person is in or is intending to come to.

Sexual risk orders: prohibitions on foreign travel

122A(1) A prohibition on foreign travel contained in a sexual risk order must not be for a period of more than 5 years.

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- (2) 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.
- (3) 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 122D.
- (4) A sexual risk order that contains a prohibition within subsection (2)(c) must require the defendant to surrender all of the defendant's passports at a police station specified in the order—
- (a) on or before the date when the prohibition takes effect, or
 - (b) within a period specified in the order.
- (5) Any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a sexual risk order containing such a prohibition (unless the person 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.

Sexual risk order: variations, renewals and discharges

122D(1) A person within subsection (2) may by complaint to the appropriate court apply for an order varying, renewing or discharging a sexual risk order.

- (2) The persons are—
- (a) the defendant;
 - (b) the chief officer of police for the area in which the defendant resides;
 - (c) a chief officer of police who believes that the defendant is in, or is intending to come to, that officer's police area;
 - (d) where the order was made on an application by a chief officer of police, that officer.

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- (3) Subject to subsections (4) and (5), 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 sexual risk 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—
- (a) protecting the public or any particular members of the public from harm from the defendant, or
 - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the defendant outside the United Kingdom.

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

- (5) The court must not discharge an order before the end of 2 years beginning with the day on which the order was made, without the consent of the defendant 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 defendant resides.
- (6) Section 122B(1) applies for the purposes of this section.
- (7) In this section “the appropriate court” means—
- (a) where an adult magistrates' court made the sexual risk order, that court, any adult magistrates' court for the area in which the defendant resides or, where the application is made by a chief officer of police, any adult magistrates' court acting for a local justice area that includes any part of the chief officer's police area;
 - (b) where a youth court made the order and the defendant is under the age of 18, that court, a youth court for the area in which the defendant resides or, where 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;
 - (c) where a youth court made the order and the defendant is aged 18 or over, an adult magistrates' court for the area in which the defendant resides or, where the application is made by a chief officer of police, any adult magistrates' 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.

Interim sexual risk orders

122E) This section applies where an application for a sexual risk order (“the main application”) has not been determined.

- (2) An application for an order under this section (“an interim sexual risk order”)

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- (a) may be made by the complaint by which the main application is made, or
 - (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.
- (3) The court may, if it considers it just to do so, make an interim sexual risk order, prohibiting the defendant from doing anything described in the order.
- (4) Such an order—
- (a) has effect only for a fixed period, specified in the order;
 - (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (5) The applicant or the defendant may by complaint apply to the court that made the interim sexual risk order for the order to be varied, renewed or discharged.

Sexual risk orders and interim sexual risk orders: notification requirements

- 122(F) A person in respect of whom a court makes—
- (a) a sexual risk order (other than one that replaces an interim sexual risk order), or
 - (b) an interim sexual risk order,
- must, within the period of 3 days beginning with the date of service of the order, notify to the police the information set out in subsection (2) (unless the person is subject to the notification requirements of this Part on that date).
- (2) The information is—
- (a) the person's name and, where the person uses one or more other names, each of those names;
 - (b) the person's home address.
- (3) A person who—
- (a) is subject to a sexual risk order or an interim sexual risk order (but is not subject to the notification requirements of this Part), and
 - (b) uses a name which has not been notified under this section (or under any other provision of this Part), or changes home address,
- must, within the period of 3 days beginning with the date on which that happens, notify to the police that name or (as the case may be) the new home address.
- (4) Sections 87 (method of notification and related matters) and 91 (offences relating to notification) apply for the purposes of this section—
- (a) with references to section 83(1) being read as references to subsection (1) above,
 - (b) with references to section 84(1) being read as references to subsection (3) above, and
 - (c) with the omission of section 87(2)(b).

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Sexual risk orders and interim sexual risk orders: appeals

- 122G) A defendant may appeal to the Crown Court—
- (a) against the making of a sexual risk order;
 - (b) against the making of an interim sexual risk order; or
 - (c) against the making of an order under section 122D, 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) or (b) (other than an order directing that an application be re-heard by a magistrates' court) is for the purposes of section 122D(7) or 122E(5) (respectively) 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).

