



**Law  
Commission**  
Reforming the law

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**Sentencing law in England and Wales**  
**Legislation currently in force**  
Part 3.9 – Consequences of conviction

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9 October 2015

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## Part 3. Sentencing powers and duties

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## 3.9 Consequences of conviction

### 3.9.1. Notification

#### 3.9.1.1. Sexual cases

##### 3.9.1.1.1 General

##### Status of notification

**R. v Longworth [2006] UKHL 1; [2006] 2 Cr. App. R. (S.) 62 (p.401)**

Notification is not part of the sentence.

##### Notification orders

*Note: SOA 2003 ss.97-103 make provision for a notification order (an order of the court as opposed to an automatic consequence of conviction such as the notification regime under SOA 2003 ss.80 et seq.). The order is a “stand alone” order made on complaint to the magistrates’ court by a chief officer of police where it is believed that an individual is intending to come into his police area and has been convicted of a relevant offence etc. under the law of another country. As it is not a sentencing order, the material is not reproduced here.*

##### 3.9.1.1.2 Who is subject to notification?

##### Offence committed on or after 1 May 2004

##### **SOA 2003 s.80<sup>1739</sup>: Persons becoming subject to notification requirements**

- s.80(1) - a person is subject to the notification requirements of this Part for the period set out in section 82 (“the notification period”) if–
- (a) he is convicted of an offence listed in Schedule 3;
  - (b) he is found not guilty of such an offence by reason of insanity;
  - (c) he is 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, he is cautioned in respect of such an offence.
- s.80(2) - a person for the time being subject to the notification requirements of this Part is referred to in this Part as a “*relevant offender*”.

##### Offence committed between 1 September 1997 and 1 May 2004

##### **SOA 2003 s.81<sup>1740</sup>: Persons formerly subject to Part 1 of the Sex Offenders Act 1997**

- s.81(1) - a person is, from the commencement of this Part until the end of the notification period, subject to the notification requirements of this Part if, before the commencement of this Part–
- (a) he was convicted of an offence listed in Schedule 3;

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<sup>1739</sup> Commencement: 1 May 2004, 2004/874 art.2.

<sup>1740</sup> Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

- (b) he was found not guilty of such an offence by reason of insanity;
- (c) he was 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, he was cautioned in respect of such an offence.

s.81(2) - subsection (1) does not apply if the notification period ended before the commencement of this Part.

### **Offence committed before 1 September 1997**

#### **SOA 2003 s.81<sup>1741</sup>: Persons formerly subject to Part 1 of the Sex Offenders Act 1997**

- s.81(3) - subsection (1)(a) does not apply to a conviction before 1st September 1997 unless, at the beginning of that day, the person—
- (a) had not been dealt with in respect of the offence;
  - (b) was serving a sentence of imprisonment, or was subject to a community order, in respect of the offence;
  - (c) was subject to supervision, having been released from prison after serving the whole or part of a sentence of imprisonment in respect of the offence; or
  - (d) was detained in a hospital or was subject to a guardianship order, following the conviction.
- s.81(4) - paragraphs (b) and (c) of subsection (1) do not apply to a finding made before 1st September 1997 unless, at the beginning of that day, the person—
- (a) had not been dealt with in respect of the finding; or
  - (b) was detained in a hospital, following the finding.
- s.81(5) - subsection (1)(d) does not apply to a caution given before 1st September 1997.
- s.81(6) - a person who would have been within subsection (3)(b) or (d) or (4)(b) but for the fact that at the beginning of 1st September 1997 he was unlawfully at large or absent without leave, on temporary release or leave of absence, or on bail pending an appeal, is to be treated as being within that provision.

### **Offender subject to restraining order/sex offender order on 30 April 2004**

#### **SOA 2003 s.81<sup>1742</sup>: Persons formerly subject to Part 1 of the Sex Offenders Act 1997**

- s.81(7) - where, immediately before the commencement of this Part, an order under a provision within subsection (8) was in force in respect of a person, the person is subject to the notification requirements of this Part from that commencement until the order is discharged or otherwise ceases to have effect.
- s.81(8) - the provisions are—
- (a) section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders);

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<sup>1741</sup> Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

<sup>1742</sup> Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

- (b) section 2 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders made in England and Wales);
- (c) section 2A of the Crime and Disorder Act 1998 (interim orders made in England and Wales);
- (d) section 20 of the Crime and Disorder Act 1998 (sex offender orders and interim orders made in Scotland);
- (e) Article 6 of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders made in Northern Ireland);
- (f) Article 6A of the Criminal Justice (Northern Ireland) Order 1998 (interim orders made in Northern Ireland).

### Sch.3

#### **SOA 2003 Sch.3<sup>1743</sup>: Sexual offences for the purposes of Part 2**

- 1 An offence under section 1 of the Sexual Offences Act 1956 (c. 69) (rape).
- 2 An offence under section 5 of that Act (intercourse with girl under 13).
- 3 An offence under section 6 of that Act (intercourse with girl under 16), if the offender was 20 or over.
- 4 An offence under section 10 of that Act (incest by a man), if the victim or (as the case may be) other party was under 18.
- 5 An offence under section 12 of that Act (buggery) if–
  - (a) the offender was 20 or over, and
  - (b) the victim or (as the case may be) other party was under 18.
- 6 An offence under section 13 of that Act (indecentcy between men) if–
  - (a) the offender was 20 or over, and
  - (b) the victim or (as the case may be) other party was under 18.
- 7 An offence under section 14 of that Act (indecent assault on a woman) if–
  - (a) the victim or (as the case may be) other party was under 18, or
  - (b) the offender, in respect of the offence or finding, is or has been–
    - (i) sentenced to imprisonment for a term of at least 30 months; or
    - (ii) admitted to a hospital subject to a restriction order.
- 8 An offence under section 15 of that Act (indecent assault on a man) if–
  - (a) the victim or (as the case may be) other party was under 18, or
  - (b) the offender, in respect of the offence or finding, is or has been–
    - (i) sentenced to imprisonment for a term of at least 30 months; or
    - (ii) admitted to a hospital subject to a restriction order.

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<sup>1743</sup> Commencement: 1 May 2004, SI 2004/874 art.2.

- 9 An offence under section 16 of that Act (assault with intent to commit buggery), if the victim or (as the case may be) other party was under 18.
- 10 An offence under section 28 of that Act (causing or encouraging the prostitution of, intercourse with or indecent assault on girl under 16).
- 11 An offence under section 1 of the Indecency with Children Act 1960 (c. 33) (indecent conduct towards young child).
- 12 An offence under section 54 of the Criminal Law Act 1977 (c. 45) (inciting girl under 16 to have incestuous sexual intercourse).
- 13 An offence under section 1 of the Protection of Children Act 1978 (c. 37) (indecent photographs of children), if the indecent photographs or pseudo-photographs showed persons under 16 and—
- (a) the conviction, finding or caution was before the commencement of this Part, or
  - (b) the offender—
    - (i) was 18 or over, or
    - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 14 An offence under section 170 of the Customs and Excise Management Act 1979 (c. 2) (penalty for fraudulent evasion of duty etc.) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (c. 36) (indecent or obscene articles), if the prohibited goods included indecent photographs of persons under 16 and—
- (a) the conviction, finding or caution was before the commencement of this Part, or
  - (b) the offender—
    - (i) was 18 or over, or
    - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 15 An offence under section 160 of the Criminal Justice Act 1988 (c. 33) (possession of indecent photograph of a child), if the indecent photographs or pseudo-photographs showed persons under 16 and—
- (a) the conviction, finding or caution was before the commencement of this Part, or
  - (b) the offender—
    - (i) was 18 or over, or
    - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 16 An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (c. 44) (abuse of position of trust), if the offender was 20 or over.
- 17 An offence under section 1 or 2 of this Act (rape, assault by penetration).
- 18 An offence under section 3 of this Act (sexual assault) if—
- (a) where the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months;
  - (b) in any other case—

- (i) the victim was under 18, or
- (ii) the offender, in respect of the offence or finding, is or has been–
  - (a) sentenced to a term of imprisonment,
  - (b) detained in a hospital, or
  - (c) made the subject of a community sentence of at least 12 months.

- 19 An offence under any of sections 4 to 6 of this Act (causing sexual activity without consent, rape of a child under 13, assault of a child under 13 by penetration).
- 20 An offence under section 7 of this Act (sexual assault of a child under 13) if the offender–
  - (a) was 18 or over, or
  - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 21 An offence under any of sections 8 to 12 of this Act (causing or inciting a child under 13 to engage in sexual activity, child sex offences committed by adults).
- 22 An offence under section 13 of this Act (child sex offences committed by children or young persons), if the offender is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.
- 23 An offence under section 14 of this Act (arranging or facilitating the commission of a child sex offence) if the offender–
  - (a) was 18 or over, or
  - (b) is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.
- 24 An offence under section 15 of this Act (meeting a child following sexual grooming etc).
- 25 An offence under any of sections 16 to 19 of this Act (abuse of a position of trust) if the offender, in respect of the offence, is or has been–
  - (a) sentenced to a term of imprisonment,
  - (b) detained in a hospital, or
  - (c) made the subject of a community sentence of at least 12 months.
- 26 An offence under section 25 or 26 of this Act (familial child sex offences) if the offender–
  - (a) was 18 or over, or
  - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 27 An offence under any of sections 30 to 37 of this Act (offences against persons with a mental disorder impeding choice, inducements etc. to persons with mental disorder).
- 28 An offence under any of sections 38 to 41 of this Act (care workers for persons with mental disorder) if–
  - (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;

- (b) in any other case, the offender, in respect of the offence or finding, is or has been–
    - (i) sentenced to a term of imprisonment,
    - (ii) detained in a hospital, or
    - (iii) made the subject of a community sentence of at least 12 months.
- 29 An offence under section 47 of this Act (paying for sexual services of a child) if the victim or (as the case may be) other party was under 16, and the offender–
  - (a) was 18 or over, or
  - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 29A An offence under section 48 of this Act (causing or inciting child prostitution or pornography) if the offender–
  - (a) was 18 or over, or
  - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 29B An offence under section 49 of this Act (controlling a child prostitute or a child involved in pornography) if the offender–
  - (a) was 18 or over, or
  - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 29C An offence under section 50 of this Act (arranging or facilitating child prostitution or pornography) if the offender–
  - (a) was 18 or over, or
  - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 30 An offence under section 61 of this Act (administering a substance with intent).
- 31 An offence under section 62 or 63 of this Act (committing an offence or trespassing, with intent to commit a sexual offence) if–
  - (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
  - (b) in any other case–
    - (i) the intended offence was an offence against a person under 18, or
    - (ii) the offender, in respect of the offence or finding, is or has been–
      - (a) sentenced to a term of imprisonment,
      - (b) detained in a hospital, or
      - (c) made the subject of a community sentence of at least 12 months.
- 32 An offence under section 64 or 65 of this Act (sex with an adult relative) if–
  - (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
  - (b) in any other case, the offender, in respect of the offence or finding, is or has been–



- (i) sentenced to a term of imprisonment, or
- (ii) detained in a hospital.

33 An offence under section 66 of this Act (exposure) if–

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case–
  - (i) the victim was under 18, or
  - (ii) the offender, in respect of the offence or finding, is or has been–
    - (a) sentenced to a term of imprisonment,
    - (b) detained in a hospital, or
    - (c) made the subject of a community sentence of at least 12 months.

34 An offence under section 67 of this Act (voyeurism) if–

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case–
  - (i) the victim was under 18, or
  - (ii) the offender, in respect of the offence or finding, is or has been–
    - (a) sentenced to a term of imprisonment,
    - (b) detained in a hospital, or
    - (c) made the subject of a community sentence of at least 12 months.

35 An offence under section 69 or 70 of this Act (intercourse with an animal, sexual penetration of a corpse) if–

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been–
  - (i) sentenced to a term of imprisonment, or
  - (ii) detained in a hospital.

35A An offence under section 63 of the Criminal Justice and Immigration Act 2008 (possession of extreme pornographic images) if the offender—

- (a) was 18 or over, and
- (b) is sentenced in respect of the offence to imprisonment for a term of at least 2 years.

35B An offence under section 62(1) of the Coroners and Justice Act 2009 (possession of prohibited images of children) if the offender—

- (a) was 18 or over, and
- (b) is sentenced in respect of the offence to imprisonment for a term of at least 2 years.

35C An offence under section 69 of the Serious Crime Act 2015 (possession of paedophile manual) if the offender—

- (a) was 18 or over, or
- (b) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.

### 3.9.1.1.3 How long is the period?

#### **SOA 2003 s.82<sup>1744</sup>: The notification period**

s.82(1) - the notification period for a person within section 80(1) or 81(1) is the period in the second column of the following Table opposite the description that applies to him.

Description of relevant offender	Notification period
A person who, in respect of the offence, is or has been sentenced to imprisonment for life, to imprisonment for public protection under section 225 of the Criminal Justice Act 2003, to an indeterminate custodial sentence under Article 13(4)(a) of the Criminal Justice (Northern Ireland) Order 2008 or to imprisonment for a term of 30 months or more	An indefinite period beginning with the relevant date
A person who, in respect of the offence, has been made the subject of an order under section 210F(1) of the Criminal Procedure (Scotland) Act 1995 (order for lifelong restriction)	An indefinite period beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital subject to a restriction order	An indefinite period beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of more than 6 months but less than 30 months	10 years beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of 6 months or less	7 years beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital without being subject to a restriction order	7 years beginning with that date
A person within section 80(1)(d)	2 years beginning with that date
A person in whose case an order for conditional discharge or, in Scotland, a community payback order imposing an offender supervision requirement, is made in respect of the offence	The period of conditional discharge or, in Scotland, the specified period for the offender supervision requirement
A person of any other description	5 years beginning with the relevant date

#### **Notification period halved for those under 18**

#### **SOA 2003 s.82<sup>1745</sup>: The notification period**

s.82(2) - where a person is under 18 on the relevant date, subsection (1) has effect as if for any reference to a period of 10 years, 7 years, 5 years or 2 years there were substituted a reference to one-half of that period.

s.82(6) - in this Part, “*relevant date*” means–

- (a) in the case of a person within section 80(1)(a) or 81(1)(a), the date of the conviction;

<sup>1744</sup> Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

<sup>1745</sup> Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

- (b) in the case of a person within section 80(1)(b) or (c) or 81(1)(b) or (c), the date of the finding;
- (c) in the case of a person within section 80(1)(d) or 81(1)(d), the date of the caution;
- (d) in the case of a person within section 81(7), the date which, for the purposes of Part 1 of the Sex Offenders Act 1997 (c. 51), was the relevant date in relation to that person.