Offence: breach of sexual risk order or interim sexual risk order etc

- 122H) A person who, without reasonable excuse, does anything that the person is prohibited from doing by—
- (a) a sexual risk order,
 - (b) an interim sexual risk order,
 - (c) a risk of sexual harm order,
 - (d) an interim risk of sexual harm order,
 - (e) an order under section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (risk of sexual harm orders in Scotland), or
 - (f) an order under section 5 of that Act (interim risk of sexual harm orders in Scotland),
- commits an offence.
- (2) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed under section 122C(4).
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- (4) Where a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order for conditional discharge.

Effect of conviction etc of an offence under section 122H etc

- 122I) This section applies to a person (“the defendant”) who—
- (a) is convicted of an offence mentioned in subsection (2);
 - (b) is found not guilty of such an offence by reason of insanity;

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- (c) is found to be under a disability and to have done the act charged against him in respect of such an offence; or
 - (d) is cautioned in respect of such an offence.
- (2) Those offences are—
- (a) an offence under section 122H or 128 of this Act;
 - (b) an offence under section 7 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (contravention of risk of sexual harm order or interim risk of sexual harm order in Scotland).
- (3) Where—
- (a) a defendant was a relevant offender immediately before this section applied to the defendant, and
 - (b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the relevant order (as renewed from time to time) has effect,
- the defendant remains subject to the notification requirements.
- (4) Where the defendant was not a relevant offender immediately before this section applied to the defendant—
- (a) this section causes the defendant to become subject to the notification requirements of this Part from the time the section first applies to the defendant until the relevant order (as renewed from time to time) ceases to have effect, and
 - (b) this Part applies to the defendant, subject to the modification set out in subsection (5).
- (5) The “relevant date” is the date on which this section first applies to the defendant.
- (6) In this section “relevant order” means—
- (a) where the conviction, finding or caution within subsection (1) is in respect of a breach of a sexual risk order or a risk of sexual harm order, that order;
 - (b) where the conviction, finding or caution within subsection (1) is in respect of a breach of an interim sexual risk order or an interim risk of sexual harm order, any sexual risk order or risk of sexual harm order made on the hearing of the application to which the interim order relates or, if no such order is made, the interim order.
- (7) In subsection (6) “risk of sexual harm order” and “interim risk of sexual harm order” include orders under sections 2 and 5 (respectively) of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.

Sexual risk orders and interim sexual risk orders: guidance

- 122(1) The Secretary of State must issue guidance to chief officers of police and to the Director General of the National Crime Agency in relation to the exercise by them of their powers with regard to sexual risk orders and interim sexual risk orders.

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- (2) The Secretary of State may, from time to time, revise the guidance issued under subsection (1).
- (3) The Secretary of State must arrange for any guidance issued or revised under this section to be published in such manner as the Secretary of State considers appropriate.

Sexual risk orders and interim sexual risk orders: supplementary

122K(1) Rules of court—

- (a) may provide for a youth court to give permission for an application under section 122A against a person aged 18 or over to be made to the youth court if—
 - (i) an application to the youth court has been made, or is to be made, under that section against a person aged under 18, and
 - (ii) the youth court thinks that it would be in the interests of justice for the applications to be heard together;
 - (b) may, in relation to a person attaining the age of 18 after proceedings against that person by virtue of section 122A, 122D or 122E have begun—
 - (i) prescribe circumstances in which the proceedings may or must remain in the youth court;
 - (ii) make provision for the transfer of the proceedings from the youth court to a magistrates' court that is not a youth court (including provision applying section 122E with modifications).
- (2) A person's age is treated for the purposes of sections 122A to 122J and this section as being that which it appears to the court to be after considering any available evidence.”

Commencement Information

II Sch. 5 para. 4 in force at 8.3.2015 by S.I. 2015/373, art. 2(e)

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