## Two or more offences

### **SOA 2003 s.82<sup>1746</sup>: The notification period**

- s.82(3) - subsection (4) applies where a relevant offender within section 80(1)(a) or 81(1)(a) is or has been sentenced, in respect of two or more offences listed in Schedule 3–
  - (a) to consecutive terms of imprisonment; or
  - (b) to terms of imprisonment which are partly concurrent.
- s.82(4) - where this subsection applies, subsection (1) has effect as if the relevant offender were or had been sentenced, in respect of each of the offences, to a term of imprisonment which–
  - (a) in the case of consecutive terms, is equal to the aggregate of those terms;
  - (b) in the case of partly concurrent terms (X and Y, which overlap for a period Z), is equal to X plus Y minus Z.
- s.82(5) - where a relevant offender the subject of a finding within section 80(1)(c) or 81(1)(c) is subsequently tried for the offence, the notification period relating to the finding ends at the conclusion of the trial.

### **3.9.1.1.4 The obligations**

#### **Initial notification**

### **SOA 2003 s.83<sup>1747</sup>: Notification requirements: initial notification**

- s.83(1) - a relevant offender must, within the period of 3 days beginning with the relevant date (or, if later, the commencement of this Part), notify to the police the information set out in subsection (5).
- s.83(2) - subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 80(1) if–
  - (a) immediately before the conviction, finding or caution, he was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court (“the earlier event”),
  - (b) at that time, he had made a notification under subsection (1) in respect of the earlier event, and
  - (c) throughout the period referred to in subsection (1), he remains subject to the notification requirements as a result of the earlier event.

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<sup>1746</sup> Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

<sup>1747</sup> Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

- s.83(3) - subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 81(1) or an order within section 81(7) if the offender complied with section 2(1) of the Sex Offenders Act 1997 in respect of the conviction, finding, caution or order.
- s.83(4) - where a notification order is made in respect of a conviction, finding or caution, subsection (1) does not apply to the relevant offender in respect of the conviction, finding or caution if–
- (a) immediately before the order was made, he was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court (“the earlier event”),
  - (b) at that time, he had made a notification under subsection (1) in respect of the earlier event, and
  - (c) throughout the period referred to in subsection (1), he remains subject to the notification requirements as a result of the earlier event.
- s.83(5) - the information is–
- (a) the relevant offender’s date of birth;
  - (b) his national insurance number;
  - (c) his name on the relevant date and, where he used one or more other names on that date, each of those names;
  - (d) his home address on the relevant date;
  - (e) his name on the date on which notification is given and, where he uses one or more other names on that date, each of those names;
  - (f) his home address on the date on which notification is given;
  - (g) the address of any other premises in the United Kingdom at which, at the time the notification is given, he regularly resides or stays;
  - (h) any prescribed information.
- s.83(5A) - in subsection (5)(h) “*prescribed*” means prescribed by regulations made by the Secretary of State.
- s.83(6) - when determining the period for the purpose of subsection (1), there is to be disregarded any time when the relevant offender is–
- (a) remanded in or committed to custody by an order of a court or kept in service custody;
  - (b) serving a sentence of imprisonment or a term of service detention;
  - (c) detained in a hospital; or
  - (d) outside the United Kingdom.
- s.83(7) - in this Part, “*home address*” means, in relation to any person–
- (a) the address of his sole or main residence in the United Kingdom, or
  - (b) where he has no such residence, the address or 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.

## Changes

### **SOA 2003 s.84<sup>1748</sup>: Notification requirements: changes**

- s.84(1) - a relevant offender must, within the period of 3 days beginning with—
- (a) his using a name which has not been notified to the police under section 83(1), this subsection, or section 2 of the Sex Offenders Act 1997 (c. 51),
  - (b) any change of his home address,
  - (c) his having resided or stayed, for a qualifying period, at any premises in the United Kingdom the address of which has not been notified to the police under section 83(1), this subsection, or section 2 of the Sex Offenders Act 1997,
  - (ca) any prescribed change of circumstances, or
  - (d) his release from custody pursuant to an order of a court or from imprisonment, service detention or detention in a hospital,
- notify to the police that name, the new home address, the address of those premises, the prescribed details or (as the case may be) the fact that he has been released, and (in addition) the information set out in section 83(5).
- s.84(2) - a notification under subsection (1) may be given before the name is used, the change of home address or the prescribed change of circumstances occurs or the qualifying period ends, but in that case the relevant offender must also specify the date when the event is expected to occur.
- s.84(3) - if a notification is given in accordance with subsection (2) and the event to which it relates occurs more than 2 days before the date specified, the notification does not affect the duty imposed by subsection (1).
- s.84(4) - if a notification is given in accordance with subsection (2) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified—
- (a) the notification does not affect the duty imposed by subsection (1), and
  - (b) the relevant offender must, within the period of 6 days beginning with the date specified, notify to the police the fact that the event did not occur within the period of 3 days beginning with the date specified.
- s.84(5) - Section 83(6) applies to the determination of the period of 3 days mentioned in subsection (1) and the period of 6 days mentioned in subsection (4)(b), as it applies to the determination of the period mentioned in section 83(1).
- s.84(5A) - in this section—
- (a) “*prescribed change of circumstances*” means any change—
    - (i) occurring in relation to any matter in respect of which information is required to be notified by virtue of section 83(5)(h), and
    - (ii) of a description prescribed by regulations made by the Secretary of State;
  - (b) “*the prescribed details*”, in relation to a prescribed change of circumstances, means such details of the change as may be so prescribed.

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<sup>1748</sup> Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

- s.84(6) - in this section, “*qualifying period*” means—
- (a) a period of 7 days, or
  - (b) two or more periods, in any period of 12 months, which taken together amount to 7 days.

### Periodic notification

#### **SOA 2003 s.85<sup>1749</sup>: Notification requirements: periodic notification**

- s.85(1) - a relevant offender must, within the applicable period after each event within subsection (2), notify to the police the information set out in section 83(5), unless within that period he has given a notification under section 84(1).
- s.85(2) - the events are—
- (a) the commencement of this Part (but only in the case of a person who is a relevant offender from that commencement);
  - (b) any notification given by the relevant offender under section 83(1) or 84(1); and
  - (c) any notification given by him under subsection (1).
- s.85(3) - where the applicable period would (apart from this subsection) end whilst subsection (4) applies to the relevant offender, that period is to be treated as continuing until the end of the period of 3 days beginning when subsection (4) first ceases to apply to him.
- s.85(4) - this subsection applies to the relevant offender if he is—
- (a) remanded in or committed to custody by an order of a court or kept in service custody,
  - (b) serving a sentence of imprisonment or a term of service detention,
  - (c) detained in a hospital, or
  - (d) outside the United Kingdom.
- s.85(5) - in this section, “*the applicable period*” means—
- (a) in any case where subsection (6) applies to the relevant offender, such period as may be prescribed by regulations made by the Secretary of State, and
  - (b) in any other case, the period of one year.
- s.85(6) - this subsection applies to the relevant offender if the last home address notified by him under section 83(1) or 84(1) or subsection (1) was the address or location of such a place as is mentioned in section 83(7)(b).

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<sup>1749</sup> Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

## Foreign travel

### **SOA 2003 s.86<sup>1750</sup>: Notification requirements: travel outside the United Kingdom**

- s.86(1) - the Secretary of State may by regulations make provision requiring relevant offenders who leave the United Kingdom, or any description of such offenders–
- (a) to give in accordance with the regulations, before they leave, a notification under subsection (2);
  - (b) if they subsequently return to the United Kingdom, to give in accordance with the regulations a notification under subsection (3).
- s.86(2) - a notification under this subsection must disclose–
- (a) the date on which the offender will leave the United Kingdom;
  - (b) the country (or, if there is more than one, the first country) to which he will travel and his point of arrival (determined in accordance with the regulations) in that country;
  - (c) any other information prescribed by the regulations which the offender holds about his departure from or return to the United Kingdom or his movements while outside the United Kingdom.
- s.86(3) - a notification under this subsection must disclose any information prescribed by the regulations about the offender's return to the United Kingdom.

## Method of notification

### **SOA 2003 s.87<sup>1751</sup>: Method of notification and related matters**

- s.87(1) - a person gives a notification under section 83(1), 84(1) or 85(1) by–
- (a) attending at such police station in his local police area as the Secretary of State may by regulations prescribe or, if there is more than one, at any of them, and
  - (b) giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station.
- s.87(2) - a person giving a notification under section 84(1)–
- (a) in relation to a prospective change of home address, or
  - (b) in relation to premises referred to in subsection (1)(c) of that section,
- may give the notification at a police station that would fall within subsection (1) above if the change in home address had already occurred or (as the case may be) if the address of those premises were his home address.
- s.87(3) - any notification under this section must be acknowledged; and an acknowledgment under this subsection must be in writing, and in such form as the Secretary of State may direct.

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<sup>1750</sup> Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

<sup>1751</sup> Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

- s.87(4) - where a notification is given under section 83(1), 84(1) or 85(1), the relevant offender must, if requested to do so by the police officer or person referred to in subsection (1)(b), allow the officer or person to–
- (a) take his fingerprints,
  - (b) photograph any part of him, or
  - (c) do both these things.
- s.87(5) - the power in subsection (4) is exercisable for the purpose of verifying the identity of the relevant offender.

**SOA 2003 s.88<sup>1752</sup>: Section 87: interpretation**

- s.88(1) - subsections (2) to (4) apply for the purposes of section 87.
- s.88(2) - “*Photograph*” includes any process by means of which an image may be produced.
- s.88(3) - “*Local police area*” means, in relation to a person–
- (a) the police area in which his home address is situated;
  - (b) in the absence of a home address, the police area in which the home address last notified is situated;
  - (c) in the absence of a home address and of any such notification, the police area in which the court which last dealt with the person in a way mentioned in subsection (4) is situated.
- s.88(4) - the ways are–
- (a) dealing with a person in respect of an offence listed in Schedule 3 or a finding in relation to such an offence;
  - (b) dealing with a person in respect of an offence under section 128 or a finding in relation to such an offence;
  - (c) making, in respect of a person, a notification order, interim notification order, sexual harm prevention order, interim sexual harm prevention order, sexual offences prevention order or interim sexual offences prevention order;
  - (d) making, in respect of a person, an order under section 2, 2A or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders and interim orders made in England and Wales or Scotland) or Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders and interim orders made in Northern Ireland);
- and in paragraphs (a) and (b), “*finding*” in relation to an offence means a finding of not guilty of the offence by reason of insanity or a finding that the person was under a disability and did the act or omission charged against him in respect of the offence.
- s.88(5) - subsection (3) applies as if Northern Ireland were a police area.

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<sup>1752</sup> Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.



### 3.9.1.1.5 Young offenders: Parental directions

#### Discretion to make parental directions order

#### **SOA 2003 s.89<sup>1753</sup>: Young offenders: parental directions**

s.89(1) - where a person within the first column of the following Table (“the young offender”) is under 18 (or, in Scotland, 16) when he is before the court referred to in the second column of the Table opposite the description that applies to him, that court may direct that subsection (2) applies in respect of an individual (“the parent”) having parental responsibility for (or, in Scotland, parental responsibilities in relation to) the young offender.

Description of person	Court which may make the direction
A relevant offender within section 80(1)(a) to (c) or 81(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A relevant offender within section 129(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A person who is the subject of a notification order, interim notification order, [sexual harm prevention order, interim sexual harm prevention order,] sexual offences prevention order or interim sexual offences prevention order	The court which makes the order
A relevant offender who is the defendant to an application under subsection (4) (or, in Scotland, the subject of an application under subsection (5))	The court which hears the application

s.89(2) - where this subsection applies–

- (a) the obligations that would (apart from this subsection) be imposed by or under sections 83 to 86 on the young offender are to be treated instead as obligations on the parent, and
- (b) the parent must ensure that the young offender attends at the police station with him, when a notification is being given.

s.89(3) - a direction under subsection (1) takes immediate effect and applies–

- (a) until the young offender attains the age of 18 (or, where a court in Scotland gives the direction, 16); or
- (b) for such shorter period as the court may, at the time the direction is given, direct.

s.89(4) - a chief officer of police may, by complaint to any magistrates’ court whose commission area includes any part of his police area, apply for a direction under subsection (1) in respect of a relevant offender (“the defendant”)–

- (a) who resides in his police area, or who the chief officer believes is in or is intending to come to his police area, and
- (b) who the chief officer believes is under 18.

<sup>1753</sup> Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

## Variation, renewal and discharge

### **SOA 2003 s.90<sup>1754</sup>: Parental directions: variations, renewals and discharges**

- s.90(1) - a person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a direction under section 89(1).
- s.90(2) - the persons are–
- (a) the young offender;
  - (b) the parent;
  - (c) the chief officer of police for the area in which the young offender resides;
  - (d) a chief officer of police who believes that the young offender is in, or is intending to come to, his police area;
  - (f) where the direction was made on an application under section 89(4), the chief officer of police who made the application;
  - (g) where the direction was made on an application under section 89(5), the chief constable who made the application.
- s.90(3) - an application under subsection (1) may be made–
- (a) where the appropriate court is the Crown Court (or in Scotland a criminal court), in accordance with rules of court;
  - (b) in any other case, by complaint (or, in Scotland, by summary application).
- s.90(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 direction, that the court considers appropriate.
- s.90(5) - in this section, the “*appropriate court*” means–
- (a) where the Court of Appeal made the order, the Crown Court;
  - (b) in any other case, the court that made the direction under section 89(1).

#### **3.9.1.1.6 Reviews of indefinite notification requirements**

*Note: The following provisions were introduced as a result of the decision in R. (F) v Secretary of State [2010] UKSC 17. The new provisions were unsuccessfully challenged in R. (Prothero) v Secretary of State [2013] EWHC 2830.*

#### **England and Wales**

*Note: Sexual Offences Act 2003 (Remedial) Order 2012 (SI 2012/1883) art.3 inserted ss.91A-91F into the 2003 Act on 30 July 2012.*

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<sup>1754</sup> Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

## To whom does the review procedure apply?

### **SOA 2003 s.91A<sup>1755</sup>: Review of indefinite notification requirements: qualifying relevant offender**

- s.91A(1) - a qualifying relevant offender may apply to the relevant chief officer of police for a determination that the qualifying relevant offender is no longer subject to the indefinite notification requirements (“an application for review”).
- s.91A(2) - a qualifying relevant offender means a relevant offender who, on the date on which he makes an application for review, is—
- (a) subject to the indefinite notification requirements; and
  - (b) not subject to a sexual harm prevention order under section 103A, an interim sexual harm prevention order under section 103F, a sexual offences prevention order under section 104(1) or an interim sexual offences prevention order under section 109(3).
- s.91A(3) - the “*indefinite notification requirements*” mean the notification requirements of this Part for an indefinite period by virtue of—
- (a) section 80(1);
  - (b) section 81(1); or
  - (c) a notification order made under section 97(5).
- s.91A(4) - in this Part, the “*relevant chief officer of police*” means, subject to subsection (5), the chief officer of police for the police area in which a qualifying relevant offender is recorded as residing or staying in the most recent notification given by him under section 84(1) or 85(1).
- s.91A(5) - subsection (6) applies if a qualifying relevant offender is recorded as residing or staying at more than one address in the most recent notification given by him under section 84(1) or 85(1).
- s.91A(6) - if this subsection applies, the “*relevant chief officer of police*” means the chief officer of police for the police area in which, during the relevant period, the qualifying relevant offender has resided or stayed on a number of days which equals or exceeds the number of days on which he has resided or stayed in any other police area.
- s.91A(7) - in subsection (6), “*the relevant period*” means the period of 12 months ending on the day on which the qualifying relevant offender makes an application for review.

## Applications

### **SOA 2003 s.91B<sup>1756</sup>: Review of indefinite notification requirements: application for review and qualifying dates**

- s.91B(1) - an application for review must be in writing and may be made on or after the qualifying date or, as the case may be, the further qualifying date.

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<sup>1755</sup> Commencement: 30 July 2012, SI 2012/1883 art.3.

<sup>1756</sup> Commencement: 30 July 2012, SI 2012/1883 art.3.

- s.91B(2) - subject to subsection (7), the qualifying date is—
- (a) where the qualifying relevant offender was 18 or over on the relevant date, the day after the end of the 15 year period beginning with the day on which the qualifying relevant offender gives the relevant notification; or
  - (b) where the qualifying relevant offender was under 18 on the relevant date, the day after the end of the 8 year period beginning with the day on which the qualifying relevant offender gives the relevant notification.
- s.91B(3) - subject to subsections (4) to (6), the further qualifying date is the day after the end of the 8 year period beginning with the day on which the relevant chief officer of police makes a determination under section 91C to require a qualifying relevant offender to remain subject to the indefinite notification requirements.
- s.91B(4) - subsection (5) applies if the relevant chief officer of police, when making a determination under section 91C to require a qualifying relevant offender to remain subject to the indefinite notification requirements, considers that the risk of sexual harm posed by a qualifying relevant offender is sufficient to justify a continuation of those requirements after the end of the 8 year period beginning with the day on which the determination is made.
- s.91B(5) - if this subsection applies, the relevant chief officer of police may make a determination to require a qualifying relevant offender to remain subject to the indefinite notification requirements for a period which may be no longer than the 15 year period beginning with the day on which the determination is made.
- s.91B(6) - if subsection (5) applies, the further qualifying date is the day after the end of the period determined under that subsection.
- s.91B(7) - the qualifying date must not be earlier than the expiry of the fixed period specified in a notification continuation order made in relation to a qualifying relevant offender in accordance with sections 88A to 88I.
- s.91B(8) - the relevant chief officer of police within 14 days of receipt of an application for review—
- (a) must give an acknowledgment of receipt of the application to the qualifying relevant offender, and
  - (b) may notify a responsible body that the application has been made.
- s.91B(9) - where a responsible body is notified of the application for review under subsection (8)(b) and holds information which it considers to be relevant to the application, the responsible body must give such information to the relevant chief officer of police within 28 days of receipt of the notification.
- s.91B(10) - in this section “*the relevant notification*” means the first notification which the relevant offender gives under section 83, 84 or 85 when he is first released after—
- (a) being remanded in or committed to custody by an order of a court in relation to the conviction for the offence giving rise to the indefinite notification requirements;
  - (b) serving a sentence of imprisonment or a term of service detention in relation to that conviction;
  - (c) being detained in hospital in relation to that conviction.
- s.91B(11) - for the purposes of this Part—
- (a) “*responsible body*” means—

- (i) the probation trust for any area that includes any part of the police area concerned,
  - (ii) in relation to any part of the police area concerned for which there is no probation trust, each provider of probation services which has been identified as a relevant provider of probation services for the purposes of section 325 of the Criminal Justice Act 2003 by arrangements under section 3 of the Offender Management Act 2007,
  - (iii) the Minister of the Crown exercising functions in relation to prisons (and for this purpose “*prison*” has the same meaning as in the Prison Act 1952), and
  - (iv) each body mentioned in section 325(6) of the Criminal Justice Act 2003, but as if the references in that subsection to the relevant area were references to the police area concerned;
- (b) “*risk of sexual harm*” means a risk of physical or psychological harm to the public in the United Kingdom or any particular members of the public caused by the qualifying relevant offender committing one or more of the offences listed in Schedule 3.

### Determination of application for review

#### **SOA 2003 s.91C<sup>1757</sup>: Review of indefinite notification requirements: determination of application for review**

- s.91C(1) - the relevant chief officer of police must, within 6 weeks of the latest date on which any body to which a notification has been given under section 91B(8)(b) may give information under section 91B(9)—
- (a) determine the application for review, and
  - (b) give notice of the determination to the qualifying relevant offender.
- s.91C(2) - for the purposes of the determination of an application for review under this section, a qualifying relevant offender must satisfy the relevant chief officer of police that it is not necessary for the purpose of protecting the public or any particular members of the public from sexual harm for the qualifying relevant offender to remain subject to the indefinite notification requirements.
- s.91C(3) - if the relevant chief officer of police determines under this section that the qualifying relevant offender should remain subject to the indefinite notification requirements, the notice of the determination must:
- (a) contain a statement of reasons for the determination, and
  - (b) inform the qualifying relevant offender that he may appeal the determination in accordance with section 91E.
- s.91C(4) If the relevant chief officer of police determines under this section that a qualifying relevant offender should not remain subject to the indefinite notification requirements, the qualifying relevant offender ceases to be subject to the indefinite notification requirements on the date of receipt of the notice of determination.
- (5) The Secretary of State may by order amend the period in subsection (1).

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<sup>1757</sup> Commencement: 30 July 2012, SI 2012/1883 art.3.

**SOA 2003 s.91D<sup>1758</sup>: Review of indefinite notification requirements: factors applying to determination under section 91C**

- s.91D(1) - in determining an application for review under section 91C, the relevant chief officer of police must—
- (a) have regard to information (if any) received from a responsible body;
  - (b) consider the risk of sexual harm posed by the qualifying relevant offender and the effect of a continuation of the indefinite notification requirements on the offender; and
  - (c) take into account the matters listed in subsection (2).
- s.91D(2) - the matters are—
- (a) the seriousness of the offence in relation to which the qualifying relevant offender became subject to the indefinite notification requirements;
  - (b) the period of time which has elapsed since the qualifying relevant offender committed the offence (or other offences);
  - (c) where the qualifying relevant offender falls within section 81(1), whether the qualifying relevant offender committed any offence under section 3 of the Sex Offenders Act 1997;
  - (d) whether the qualifying relevant offender has committed any offence under section 91;
  - (e) the age of the qualifying relevant offender at the qualifying date or further qualifying date;
  - (f) the age of the qualifying relevant offender at the time the offence referred to in paragraph (a) was committed;
  - (g) the age of any person who was a victim of any such offence (where applicable) and the difference in age between the victim and the qualifying relevant offender at the time the offence was committed;
  - (h) any assessment of the risk posed by the qualifying relevant offender which has been made by a responsible body under the arrangements for managing and assessing risk established under section 325 of the Criminal Justice Act 2003;
  - (i) any submission or evidence from a victim of the offence giving rise to the indefinite notification requirements;
  - (j) any convictions or findings made by a court (including by a court in Scotland, Northern Ireland or countries outside the United Kingdom) in respect of the qualifying relevant offender for any offence listed in Schedule 3 other than the one referred to in paragraph (a);
  - (k) any caution which the qualifying relevant offender has received for an offence (including for an offence in Northern Ireland or countries outside the United Kingdom) which is listed in Schedule 3;
  - (l) any convictions or findings made by a court in Scotland, Northern Ireland or countries outside the United Kingdom in respect of the qualifying relevant offender for any offence listed in Schedule 5 where the behaviour of the qualifying relevant offender since the date of such conviction or finding indicates a risk of sexual harm;

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<sup>1758</sup> Commencement: 30 July 2012, SI 2012/1883 art.3.

- (m) any other submission or evidence of the risk of sexual harm posed by the qualifying relevant offender;
- (n) any evidence presented by or on behalf of the qualifying relevant offender which demonstrates that the qualifying relevant offender does not pose a risk of sexual harm; and
- (o) any other matter which the relevant chief officer of police considers to be appropriate.

s.91D(3) - in this section, a reference to a conviction, finding or caution for an offence committed in a country outside the United Kingdom means a conviction, finding or caution for an act which—

- (a) constituted an offence under the law in force in the country concerned, and
- (b) would have constituted an offence listed in Schedule 3 or Schedule 5 if it had been done in any part of the United Kingdom.

### Appeals

#### **SOA 2003 s.91E<sup>1759</sup>: Review of indefinite notification requirements: appeals**

s.91E(1) - a qualifying relevant offender may appeal against a determination of the relevant chief officer of police under section 91C.

s.91E(2) - an appeal under this section may be made by complaint to a magistrates' court within the period of 21 days beginning with the day of receipt of the notice of determination.

s.91E(3) - a qualifying relevant offender may appeal under this section to any magistrates' court in a local justice area which includes any part of the police area for which the chief officer is the relevant chief officer of police.

s.91E(4) - if the court makes an order that a qualifying relevant offender should not remain subject to the indefinite notification requirements, the qualifying relevant offender ceases to be subject to the indefinite notification requirements on the date of the order.

### Guidance issued by Secretary of State

#### **SOA 2003 s.91F<sup>1760</sup>: Review of indefinite notification requirements: guidance**

s.91F(1) - the Secretary of State must issue guidance to relevant chief officers of police in relation to the determination by them of applications made under section 91B.

s.91F(2) - the Secretary of State may, from time to time, revise the guidance issued under subsection (1).

s.91F(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.

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<sup>1759</sup> Commencement: 30 July 2012, SI 2012/1883 art.3.

<sup>1760</sup> Commencement: 30 July 2012, SI 2012/1883 art.3.

### 3.9.1.1.7 Breach

#### **SOA 2003 s.91<sup>1761</sup>: Offences relating to notification**

##### **Offences**

- s.91(1) - a person commits an offence if he–
- (a) fails, without reasonable excuse, to comply with section 83(1), 84(1), 84(4)(b), 85(1), 87(4) or 89(2)(b) or any requirement imposed by regulations made under section 86(1); or
  - (b) notifies to the police, in purported compliance with section 83(1), 84(1) or 85(1) or any requirement imposed by regulations made under section 86(1), any information which he knows to be false.

##### **Penalties**

- s.91(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.

##### **Interpretation/Clarification**

- s.91(3) - a person commits an offence under paragraph (a) of subsection (1) on the day on which he first fails, without reasonable excuse, to comply with section 83(1), 84(1) or 85(1) or a requirement imposed by regulations made under section 86(1), and continues to commit it throughout any period during which the failure continues; but a person must not be prosecuted under subsection (1) more than once in respect of the same failure.

### 3.9.1.1.8 Certificates of conviction of offence under Sch.3

#### **SOA 2003 s.92<sup>1762</sup>: Certificates for purposes of Part 2**

- s.92(1) - subsection (2) applies where on any date a person is–
- (a) convicted of an offence listed in Schedule 3;
  - (b) found not guilty of such an offence by reason of insanity; or
  - (c) found to be under a disability and to have done the act charged against him in respect of such an offence.
- s.92(2) - if the court by or before which the person is so convicted or found–
- (a) states in open court–
    - (i) that on that date he has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged against him, and
    - (ii) that the offence in question is an offence listed in Schedule 3, and

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<sup>1761</sup> Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

<sup>1762</sup> Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.



- (b) certifies those facts, whether at the time or subsequently, the certificate is, for the purposes of this Part, evidence (or, in Scotland, sufficient evidence) of those facts.
- s.92(3) - subsection (4) applies where on any date a person is, in England and Wales or Northern Ireland, cautioned in respect of an offence listed in Schedule 3.
- s.92(4) - if the constable—
  - (a) informs the person that he has been cautioned on that date and that the offence in question is an offence listed in Schedule 3, and
  - (b) certifies those facts, whether at the time or subsequently, in such form as the Secretary of State may by order prescribe, the certificate is, for the purposes of this Part, evidence (or, in Scotland, sufficient evidence) of those facts.
- s.92(4) - proceedings for an offence under this section may be commenced in any court having jurisdiction in any place where the person charged with the offence resides or is found.

### 3.9.1.2. Terrorism cases

#### 3.9.1.2.1 Introduction

#### **CTA 2008 s.40<sup>1763</sup>: Scheme of this Part**

- s.40(1) - this Part imposes notification requirements on persons dealt with in respect of certain offences—
  - (a) sections 41 to 43 specify the offences to which this Part applies;
  - (b) sections 44 to 46 make provision as to the sentences or orders triggering the notification requirements;
  - (c) sections 47 to 52 contain the notification requirements; and
  - (d) section 53 makes provision as to the period for which the requirements apply.
- s.40(2) - this Part also provides for—
  - (a) orders applying the notification requirements to persons dealt with outside the United Kingdom for corresponding foreign offences (see section 57 and Schedule 4); and
  - (b) orders imposing restrictions on travel outside the United Kingdom on persons subject to the notification requirements (see section 58 and Schedule 5).
- s.40(3) - Schedule 6 provides for the application of this Part to service offences and related matters.

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<sup>1763</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

### 3.9.1.2.2 Who is liable to notification?

#### Trigger offences

#### **CTA 2008 s.41<sup>1764</sup>: Offences to which this Part applies: terrorism offences**

- s.41(1) - this Part applies to—
- (a) an offence under any of the following provisions of the Terrorism Act 2000 (c. 11)—
    - section 11 or 12 (offences relating to proscribed organisations),
    - sections 15 to 18 (offences relating to terrorist property),
    - section 38B (failure to disclose information about acts of terrorism),
    - section 54 (weapons training),
    - sections 56 to 61 (directing terrorism, possessing things and collecting information for the purposes of terrorism and inciting terrorism outside the United Kingdom);
  - (b) an offence in respect of which there is jurisdiction by virtue of any of sections 62 to 63D of that Act (extra-territorial jurisdiction in respect of certain offences committed outside the United Kingdom for the purposes of terrorism etc);
  - (c) an offence under section 113 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (use of noxious substances or things);
  - (d) an offence under any of the following provisions of Part 1 of the Terrorism Act 2006 (c. 11)—
    - sections 1 and 2 (encouragement of terrorism),
    - sections 5, 6 and 8 (preparation and training for terrorism),
    - sections 9, 10 and 11 (offences relating to radioactive devices and material and nuclear facilities);
  - (e) an offence in respect of which there is jurisdiction by virtue of section 17 of that Act (extra-territorial jurisdiction in respect of certain offences committed outside the United Kingdom for the purposes of terrorism etc).
- s.41(2) - this Part also applies to any ancillary offence in relation to an offence listed in subsection (1).
- s.41(3) - the Secretary of State may by order amend subsection (1).
- s.41(4) - any such order is subject to affirmative resolution procedure.
- s.41(5) - an order adding an offence applies only in relation to offences dealt with after the order comes into force.
- s.41(6) - an order removing an offence has effect in relation to offences whenever dealt with, whether before or after the order comes into force.

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<sup>1764</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

s.41(7) - where an offence is removed from the list, a person subject to the notification requirements by reason of that offence being listed (and who is not otherwise subject to those requirements) ceases to be subject to them when the order comes into force.

**CTA 2008 s.42<sup>1765</sup>: Offences to which this Part applies: offences having a terrorist connection**

s.42(1) - this Part applies to—

- (a) an offence as to which a court has determined under section 30 (sentences for offences with a terrorist connection: England and Wales) that the offence has a terrorist connection, and
- (b) an offence in relation to which section 31 applies (sentences for offences with terrorist connection: Scotland).

s.42(2) - a person to whom the notification requirements apply by virtue of such a determination as is mentioned in subsection (1)(a) may appeal against it to the same court, and subject to the same conditions, as an appeal against sentence.

s.42(3) - if the determination is set aside on appeal, the notification requirements are treated as never having applied to that person in respect of the offence.

s.42(4) - where an order is made under section 33 removing an offence from the list in Schedule 2, a person subject to the notification requirements by reason of that offence being so listed (and who is not otherwise subject to those requirements) ceases to be subject to them when the order comes into force.

**CTA 2008 s.43<sup>1766</sup>: Offences dealt with before commencement**

s.43(1) - this Part applies to a person dealt with for an offence before the commencement of this Part only if—

- (a) the offence is on the commencement of this Part within section 41(1) or (2) (offences to which this Part applies: terrorism offences), and
- (b) immediately before the commencement of this Part the person—
  - (i) is imprisoned or detained in pursuance of the sentence passed or order made in respect of the offence,
  - (ii) would be so imprisoned or detained but for being unlawfully at large, absent without leave, on temporary leave or leave of absence, or on bail pending an appeal, or
  - (iii) is on licence, having served the custodial part of a sentence of imprisonment in respect of the offence.

s.43(2) - in relation to a person dealt with for an offence before the commencement of this Part—

- (a) any reference in this Part to a sentence or order under a specified statutory provision includes a sentence or order under any corresponding earlier statutory provision;

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<sup>1765</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

<sup>1766</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- (b) any reference in this Part to a person being or having been found to be under a disability and to have done the act charged against them in respect of an offence includes a reference to their being or having been found—
  - (i) unfit to be tried for the offence,
  - (ii) insane so that their trial for the offence cannot or could not proceed, or
  - (iii) unfit to be tried and to have done the act charged against them in respect of the offence.

### To whom do the notification requirements apply?

#### **CTA 2008 s.44<sup>1767</sup>: Persons to whom the notification requirements apply**

s.44 - the notification requirements apply to a person who—

- (a) is aged 16 or over at the time of being dealt with for an offence to which this Part applies, and
- (b) is made subject in respect of the offence to a sentence or order within section 45 (sentences or orders triggering notification requirements).

#### **CTA 2008 s.45<sup>1768</sup>: Sentences or orders triggering notification requirements**

s.45(1) The notification requirements apply to a person who in England and Wales—

- (a) has been convicted of an offence to which this Part applies and sentenced in respect of the offence to—
  - (i) imprisonment or custody for life,
  - (ii) imprisonment or detention in a young offender institution for a term of 12 months or more,
  - (iii) imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (c. 44),
  - (iv) detention for life or for a period of 12 months or more under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (offenders under 18 convicted of certain serious offences),
  - (v) a detention and training order for a term of 12 months or more under section 100 of that Act (offenders under age of 18),
  - (vi) detention for public protection under section 226 of the Criminal Justice Act 2003 (serious offences committed by persons under 18), or
  - (via) detention under section 226B of that Act (extended sentence of detention for certain dangerous offenders aged under 18),
  - (vii) detention during Her Majesty's pleasure; or
- (b) has been—
  - (i) convicted of an offence to which this Part applies carrying a maximum term of imprisonment of 12 months or more,
  - (ii) found not guilty by reason of insanity of such an offence, or

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<sup>1767</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

<sup>1768</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- (iii) found to be under a disability and to have done the act charged against them in respect of such an offence,  
and made subject in respect of the offence to a hospital order.

s.45(2) - the notification requirements apply to a person who in Scotland—

- (a) has been convicted of an offence to which this Part applies and sentenced in respect of the offence to—
  - (i) imprisonment or detention in a young offenders institution for life,
  - (ii) imprisonment or detention in a young offenders institution for a term of 12 months or more,
  - (iii) an order for lifelong restriction under section 210F of the Criminal Procedure (Scotland) Act 1995 (c. 46),
  - (iv) detention without limit of time under section 205(2) of that Act (punishment for murder for offenders under 18), or
  - (v) detention for a period of 12 months or more under section 208 of that Act (detention of children convicted on indictment); or
- (b) has been—
  - (i) convicted of an offence to which this Part applies carrying a maximum term of imprisonment of 12 months or more,
  - (ii) acquitted of such an offence by reason of the special defence set out in section 51A of that Act (criminal responsibility of persons with mental disorder), or
  - (iii) found, following an examination of facts under section 55 of that Act (examination of facts where person unfit for trial) in relation to such an offence, to have done the act or omission constituting the offence,  
and made subject in respect of the offence to a hospital order.

s.45(3) - the notification requirements apply to a person who in Northern Ireland—

- (a) has been convicted of an offence to which this Part applies and sentenced in respect of the offence to—
  - (i) imprisonment for life,
  - (ii) imprisonment or detention in a young offenders centre for a term of 12 months or more,
  - (iii) an indeterminate custodial sentence under Article 13 of the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)),
  - (iv) an extended custodial sentence under Article 14(5) of that Order (offenders under 21 convicted of certain offences),
  - (v) a juvenile justice centre order under Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) for a period of 12 months or more,
  - (vi) detention during the pleasure of the [Minister in charge of the Department of Justice]<sup>4</sup> under Article 45(1) of that Order (punishment of certain grave crimes committed by a child), or
  - (vii) detention under Article 45(2) of that Order for a period of 12 months or more (other serious offences committed by a child); or

- (b) has been—
  - (i) convicted of an offence to which this Part applies carrying a maximum term of imprisonment of 12 months or more,
  - (ii) found not guilty by reason of insanity of such an offence, or
  - (iii) found to be unfit to be tried and to have done the act charged against them in respect of such an offence,and made subject in respect of the offence to a hospital order.

- s.45(4) - the references in this section to an offence carrying a maximum term of imprisonment of 12 months or more—
  - (a) are to an offence carrying such a maximum term in the case of a person who has attained the age of 21 (18 in relation to England and Wales), and
  - (b) include an offence carrying in the case of such a person a maximum term of life imprisonment and an offence for which in the case of such a person the sentence is fixed by law as life imprisonment.
- s.45(5) - in relation to any time before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (c. 43) subsection (4)(a) above has effect with the omission of the words “(18 in relation to England and Wales)”.

#### **Power to amend sentences etc. to which notification applies**

#### ***CTA 2008 s.46<sup>1769</sup>: Power to amend specified terms or periods of imprisonment or detention***

- s.46(1) - the Secretary of State may by order amend the provisions of section 45 referring to a specified term or period of imprisonment or detention.
- s.46(2) - an order reducing a specified term or period has effect only in relation to persons dealt with after the order comes into force.
- s.46(3) - where an order increases a specified term or period—
  - (a) it has effect in relation to persons dealt with at any time, whether before or after the order comes into force, and
  - (b) a person who would not have been subject to the notification requirements if the order had been in force when the offence was dealt with (and who is not otherwise subject to those requirements) ceases to be subject to the requirements when the order comes into force.
- s.46(4) - an order under this section is subject to affirmative resolution procedure.

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<sup>1769</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

### 3.9.1.2.3 The obligations under the regime

#### Initial notification

#### **CTA 2008 s.47<sup>1770</sup>: Initial notification**

- s.47(1) - a person to whom the notification requirements apply must notify the following information to the police within the period of three days beginning with the day on which the person is dealt with in respect of the offence in question.
- s.47(2) - the information required is—
- (a) date of birth;
  - (b) national insurance number;
  - (c) name on the date on which the person was dealt with in respect of the offence (where the person used one or more other names on that date, each of those names);
  - (d) home address on that date;
  - (e) name on the date on which notification is made (where the person uses one or more other names on that date, each of those names);
  - (f) home address on the date on which notification is made;
  - (g) address of any other premises in the United Kingdom at which, at the time the notification is made, the person regularly resides or stays;
  - (h) any prescribed information.
- s.47(3) - in subsection (2) “*prescribed*” means prescribed by regulations made by the Secretary of State.  
Such regulations are subject to affirmative resolution procedure.
- s.47(4) - in determining the period within which notification is to be made under this section, there shall be disregarded any time when the person is—
- (a) remanded in or committed to custody by an order of a court,
  - (b) serving a sentence of imprisonment or detention,
  - (c) detained in a hospital, or
  - (d) detained under the Immigration Acts.
- s.47(5) - this section does not apply to a person who—
- (a) is subject to the notification requirements in respect of another offence (and does not cease to be so subject before the end of the period within which notification is to be made), and
  - (b) has complied with this section in respect of that offence.

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<sup>1770</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- s.47(6) - in the application of this section to a person dealt with for an offence before the commencement of this Part who, immediately before commencement—
- (a) would be imprisoned or detained in respect of the offence but for being unlawfully at large, absent without leave, on temporary leave or leave of absence, or on bail pending an appeal, or
  - (b) is on licence, having served the custodial part of a sentence of imprisonment in respect of the offence,
- the reference in subsection (1) to the day on which the person is dealt with in respect of the offence shall be read as a reference to the commencement of this Part.

### Changes to circumstances

#### **CTA 2008 s.48<sup>1771</sup>: Notification of changes**

- s.48(1) - a person to whom the notification requirements apply who uses a name that has not previously been notified to the police must notify the police of that name.
- s.48(2) - if there is a change of the home address of a person to whom the notification requirements apply, the person must notify the police of the new home address.
- s.48(3) - a person to whom the notification requirements apply who resides or stays at premises in the United Kingdom the address of which has previously not been notified to the police—
- (a) for a period of 7 days, or
  - (b) for two or more periods, in any period of 12 months, that taken together amount to 7 days,
- must notify the police of the address of those premises.
- s.48(4) - a person to whom the notification requirements apply who is released—
- (a) from custody pursuant to an order of a court,
  - (b) from imprisonment or detention pursuant to a sentence of a court,
  - (c) from detention in a hospital, or
  - (d) from detention under the Immigration Acts,
- must notify the police of that fact.
- This does not apply if the person is at the same time required to notify the police under section 47 (initial notification).
- s.48(5) - a person who is required to notify information within section 47(2)(h) (prescribed information) must notify the police of the prescribed details of any prescribed changes in that information.
- s.48(6) - in subsection (5) “*prescribed*” means prescribed by regulations made by the Secretary of State.
- Such regulations are subject to affirmative resolution procedure.

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<sup>1771</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).



- s.48(7) - notification under this section must be made before the end of the period of three days beginning with the day on which the event in question occurs. Where subsection (3) applies that is the day with which the period referred to in paragraph (a) or (b) (as the case may be) ends.
- s.48(8) - in determining the period within which notification is to be made under this section, there shall be disregarded any time when the person is—
- (a) remanded in or committed to custody by an order of a court,
  - (b) serving a sentence of imprisonment or detention,
  - (c) detained in a hospital, or
  - (d) detained under the Immigration Acts.
- s.48(9) - references in this section to previous notification are to previous notification by the person under section 47 (initial notification), this section, section 49 (periodic re-notification) or section 56 (notification on return after absence from UK).
- s.48(10) - notification under this section must be accompanied by re-notification of the other information mentioned in section 47(2).

### Re-notification

#### **CTA 2008 s.49<sup>1772</sup>: Periodic re-notification**

- s.49(1) - a person to whom the notification requirements apply must, within the period of one year after last notifying the police in accordance with—
- (a) section 47 (initial notification),
  - (b) section 48 (notification of change),
  - (c) this section, or
  - (d) section 56 (notification on return after absence from UK),
- re-notify to the police the information mentioned in section 47(2).
- s.49(2) - subsection (1) does not apply if the period referred to in that subsection ends at a time when the person is—
- (a) remanded in or committed to custody by an order of a court,
  - (b) serving a sentence of imprisonment or detention,
  - (c) detained in a hospital, or
  - (d) detained under the Immigration Acts.
- s.49(3) - in that case section 48(4) and (10) (duty to notify of release and to re-notify other information) apply when the person is released.

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<sup>1772</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

## Method of notification

### **CTA 2008 s.50<sup>1773</sup>: Method of notification and related matters**

- s.50(1) - this section applies to notification under—
- (a) section 47 (initial notification),
  - (b) section 48 (notification of change),
  - (c) section 49 (periodic re-notification), or
  - (d) section 56 (notification on return after absence from UK).
- s.50(2) - notification must be made by the person—
- (a) attending at a police station in the person's local police area, and
  - (b) making an oral notification to a police officer or to a person authorised for the purpose by the officer in charge of the station.
- s.50(3) - a person making a notification under section 48 (notification of change) in relation to premises referred to in subsection (3) of that section may make the notification at a police station that would fall within subsection (2)(a) above if the address of those premises were the person's home address.
- s.50(4) - the notification must be acknowledged.
- s.50(5) - the acknowledgement must be in writing, and in such form as the Secretary of State may direct.
- s.50(6) - the person making the notification must, if requested to do so by the police officer or person to whom the notification is made, allow the officer or person to—
- (a) take the person's fingerprints,
  - (b) photograph any part of the person, or
  - (c) do both these things,
- for the purpose of verifying the person's identity.

### **CTA 2008 s.51<sup>1774</sup>: Meaning of "local police area"**

- s.51(1) - for the purposes of section 50(2) (method of notification) a person's "local police area" means—
- (a) the police area in which the person's home address is situated;
  - (b) in the absence of a home address, the police area in which the home address last notified is situated;
  - (c) in the absence of a home address and of any such notification, the police area in which the court of trial was situated.
- s.51(2) - in subsection (1)(c) "the court of trial" means—
- (a) the court by or before which the conviction or finding was made by virtue of which the notification requirements apply to the person, or

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<sup>1773</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

<sup>1774</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- (b) if that conviction or finding was one substituted on an appeal or reference, the court by or before which the proceedings were taken from which the appeal or reference was brought.

s.51(3) - this section and section 50(2) apply in relation to Northern Ireland as if Northern Ireland were a police area.

s.51(4) - this section and section 50(2) apply in relation to Scotland as if Scotland were a police area.

#### 3.9.1.2.4 For how long do the notification requirements apply?

##### **CTA 2008 s.53<sup>1775</sup>: Period for which notification requirements apply**

s.53(1) - the period for which the notification requirements apply is—

- (a) 30 years in the case of a person who—
  - (i) is aged 18 or over at the time of conviction for the offence, and
  - (ii) receives in respect of the offence a sentence within subsection (2);
- (b) 15 years in the case of a person who—
  - (i) is aged 18 or over at the time of conviction for the offence, and
  - (ii) receives in respect of the offence a sentence within subsection (3);
- (c) 10 years in any other case.

s.53(2) - the sentences in respect of which a 30 year period applies are—

- (a) in England and Wales—
  - (i) imprisonment or custody for life,
  - (ii) imprisonment or detention in a young offender institution for a term of 10 years or more,
  - (iii) imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (c. 44),
  - (iv) detention during Her Majesty's pleasure;
  - (iv) an extended custodial sentence for a term of 10 years or more under Article 14(5) of that Order (offenders under 21 convicted of certain offences),
  - (v) detention during the pleasure of the Minister in charge of the Department of Justice under Article 45(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)).

s.53(3) - the sentences in respect of which a 15 year period applies are—

- (a) in England and Wales, imprisonment or detention in a young offender institution for a term of 5 years or more but less than 10 years;

(3)(b)(iii) (finding of disability, etc) is subsequently tried for the offence, the period resulting from that finding ends—

- (a) if the person is acquitted, at the conclusion of the trial;

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<sup>1775</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- (b) if the person is convicted, when the person is again dealt with in respect of the offence.

s.53(6) - for the purposes of determining the length of the period—

- (a) a person who has been sentenced in respect of two or more offences to which this Part applies to consecutive terms of imprisonment is treated as if sentenced, in respect of each of the offences, to a term of imprisonment equal to the aggregate of the terms; and
- (b) a person who has been sentenced in respect of two or more such offences to concurrent terms of imprisonment (X and Y) that overlap for a period (Z) is treated as if sentenced, in respect of each of the offences, to a term of imprisonment equal to X plus Y minus Z.

s.53(7) - in determining whether the period has expired, there shall be disregarded any period when the person was—

- (a) remanded in or committed to custody by an order of a court,
- (b) serving a sentence of imprisonment or detention,
- (c) detained in a hospital, or
- (d) detained under the Immigration Acts.

### 3.9.1.2.5 Absence from UK

#### ***CTA 2008 s.52<sup>1776</sup>: Travel outside the United Kingdom***

s.52(1) - the Secretary of State may by regulations make provision requiring a person to whom the notification requirements apply who leaves the United Kingdom—

- (a) to notify the police of their departure before they leave, and
- (b) to notify the police of their return if they subsequently return to the United Kingdom.

s.52(2) - notification of departure must disclose—

- (a) the date on which the person intends to leave the United Kingdom;
- (b) the country (or, if there is more than one, the first country) to which the person will travel;
- (c) the person's point of arrival (determined in accordance with the regulations) in that country;
- (d) any other information required by the regulations.

s.52(3) - notification of return must disclose such information as is required by the regulations about the person's return to the United Kingdom.

s.52(4) - notification under this section must be given in accordance with the regulations.

s.52(5) - regulations under this section are subject to affirmative resolution procedure.

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<sup>1776</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

**Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009 (SI 2009/2493)**

**1.— Citation, commencement, interpretation and application**

- (1) These Regulations may be cited as the Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009 and shall come into force twenty-one days after the day on which they are made.
- (2) In these Regulations—
  - (a) a reference to section 52 is a reference to section 52 of the Counter-Terrorism Act 2008, and
  - (b) “the 2008 Act” means the Counter-Terrorism Act 2008.

**2.— Determination of point of arrival**

- (1) For the purposes of section 52(2)(c) and these Regulations, a person’s point of arrival is to be determined in accordance with this regulation.
- (2) Where a person will arrive in a country by rail, sea or air, the point of arrival is the station, port or airport at which the person will first disembark.
- (3) Where a person will arrive in a country by any other means, the point of arrival is the place at which the person will first enter the country.

**3.— Notification of departure: requirement and content**

- (1) This regulation applies to a person to whom the notification requirements in Part 4 of the 2008 Act apply and who intends to leave the United Kingdom for a period of three days or more.
- (2) A person to whom this regulation applies must notify the required information to the police.
- (3) For the purposes of this and the following regulation, the “required information” is—
  - (a) the information that must be disclosed in accordance with section 52(2)(a) to (c), and
  - (b) so much of the following information as the person holds—
    - (i) where the person intends to travel to more than one country outside the United Kingdom, the person’s point of arrival in each such country (other than the point of arrival specified in section 52(2)(c)),
    - (ii) the name of the carrier the person intends to use to leave the United Kingdom and to return to the United Kingdom,
    - (iii) the name of any carrier the person intends to use to travel between countries while outside the United Kingdom,
    - (iv) the address or other place at which the person intends to stay for their first night outside the United Kingdom,
    - (v) where the person intends to return to the United Kingdom on a particular date, that date, and
    - (vi) where the person intends to return to the United Kingdom at a particular point of arrival, that point of arrival.

#### **4.— Notification of departure: timing**

- (1) Where a person knows any of the required information more than seven days before the date of their intended departure, the person must notify such of the required information as the person holds—
  - (a) not less than seven days before that date (“the seven day notification requirement”), or
  - (b) if the person has a reasonable excuse for not complying with the seven day notification requirement, as soon as practicable but in any event not less than twenty-four hours before that date.
- (2) Where the person has notified the police in accordance with paragraph (1) but—
  - (a) the information so notified does not contain all the required information, or
  - (b) at any time prior to their intended departure, the information so notified becomes inaccurate,the person must notify to the police the remaining required information or the changes to the required information as the case may be in accordance with the rule in paragraph (4).
- (3) Where a person does not know any of the required information more than seven days before the date of their intended departure, the person must notify the required information to the police in accordance with the rule in paragraph (4).
- (4) The rule is that the person must make the notification—
  - (a) not less than twenty-four hours before the date of their intended departure (“the twenty-four hour notification requirement”), or
  - (b) if the person has a reasonable excuse for not complying with the twenty-four hour notification requirement, as soon as practicable but in any event before the person’s departure from the United Kingdom.

#### **5.— Notification of return**

- (1) This regulation applies to a person to whom the notification requirements in Part 4 of the 2008 Act apply and who returns to the United Kingdom after leaving the United Kingdom for a period of three days or more.
- (2) Subject to paragraph (4), a person to whom this regulation applies must notify the following information to the police within the period of three days beginning with the day on which the person returns to the United Kingdom.
- (3) The information is—
  - (a) the date of the person’s return to the United Kingdom, and
  - (b) the person’s point of arrival in the United Kingdom.
- (4) Paragraph (2) does not apply to a person who notified to the police in accordance with regulation 4 a date and a point of arrival as specified in regulation 3(3)(b)(v) and (vi), and whose return to the United Kingdom was on that date and at that point of arrival.

**6.— Method of notification**

- (1) Notification in accordance with regulation 4(1) or 5(2) must be made by the person—
  - (a) attending at a police station in the person’s local police area; and
  - (b) making an oral notification to a police officer or to a person authorised for the purpose by the officer in charge of the station.
- (2) Notification in accordance with regulation 4(2) or 4(3) must be made by the person—
  - (a) attending at a police station, and
  - (b) making an oral notification to a police officer or to a person authorised for the purpose by the officer in charge of the station.
- (3) The person making a notification in accordance with these Regulations must inform the police officer or person to whom the notification is made of their—
  - (a) name,
  - (b) home address, and
  - (c) date of birth.
- (4) A person making a notification in accordance with regulation 4(2) must also inform the police officer or person to whom the notification is made of the police station at which the person made a notification in accordance with regulation 4(1) in respect of the intended departure.

**7.— Transitional provision**

These Regulations do not apply to a person—

- (a) whose intended date of departure from the United Kingdom is less than eight days before the date on which these Regulations come into force, or
- (b) who is outside the United Kingdom on the date on which these Regulations come into force,

in respect of that absence from the United Kingdom.

**CTA 2008 s.55<sup>1777</sup>: Effect of absence abroad**

- s.55(1) - if a person to whom the notification requirements apply is absent from the United Kingdom for any period the following provisions apply.
- s.55(2) - during the period of absence the period for which the notification requirements apply continues to run.
- s.55(3) - the period of absence does not affect the obligation under section 47 (initial notification).  
This is subject to subsection (4).
- s.55(4) - Section 47 does not apply if—
  - (a) the period of absence begins before the end of the period within which notification must be made under that section, and

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<sup>1777</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- (b) the person's absence results from the person's removal from the United Kingdom.
- s.55(5) - Section 48 (notification of changes)—
  - (a) applies in relation to an event that occurs before the period of absence, but
  - (b) does not apply in relation to an event that occurs during the period of absence.Paragraph (a) is subject to subsection (6).
- s.55(6) - Section 48 does not apply in relation to an event that occurs before the period of absence if:
  - (a) the period of absence begins before the end of the period within which notification must be made under that section, and
  - (b) the person's absence results from the person's removal from the United Kingdom.
- s.55(7) - Section 49 (periodic re-notification) does not apply if the period referred to in subsection (1) of that section ends during the period of absence.
- s.55(8) - Section 53(7) (disregard of period of custody etc) applies in relation to the period of absence as if it referred to any period when the person was—
  - (a) remanded in or committed to custody by an order of a court outside the United Kingdom,
  - (b) serving a sentence of imprisonment or detention imposed by such a court,
  - (c) detained in a hospital pursuant to an order of such a court that is equivalent to a hospital order, or
  - (d) subject to a form of detention outside the United Kingdom that is equivalent to detention under the Immigration Acts.
- s.55(9) - references in this section and section 56 to a person's removal from the United Kingdom include:
  - (a) the person's removal from the United Kingdom in accordance with the Immigration Acts,
  - (b) the person's extradition from the United Kingdom, or
  - (c) the person's transfer from the United Kingdom to another country pursuant to a warrant under section 1 of the Repatriation of Prisoners Act 1984 (c. 47).

**CTA 2008 s.56<sup>1778</sup>: Notification on return after absence from UK**

- s.56(1) - this section applies if, before the end of the period for which the notification requirements apply, a person to whom the requirements apply returns to the United Kingdom after a period of absence and—
  - (a) the person was not required to make a notification under section 47 (initial notification),

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<sup>1778</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).



- (b) there has been a change to any of the information last notified to the police in accordance with—
    - (i) section 47,
    - (ii) section 48 (notification of changes),
    - (iii) section 49 (periodic re-notification), or
    - (iv) this section, or
  - (c) the period referred to in section 49(1) (period after which re-notification required) ended during the period of absence.
- s.56(2) - the person must notify or (as the case may be) re-notify to the police the information mentioned in section 47(2) within the period of three days beginning with the day of return.
- s.56(3) - in determining the period within which notification is to be made under this section, there shall be disregarded any time when the person is—
- (a) remanded in or committed to custody by an order of a court,
  - (b) serving a sentence of imprisonment or detention,
  - (c) detained in a hospital, or
  - (d) detained under the Immigration Acts.
- s.56(4) - this section does not apply if—
- (a) the person subsequently leaves the United Kingdom,
  - (b) the period of absence begins before the end of the period within which notification must be made under this section, and
  - (c) the person's absence results from the person's removal from the United Kingdom.
- s.56(5) - the obligation under this section does not affect any obligation to notify information under section 52(3) (regulations requiring notification of return etc).

#### **3.9.1.2.6 Breach**

##### ***CTA 2008 s.54<sup>1779</sup>: Offences relating to notification***

- s.54(1) - a person commits an offence who—
- (a) fails without reasonable excuse to comply with—
    - section 47 (initial notification),
    - section 48 (notification of changes),
    - section 49 (periodic re-notification),
    - section 50(6) (taking of fingerprints or photographs),
    - any regulations made under section 52(1) (travel outside United Kingdom), or
    - section 56 (notification on return after absence from UK); or

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<sup>1779</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- (b) notifies to the police in purported compliance with—
    - section 47 (initial notification),
    - section 48 (notification of changes),
    - section 49 (periodic re-notification),
    - any regulations made under section 52(1) (travel outside United Kingdom), or
    - section 56 (notification on return after absence from UK),
    - any information that the person knows to be false.
- s.54(2) - a person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 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 or a fine or both.
- s.54(3) - in the application of subsection (2)(a)—
  - (a) in England and Wales, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), or
  - (b) in Northern Ireland,for “12 months” substitute “6 months”.
- s.54(4) - a person—
  - (a) commits an offence under subsection (1)(a) above on the day on which the person first fails without reasonable excuse to comply with—
    - section 47 (initial notification),
    - section 48 (notification of changes),
    - section 49 (periodic re-notification),
    - any regulations made under section 52(1) (travel outside United Kingdom), or
    - section 56 (notification on return after absence from UK), and
  - (b) continues to commit it throughout any period during which the failure continues.But a person must not be prosecuted under subsection (1) more than once in respect of the same failure.
- s.54(5) - proceedings for an offence under this section may be commenced in any court having jurisdiction in any place where the person charged with the offence resides or is found.

### 3.9.1.2.7 Notification orders: Offences outside the UK

#### **CTA 2008 s.57<sup>1780</sup>: Notification orders**

s.57 - Schedule 4 makes provision for notification orders applying the notification requirements of this Part to persons who have been dealt with outside the United Kingdom in respect of a corresponding foreign offence.

#### **What is a notification order?**

#### **CTA 2008 Sch.4<sup>1781</sup>: Notification orders**

para.1 - a “notification order” is an order applying the notification requirements of this Part to a person who has been dealt with outside the United Kingdom in respect of a corresponding foreign offence.

#### **What is a “corresponding foreign offence”?**

#### **CTA 2008 Sch.4<sup>1782</sup>: Notification orders**

para.2(1) - a “corresponding foreign offence” means an act that—

- (a) constituted an offence under the law in force in a country outside the United Kingdom, and
- (b) corresponds to an offence to which this Part applies.

para.2(2) For this purpose an act punishable under the law in force in a country outside the United Kingdom is regarded as constituting an offence under that law however it is described in that law.

para.2(3) - an act corresponds to an offence to which this Part applies if—

- (a) it would have constituted an offence to which this Part applies by virtue of section 41 if it had been done in any part of the United Kingdom, or
- (b) it was, or took place in the course of, an act of terrorism or was done for the purposes of terrorism.

para.2(4) - on an application for a notification order the condition in sub-paragraph (3)(a) or (b) is to be taken to be met unless—

- (a) the defendant serves on the applicant, not later than rules of court may provide, a notice—
  - (i) stating that, on the facts as alleged with respect to the act concerned, the condition is not in the defendant’s opinion met,
  - (ii) showing the defendant’s grounds for that opinion, and
  - (iii) requiring the applicant to prove that the condition is met; or
- (b) the court permits the defendant to require the applicant to prove that the condition is met without service of such a notice.

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<sup>1780</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

<sup>1781</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

<sup>1782</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

## What are the conditions for making a notification order?

### **CTA 2008 Sch.4<sup>1783</sup>: Notification orders**

para.3(1) - the conditions for making a notification order in respect of a person are as follows.

para.3(2) - the first condition is that under the law in force in a country outside the United Kingdom—

- (a) the person has been convicted of a corresponding foreign offence and has received in respect of the offence a sentence equivalent to a sentence mentioned in section 45(1)(a), (2)(a) or (3)(a), or
- (b) a court exercising jurisdiction under that law has, in respect of a corresponding foreign offence—
  - (i) convicted the person or made a finding in relation to the person equivalent to a finding mentioned in section 45(1)(b)(ii) or (iii), (2)(b)(ii) or (iii) or (3)(b)(ii) or (iii) (finding of insanity or disability), and
  - (ii) made the person subject to an order equivalent to a hospital order.

para.3(3) - this condition is not met if there was a flagrant denial of the person's right to a fair trial.

para.3(4) - the second condition is that—

- (a) the sentence was imposed or order made after the commencement of this Part, or
- (b) the sentence was imposed or order made before the commencement of this Part and immediately before that time the person—
  - (i) was imprisoned or detained in pursuance of the sentence or order,
  - (ii) would have been so imprisoned or detained but for being unlawfully at large or otherwise unlawfully absent, lawfully absent on a temporary basis or on bail pending an appeal, or
  - (iii) had been released on licence, or was subject to an equivalent form of supervision, having served the whole or part of a sentence of imprisonment for the offence.

para.3(5) - the third condition is that the period for which the notification requirements would apply in respect of the offence (in accordance with section 53 as modified by paragraph 8(e)) has not expired.

para.3(6) - if on an application for a notification order it is proved that the conditions in sub-paragraphs (2), (4) and (5) are met, the court must make the order.

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<sup>1783</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

## Applications

### **CTA 2008 Sch.4<sup>1784</sup>: Notification orders**

para.4(1) - in England and Wales an application for a notification order in respect of a person may only be made by a chief officer of police.

para.4(2) - an application may only be made if—

- (a) the person resides in the chief officer's police area, or
- (b) the chief officer believes that the person is in, or is intending to come to, that area.

para.4(3) - the application must be made to the High Court.

## The effect of a notification order

### **CTA 2008 Sch.4<sup>1785</sup>: Notification orders**

para.7 - the effect of a notification order is that the notification requirements of this Part apply to the person in respect of whom it is made.

## Modifications

### **CTA 2008 Sch.4<sup>1786</sup>: Notification orders**

para.8 - the provisions of this Part have effect with the following adaptations in relation to foreign proceedings and cases where the notification requirements apply because a notification order has been made—

- (a) in section 61(1) (references to dealing with an offence) for “being sentenced, or made subject to a hospital order” substitute “being made subject by the foreign court to a sentence or order within paragraph 3(2)(a) or (b) of Schedule 4”;
- (b) in section 61(2) (references to time when person dealt with for an offence) for paragraphs (a) to (c) substitute “by the foreign court of first instance”;
- (c) for the purposes of section 47 (initial notification) the period within which notification is to be made begins with the date of service of the notification order;
- (d) in section 51 (meaning of “local police area”) the reference in subsection (1)(c) to the court of trial shall be read as a reference to the court by which the notification order was made;
- (e) in section 53 (period for which notification requirements apply) a reference to a sentence or order of any description is to be read as a reference to an equivalent sentence or order of the foreign court.

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<sup>1784</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

<sup>1785</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

<sup>1786</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

### 3.9.1.2.8 Foreign travel restriction orders

#### **CTA 2008 s.58<sup>1787</sup>: Foreign travel restriction orders**

- s.58 - Schedule 5 makes provision for foreign travel restriction orders prohibiting persons to whom the notification requirements apply from—
- (a) travelling to a 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.

#### **What is a foreign travel restriction order?**

#### **CTA 2008 Sch.5<sup>1788</sup>: Foreign travel restriction orders**

- para.1 - a foreign travel restriction order is an order prohibiting the person to whom it applies from doing whichever of the following is specified in the order—
- (a) travelling to a 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;
  - (c) travelling to any country outside the United Kingdom.

#### **Conditions for making an order**

#### **CTA 2008 Sch.5<sup>1789</sup>: Foreign travel restriction orders**

- para.2(1) - the conditions for making a foreign travel restriction order in respect of a person are as follows.
- para.2(2) - the first condition is that the notification requirements apply to the person.
- para.2(3) - the second condition is that the person's behaviour since the person was dealt with for the offence by virtue of which those requirements apply makes it necessary for a foreign travel restriction order to be made to prevent the person from taking part in terrorism activity outside the United Kingdom.
- para.2(4) - if the person was dealt with for the offence before the commencement of this Part, the condition in sub-paragraph (3) is not met unless the person has acted in that way since the commencement of this Part.
- para.2(5) - if on an application for a foreign travel restriction order the court is satisfied that the conditions in sub-paragraphs (2) and (3) are met, it may make a foreign travel restriction order.

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<sup>1787</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

<sup>1788</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

<sup>1789</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

## Applications: England and Wales

### **CTA 2008 Sch.5<sup>1790</sup>: Foreign travel restriction orders**

para.3(1) - in England and Wales an application for a foreign travel restriction order in respect of a person may only be made by a chief officer of police.

para.3(2) - an application may only be made if—

- (a) the person resides in the chief officer's police area, or
- (b) the chief officer believes that the person is in, or is intending to come to, that area.

para.3(3) - the application must be made by complaint to a magistrates' court whose commission area includes any part of the chief officer's police area.

## The extent of the order

### **CTA 2008 Sch.5<sup>1791</sup>: Foreign travel restriction orders**

para.6(1) - a foreign travel restriction order may prohibit the person to whom it applies—

- (a) from travelling to any country outside the United Kingdom named or described in the order; or
- (b) from travelling to any country outside the United Kingdom other than a country named or described in the order; or
- (c) from travelling to any country outside the United Kingdom.

para.6(2) - the order must only impose such prohibitions as are necessary for the purpose of preventing the person from taking part in terrorism activity outside the United Kingdom.

para.6(3) - a foreign travel restriction order containing a prohibition within sub-paragraph (1)(c) must require the person to whom it applies to surrender all that person'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.

para.6(4) - any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a foreign travel restriction order containing such a prohibition.

## Length of the order

### **CTA 2008 Sch.5<sup>1792</sup>: Foreign travel restriction orders**

para.7(1) - a foreign travel restriction order has effect for a fixed period of not more than 6 months.

para.7(2) - the period must be specified in the order.

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<sup>1790</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

<sup>1791</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

<sup>1792</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

para.7(3) - a foreign travel restriction order ceases to have effect if a court (whether the same or another court) makes another foreign travel restriction order in relation to the person to whom the earlier order applies.

### **Variation, renewal, discharge: England and Wales**

#### ***CTA 2008 Sch.5<sup>1793</sup>: Foreign travel restriction orders***

para.8(1) - in England and Wales an application for an order varying, renewing or discharging a foreign travel restriction order may be made by:

- (a) the person subject to the order;
- (b) the chief officer of police on whose application the order was made;
- (c) the chief officer of police for the area in which the person subject to the order resides; or
- (d) a chief officer of police who believes that the person subject to the order is in, or is intending to come to, the officer's police area.

para.8(2) - the application must be made by complaint to—

- (a) a magistrates' court for the same area as the court that made the order,
- (b) a magistrates' court for the area in which the person subject to the order resides, or
- (c) where the application is made by a chief officer of police, any magistrates' court whose commission area includes any part of that chief officer's police area.

para.8(3) - on an application under this paragraph the court may make such order varying, renewing or discharging the foreign travel restriction order as it considers appropriate.

para.8(4) - before doing so it must hear the person making the application and (if they wish to be heard) the other persons mentioned in sub-paragraph (1).

### **Variation, renewal, discharge: Adding prohibitions**

#### ***CTA 2008 Sch.5<sup>1794</sup>: Foreign travel restriction orders***

para.11(1) - a foreign travel restriction order may be renewed, or varied so as to impose additional prohibitions, but only if it is necessary to do so for the purpose of preventing the person subject to the order from taking part in terrorism activities outside the United Kingdom.

para.11(2) - any renewed or varied order must contain only the prohibitions necessary for that purpose.

### **Appeals: England and Wales**

#### ***CTA 2008 Sch.5<sup>1795</sup>: Foreign travel restriction orders***

para.12(1) - in England and Wales—

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<sup>1793</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

<sup>1794</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

<sup>1795</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).



- (a) a person against whom a foreign travel restriction order is made may appeal against the making of the order;
- (b) a person subject to a foreign travel restriction order may appeal against—
  - (i) an order under paragraph 8 varying or renewing the order, or
  - (ii) a refusal to make an order under that paragraph varying or discharging the order.

para.12(2) - the appeal lies to the Crown Court.

para.12(3) - on an appeal under this paragraph the court may make—

- (a) such orders as it considers necessary to give effect to its determination of the appeal, and
- (b) such incidental and consequential orders as appear to it to be just.

### **Breach**

#### ***CTA 2008 Sch.5<sup>1796</sup>: Foreign travel restriction orders***

para.15(1) - a person commits an offence who, without reasonable excuse—

- (a) does anything they are prohibited from doing by a foreign travel restriction order, or
- (b) fails to comply with a requirement imposed on them by such an order.

para.15(2) - a person guilty of an offence under this paragraph is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 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 or a fine or both.

para.15(3) - in the application of sub-paragraph (2)(a)—

- (a) in England and Wales, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), or
- (b) in Northern Ireland,  
for “12 months” substitute “6 months”.

para.15(4) - where a person is convicted of an offence under this paragraph, it is not open to the court by or before which they are convicted—

- (a) in England and Wales or Northern Ireland, to make an order for conditional discharge in respect of the offence;
- (b) in Scotland, to make a probation order in respect of the offence.

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<sup>1796</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

## Interpretation

### **CTA 2008 Sch.5<sup>1797</sup>: Foreign travel restriction orders**

para.16 - in this Schedule “*terrorism activity*” means anything that—

- (a) if done in any part of the United Kingdom, would constitute an offence to which this Part applies by virtue of section 41, or
- (b) is, or takes place in the course of, an act of terrorism or is for the purposes of terrorism.

### **3.9.1.2.10 Interpretation**

#### **CTA 2008 s.60<sup>1798</sup>: Minor definitions for Part 4**

s.60 - In this Part—

“*country*” includes a territory;

“*detained in a hospital*” means detained in a hospital under—

- (a) Part 3 of the Mental Health Act 1983 (c. 20),
- (b) Part 6 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), or
- (c) Part 3 of the Mental Health (Northern Ireland) Order (S.I. 1986/ 595 (N.I. 4));

“*home address*” means, in relation to a person—

- (a) the address of the person’s sole or main residence in the United Kingdom, or
- (b) where the person has no such residence, the address or location of a place in the United Kingdom where the person can regularly be found and, if there is more than one such place, such one of those places as the person may select;

“*hospital order*” means—

- (a) a hospital order within the meaning of the Mental Health Act 1983,
- (b) an order under Part 6 of the Criminal Procedure (Scotland) Act 1995, or
- (c) a hospital order within the meaning of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));

“*passport*” means—

- (a) a United Kingdom passport within the meaning of the Immigration Act 1971 (c. 77), or
- (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,  
and includes any document that can be used (in some or all circumstances) instead of a passport;

“*photograph*” includes any process by means of which an image may be produced;

“*release*” from imprisonment or detention includes release on licence but not temporary release.

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<sup>1797</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

<sup>1798</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

**CTA 2008 s.61<sup>1799</sup>: References to a person being “dealt with” for an offence**

- s.61(1) - references in this Part to a person being dealt with for or in respect of an offence are to their being sentenced, or made subject to a hospital order, in respect of the offence.
- References in this Part to an offence being dealt with are to a person being dealt with in respect of the offence.
- s.61(2) - subject to the following provisions of this section, references in this Part to the time at which a person is dealt with for an offence are to the time at which they are first dealt with—
- (a) in England and Wales, by a magistrates’ court or the Crown Court;
- This is referred to below as “*the original decision*”.
- s.61(3) - where the original decision is varied (on appeal or otherwise), then—
- (a) if the result is that the conditions for application of the notification requirements to a person in respect of an offence cease to be met (and paragraph (c) below does not apply), the notification requirements are treated as never having applied to that person in respect of that offence;
- (b) if the result is that the conditions for application of the notification requirements to a person in respect of an offence are met where they were not previously met (and paragraph (c) below does not apply)—
- (i) the person is treated as dealt with for the offence when the variation takes place, and
- (ii) the notification requirements apply accordingly;
- (c) if—
- (i) a conviction of, or finding in relation to, a different offence is substituted, and
- (ii) the conditions for application of the notification requirements were met in respect of the original offence and are also met in respect of the substituted offence,
- the person is treated as if they had been dealt with for the substituted offence at the time of the original decision;
- (d) if the sentence is varied so as to become one by virtue of which the notification requirements would apply for a different period, the period for which those requirements apply shall be determined as if the sentence as varied had been imposed at the time of the original decision;
- (e) in any other case, the variation is disregarded.
- s.61(4) - for the purposes of—
- (a) section 41(5) (effect of order adding offence to list of terrorism offences),
- (b) section 44(a) or paragraph 4(a) of Schedule 6 (persons subject to notification requirements: age when dealt with for offence),
- (c) section 46(2) or paragraph 6(2) of Schedule 6 (effect of order reducing term or period triggering notification requirements),

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<sup>1799</sup> Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- (d) section 53(5)(b) or paragraph 7(5)(b) of Schedule 6 (period for which notification requirements apply: ending of period resulting from finding of disability etc where person subsequently tried), and
- (e) paragraph 2(3) of Schedule 5 (conditions for making foreign travel restriction order: behaviour since offence dealt with),

a person is treated as dealt with at the time of the original decision and any subsequent variation of the decision is disregarded.

s.61(5) - for the purposes of—

- (a) section 43(1) and (2) or paragraph 3(1) and (2) of Schedule 6 (application of Part to offences dealt with before commencement), and
- (b) paragraph 2(4) of Schedule 5 (conditions for making foreign travel restriction order where offence dealt with before commencement),

a person is dealt with for an offence before the commencement of this Part if the time of the original decision falls before the commencement of this Part.

Where in such a case subsection (3) above applies for the purposes of any provision of this Part, that subsection has effect as if the provisions of this Part had been in force at all material times.

s.61(6) - in section 47(6) (adaptation of initial notification requirements in case of offence dealt with before commencement)—

- (a) the reference in the opening words to an offence dealt with before the commencement of this Part is to an offence where the time of the original decision falls before the commencement of this Part, and
- (b) the reference in the closing words to when the offence is dealt with has the same meaning as in subsection (1) of that section.

s.61(7) - references in this section to the variation of a decision include any proceedings by which the decision is altered, set aside or quashed, or in which a further decision is come to following the setting aside or quashing of the decision.

## 3.9.2. Barring

*Note: Disqualification is now automatic upon conviction for a listed offence.*

### 3.9.2.1. Introduction

*Note: There are three ways in which a person can be barred: (a) a conviction for a listed offence, (b) where the DBS determines that it is appropriate for a person to be placed onto a barred list, and (c) a third party can refer a person to the DBS for inclusion on a barred list.*

*As only the first relates to sentencing only the details of this method are listed.*

### 3.9.2.2. The lists

#### **SVGA 2006 s.2<sup>1800</sup>: Barred lists**

- s.2(1) - DBS must maintain–
  - (a) the children’s barred list;
  - (b) the adults’ barred list.
- s.2(2) - Part 1 of Schedule 3 applies for the purpose of determining whether an individual is included in the children’s barred list.
- s.2(3) - Part 2 of that Schedule applies for the purpose of determining whether an individual is included in the adults’ barred list.
- s.2(4) - Part 3 of that Schedule contains supplementary provision.
- s.2(5) - in respect of an individual who is included in a barred list, DBS must keep other information of such description as is prescribed.

*Note: There are two lists; the adults list and the children’s list. There are four sets of offences: for each list, there is a list with a right to make representations and a list without the right to make representations. These can be found as set out below:*

*Children’s list (no right to make representations): SI 2009/37 reg 3 and Sch. para.1*

*Children’s list (right to make representations): SI 2009/37 reg 4 and Sch. para.2*

*Adult’s list (no right to make representations): SI 2009/37 reg 5 and Sch. para.3*

*Adult’s list (right to make representations): SI 2009/37 reg 6 and Sch. para.4*

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<sup>1800</sup> Commencement: Section 2(2) and (3) in force 31 December 2007 so far as they relate to SVGA 2006 Sch.3 paras.(1)(1), 2(1), 7(1) and 8(1) for the purposes of making regulations, SI 2007/3545 art.2(a) and (j). Section 2(4) in force 31 December 2007 in so far as it relates to SVGA 2006 Sch.3 paras.15(1) and (2), 18(3)(b) and (6) and 24(1), (2) and (9), SI 2007/3545 art.2(b) and (k). Section 2(5) in force 31 December 2007 for the purposes of making regulations, SI 2007/3545 art.2(c). Section 2 in force 11 February 2008 so far as necessary for the exercise of functions to be conferred on IBB under SVGA 2006 Sch.8 (transitional provisions), SI 2007/3545 art.4(a). Section 2(4) in force 19 May 2008 for the purposes of making regulations, SI 2008/1320 art.4(v). Section 2 in force 20 January 2009 for the purposes of the Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009 (SI 2009/12), SI 2009/39 art.2(1)(a). Section 2 otherwise in force 12 October 2009, SI 2009/2611 art.2 and Sch.1. Section 2(2), (3) and (4) in force 19 May 2008, for the purpose of making orders, SI 2008/1320 art.5(o).

### 3.9.2.3. Who is barred?

#### **SVGA 2006 s.3<sup>1801</sup>: Barred persons**

- s.3(1) - a reference to a person being barred from regulated activity must be construed in accordance with this section.
- s.3(2) - a person is barred from regulated activity relating to children if he is—
- (a) included in the children’s barred list;
  - (b) included in a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the children’s barred list.
- s.3(3) - a person is barred from regulated activity relating to vulnerable adults if he is—
- (a) included in the adults’ barred list;
  - (b) included in a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the adults’ barred list.

### 3.9.2.4. Children’s list - Part 1

#### **Automatic inclusion**

#### **SVGA 2006 Sch.3: Barred lists**

- para.1(1) - this paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.
- para.1(2) - if DBS is satisfied that this paragraph applies to a person, it must include the person in the children’s barred list.

#### **Inclusion subject to consideration of representations**

#### **SVGA 2006 Sch.3: Barred lists**

- para.2(1) - this paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.
- para.2(2) - sub-paragraph (4) applies if it appears to DBS that—
- (a) this paragraph applies to a person, and
  - (b) the person is or has been, or might in future be, engaged in regulated activity relating to children.
- para.2(4) - DBS must give the person the opportunity to make representations as to why the person should not be included in the children’s barred list.

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<sup>1801</sup> Commencement: Section 3(1) and (2)(a) in force 19 May 2008 for the purposes of regulations made under Childcare Act 2006 s.75 (disqualification from registration), SI 2008/1320 art.2(a). Section 3(2)(b) and (3)(b) in force 19 May 2008 for the purposes of making orders, SI 2008/1320 art.5(a). Otherwise in force 12 October 2009, SI 2009/2611 art.2 and Sch.1

para.2(5) - sub-paragraph (6) applies if—

- (a) the person does not make representations before the end of any time prescribed for the purpose, or
- (b) the duty in sub-paragraph (4) does not apply by virtue of paragraph 16(2).

para.2(6) - if DBS—

- (a) is satisfied that this paragraph applies to the person, and
  - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children,
- it must include the person in the list.

para.2(7) - sub-paragraph (8) applies if the person makes representations before the end of any time prescribed for the purpose.

para.2(8) - if DBS—

- (a) is satisfied that this paragraph applies to the person,
  - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children, and
  - (c) is satisfied that it is appropriate to include the person in the children's barred list,
- it must include the person in the list.

#### 3.9.2.5. Adult's list - Part 2

##### **Automatic inclusion**

##### ***SVGA 2006 Sch.3: Barred lists***

para.7(1) - this paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.

para.7(2) - if DBS is satisfied that this paragraph applies to a person, it must include the person in the adults' barred list.

##### **Inclusion subject to consideration of representations**

##### ***SVGA 2006 Sch.3: Barred lists***

para.8(1) - this paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.

para.8(2) - sub-paragraph (4) applies if it appears to DBS that—

- (a) this paragraph applies to a person, and
- (b) the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults.

para.8(4) - DBS must give the person the opportunity to make representations as to why the person should not be included in the adults' barred list.

para.8(5) - sub-paragraph (6) applies if—

- (a) the person does not make representations before the end of any time prescribed for the purpose, or
- (b) the duty in sub-paragraph (4) does not apply by virtue of paragraph 16(2).

para.8(6) - if DBS —

- (a) is satisfied that this paragraph applies to the person, and
  - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,
- it must include the person in the list.

para.8(7) - sub-paragraph (8) applies if the person makes representations before the end of any time prescribed for the purpose.

para.8(8) - if DBS—

- (a) is satisfied that this paragraph applies to the person,
  - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults, and
  - (c) is satisfied that it is appropriate to include the person in the adults' barred list,
- it must include the person in the list.

### 3.9.2.6. Duty of the court to tell defendant he/she is barred

#### **SVGA 2006 Sch.3: Barred lists**

para.24(1) - the criteria which may be prescribed for the purposes of paragraphs 1, 2, 7 and 8 are—

- (a) that a person has been convicted of, or cautioned in relation to, an offence of a specified description;
- (b) that an order of a specified description requiring the person to do or not to do anything has been made against him;
- (c) that a person is included in a specified list maintained for the purposes of a country or territory outside the United Kingdom;
- (d) that an order or direction of a specified description requiring the person to do or not to do anything has been made against him for the purposes of a country or territory outside the United Kingdom.

para.25(1) - a court by or before which a person is convicted of an offence of a description specified for the purposes of paragraph 24(1)(a), or which makes an order of a description specified for the purposes of paragraph 24(1)(b), must inform the person at the time he is convicted or the order is made that DBS will or (as the case may be) may include him in the barred list concerned.

para.25(2) - this paragraph does not apply to convictions by or before a court in a country or territory outside England and Wales.



### 3.9.2.7. The trigger offences - the “prescribed criteria”

#### **Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 (SI 2009/37)<sup>1802</sup>**

reg.1(1) - these Regulations may be cited as the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 and come into force seven days after the day on which they are made.

reg.1(2) - in these Regulations—

“*the Act*” means the Safeguarding Vulnerable Groups Act 2006;

“*the 2002 Act*” means the Education Act 2002;

“*the 2003 Regulations*” means the Education (Prohibition from Teaching or Working with Children) Regulations 2003;

“*connected offence*” means, in relation to an offence specified in the Schedule, an offence of—

- (a) attempting, conspiring or incitement to commit that offence, or
- (b) aiding, abetting, counselling or procuring, the commission of that offence;

“*disqualification order*” means an order of the court under section 28, 29 or 29A of the Criminal Justice and Court Services Act 2000;

“*relevant circumstances*” means—

(a) in relation to an offence specified in—

- (i) sub-paragraph (a) or (b) of paragraph 1,
- (ii) sub-paragraph (b)(ii) to (v), (c) or (d)(ii) of paragraph 2, or
- (iii) sub-paragraph (b)(ii) to (vii), (c) or (d)(ii) of paragraph 4

of the Schedule the circumstances described in the relevant sub-paragraph which relate to the commission of that offence, and

(b) in relation to an offence specified in—

- (i) sub-paragraph (c), (e) or (g)(i) of paragraph 1,
- (ii) sub-paragraph (e), (g) or (i)(i) of paragraph 2, or
- (iii) sub-paragraph (e), (g) or (i)(i) of paragraph 4

of the Schedule the circumstances referred to in the relevant sub-paragraph in relation to the commission of that offence;

“*relevant date*” means the date on which these Regulations come into force.

reg.1(3) - in regulation 3 a reference to an offence specified in paragraph 1(a) to (c), (e) or (g)(i) of the Schedule is a reference to that offence only where it was committed in relevant circumstances.

reg.1(4) - in regulation 4 a reference to an offence specified in paragraph 2(b)(ii) to (v), (c), (d)(ii), (e), (g) or (i)(i) of the Schedule is a reference to that offence only where it was committed in relevant circumstances.

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<sup>1802</sup> Commencement: 20 January 2009, SI 2009/37 reg.1(1).

- reg.1(5) - in regulation 6 a reference to an offence specified in paragraph 4(b)(ii) to (vii), (c), (d)(ii), (e), (g) or (i)(i) of the Schedule is a reference to that offence only where it was committed in relevant circumstances.
- reg.1(6) - in regulations 3 to 6—
- (a) a reference to an offence, A, specified in the Schedule includes a reference to an offence, B, which in relation to offence A is a connected offence, and
  - (b) a reference to being convicted of an offence specified in the Schedule includes a reference to being convicted of—
    - (i) an Islands offence, or
    - (ii) a relevant foreign offence.
- reg.1(7) - in paragraph (6)(b), an Islands offence is an offence satisfying the criteria in paragraph (7A) and a relevant foreign offence is an offence satisfying the criteria in paragraph (8).
- reg.1(7A) - the criteria are that—
- (a) the offence is one under the law in force in the Isle of Man or any of the Channel Islands;
  - (b) the conduct which constitutes the offence would, if carried out in England and Wales, amount to an equivalent offence which is specified in the Schedule; and
  - (c) where the equivalent offence is one specified in paragraph 1(a) to (c), (e) or (g)(i), 2(b)(ii) to (v), (c), (d)(ii), (e), (g) or (i)(i) or 4(b)(ii) to (vii), (c), (d)(ii), (e), (g) or (i)(i) of the Schedule, the offence was committed in relevant circumstances relating to the equivalent offence.
- reg.1(8) - the criteria are that—
- (a) the offence is one under the law in force in a country or territory outside the British Islands;
  - (b) the conduct which constitutes the offence would, if carried out in England and Wales, amount to an equivalent offence which is specified in the Schedule;
  - (c) where the equivalent offence is one specified in paragraph 1(a) to (c), (e) or (g)(i), 2(b)(ii) to (v), (c), (d)(ii), (e), (g) or (i)(i) or 4(b)(ii) to (vii), (c), (d)(ii), (e), (g) or (i)(i) of the Schedule, the offence was committed in relevant circumstances relating to the equivalent offence.
- reg.1(8A) - for the purposes of paragraph (7A), an act punishable under the law in force in the Isle of Man or any of the Channel Islands constitutes an offence under that law however it is described in that law.
- reg.1(9) - for the purposes of paragraph (8) an act punishable under the law in force in a country or territory outside the British Islands constitutes an offence under that law however it is described in that law.
- reg.2(1) - where the condition in paragraph (2) is met, the offences referred to in regulations 3 to 6 do not include any offence which a person has committed against a child before the commencement (for all purposes) of section 2 of the Act.
- reg.2(2) - the condition is that the court, having considered whether to make a disqualification order in connection with the commission of the offence, decided not to.
- reg.2(3) - in this regulation the reference to an offence committed against a child must be construed in accordance with Part 2 of the Criminal Justice and Court Services Act 2000.

- reg.3(1) - the criteria prescribed for the purposes of paragraph 1(1) of Schedule 3 to the Act are the criteria set out in paragraphs (2) to (4).
- reg.3(2) - the criterion set out in this paragraph is that before the relevant date—
- (a) the person had been made subject to a disqualification order, and
  - (b) condition C in the 2003 Regulations was satisfied in relation to the person, and
  - (c) regulation 8 of those Regulations applied to the person, and
  - (d) the Secretary of State had not made a direction under section 142(1)(a) of the 2002 Act in relation to that person.
- reg.3(3) - the criterion set out in this paragraph is that before the relevant date—
- (a) the person had been convicted of, or cautioned in relation to, an offence specified in Part 2 of Schedule 2 to the 2003 Regulations, and
  - (b) condition C in those Regulations was satisfied in relation to the person, and
  - (c) regulation 8 of those Regulations applied to the person, and
  - (d) the Secretary of State had not made a direction under section 142(1)(a) of the 2002 Act in relation to that person.
- reg.3(4) - the criterion set out in this paragraph is that the person has, on or after the relevant date, been convicted of, or cautioned in relation to, an offence specified in paragraph 1 of the Schedule.
- reg.4(1) - the criteria prescribed for the purposes of paragraph 2(1) of Schedule 3 to the Act are the criteria set out in paragraphs (2) to (6).
- reg.4(2) - the criterion set out in this paragraph is that before the relevant date—
- (a) the person had been made subject to a disqualification order, and
  - (b) condition C in the 2003 Regulations was not satisfied in relation to the person, and
  - (c) regulation 8 of those Regulations applied to the person, and
  - (d) the Secretary of State had not made a direction under section 142(1)(a) of the 2002 Act in relation to that person.
- reg.4(3) - the criterion set out in this paragraph is that before the relevant date—
- (a) the person had been convicted of, or cautioned in relation to, an offence specified in Parts 2 to 5 of Schedule 2 to the 2003 Regulations, and
  - (b) any of conditions D to F in those Regulations was satisfied in relation to the person, and
  - (c) regulation 8 of those Regulations applied to the person, and
  - (d) the Secretary of State had not made a direction under section 142(1)(a) of the 2002 Act in relation to that person.
- reg.4(4) - the criterion set out in this paragraph is that the person has, on or after the relevant date, been made subject to a risk of sexual harm order within the meaning of section 123 of the Sexual Offences Act 2003 or section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.
- reg.4(5) - the criterion set out in this paragraph is that the person has, on or after the relevant date, been convicted of, or cautioned in relation to, an offence specified in paragraph 2 of the Schedule.

- reg.4(6) - the criterion set out in this paragraph is that the person has, on or after the relevant date, been made subject to a disqualification order and the person does not meet any other criteria prescribed in regulation 3 or in this regulation.
- reg.5 - the criterion prescribed for the purposes of paragraph 7(1) of Schedule 3 to the Act is that the person has, on or after the relevant date, been convicted of, or cautioned in relation to, an offence specified in paragraph 3 of the Schedule.
- reg.6 - the criteria prescribed for the purposes of paragraph 8(1) of Schedule 3 to the Act are—
- (a) that the person has, on or after the relevant date, been made subject to a risk of sexual harm order within the meaning of section 123 of the Sexual Offences Act 2003 or section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005;
  - (b) that the person has, on or after the relevant date, been convicted of, or cautioned in relation to, an offence specified in paragraph 4 of the Schedule.
- reg.7(1) - in regulation 8 of the Education (Provision of Information by Independent Schools) (England) Regulations 2003—
- (a) omit paragraphs (1)(a)(ii) and (2);
  - (b) in paragraph (1) for “Secretary of State” substitute “ “[Independent Safeguarding Authority] established under section 1 of the Safeguarding Vulnerable Groups Act 2006” ”.
- reg.7(2) - after regulation 10 of those Regulations, insert:
- “10A. Provision of information
- The Independent Safeguarding Authority established under section 1 of the Safeguarding Vulnerable Groups Act 2006 must, at the request of the Secretary of State, inform the Secretary of State whether the Independent Safeguarding Authority has received information from the proprietor of a specified school in relation to a specified person pursuant to regulation 8.”.
- reg.7(3) - in Part 5 of the Schedule to those Regulations, in paragraph 20 for “of the Secretary of State’s functions under section 142 of the 2002 Act” substitute “ “by the Independent Safeguarding Authority established under section 1 of the Safeguarding Vulnerable Groups Act 2006 of its functions under Schedule 3 to that Act””.
- reg.8(1) - The Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008 is amended as follows.
- reg.8(2) - after article 2(1)(a), insert—
- “(aa) who does not meet any of the criteria prescribed for the purposes of paragraph 1 or 2 of Schedule 3 to the Act under the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009;”.

**Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 (SI 2009/37) Sch.1<sup>1803</sup>**

- para.1 - the offences specified in this paragraph are—
- (a) [Scotland]
  - (b) [Northern Ireland]
  - (c) any offence contrary to a provision specified in the first column of Part 1 of the table set out in this paragraph, where it was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table;
  - (d) any offence contrary to a provision specified in Part 2 of that table;
  - (e) any offence contrary to—
    - (i) section 70 of the Army Act 1955,
    - (ii) section 70 of the Air Force Act 1955, or
    - (iii) section 42 of the Naval Discipline Act 1957,which corresponds to an offence contrary to any provision specified in the first column of Part 1 of that table and which was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table;
  - (f) any offence contrary to—
    - (i) section 70 of the Army Act 1955,
    - (ii) section 70 of the Air Force Act 1955, or
    - (iii) section 42 of the Naval Discipline Act 1957,which corresponds to an offence contrary to any provision specified in Part 2 of that table; and
  - (g) any offence contrary to section 42 of the Armed Forces Act 2006 where—
    - (i) the corresponding offence under the law of England and Wales is one contrary to a provision specified in the first column of Part 1 of that table, and the offence under the Armed Forces Act 2006 was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table, or
    - (ii) the corresponding offence under the law of England and Wales is one contrary to a provision specified in Part 2 of that table.

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<sup>1803</sup> Commencement: 20 January 2009, SI 2009/37 reg.1(1).

**Table****Part 1**

<b>Provision</b>	<b>Circumstances</b>
<b>Part 1</b>	
Sexual Offences Act 1956, section 1	The offence was committed against a child
Mental Health Act 1959, section 128	The offence was committed against a child
Sexual Offences Act 2003, section 1	The offence was committed against a child
Sexual Offences Act 2003, section 2	The offence was committed against a child
Sexual Offences Act 2003, section 30	The offence was committed against a child
Sexual Offences Act 2003, section 31	The person caused or incited to engage in sexual activity was a child
Sexual Offences Act 2003, section 32	The person who was present or in a place from which the person committing the offence could be seen was a child
Sexual Offences Act 2003, section 33	The person caused to watch the sexual activity in question was a child
Sexual Offences Act 2003, section 34	The offence was committed against a child
Sexual Offences Act 2003, section 35	The person induced, threatened or deceived was a child
Sexual Offences Act 2003, section 36	The person who agreed to be present or in a place from which the person committing the offence could be observed was a child
Sexual Offences Act 2003, section 37	The person induced, threatened or deceived was a child
Sexual Offences Act 2003, section 38	The offence was committed against a child
Sexual Offences Act 2003, section 39	The person caused or incited to engage in sexual activity was a child
Sexual Offences Act 2003, section 40	The person who was present or in a place from which the person committing the offence could be seen was a child
Sexual Offences Act 2003, section 41	The person caused to watch the sexual activity was a child
<b>Part 2</b>	
Criminal Law Amendment Act 1885, section 4	
Sexual Offences Act 1956, section 5	
Sexual Offences Act 2003, section 5	
Sexual Offences Act 2003, section 6	
Sexual Offences Act 2003, section 7	
Sexual Offences Act 2003, section 8	

para.2 - the offences specified in this paragraph are—

- (a) the offences contrary to the common law of England and Wales of—
  - (i) murder,
  - (ii) kidnapping,
  - (iii) infanticide;
- (b) the offences contrary to the common law of Scotland of—
  - (i) murder,
  - (ii) rape, where the offence was committed against an adult,
  - (iii) sodomy, unless every person involved in the offence was aged 16 or over and was a willing participant,

- (iv) indecent assault, where the offence was committed against a child,
- (v) clandestine injury to women, where the offence was committed against a child,
- (vi) abduction of a woman or a girl with intent to rape,
- (vii) assault with intent to rape or ravish;
- (c) an offence contrary to the common law of Scotland involving lewd, indecent or libidinous behaviour or practices, where the offence was committed against or involving a child under the age of 16;
- (d) the offence contrary to the common law of Northern Ireland of—
  - (i) murder,
  - (ii) rape, where the offence was committed against an adult,
  - (iii) kidnapping,
  - (iv) infanticide;
- (e) any offence contrary to a provision specified in Part 1 of the table set out in this paragraph, where it was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table;
- (f) any offence contrary to a provision specified in Part 2 of that table;
- (g) any offence contrary to—
  - (i) section 70 of the Army Act 1955,
  - (ii) section 70 of the Air Force Act 1955, or
  - (iii) section 42 of the Naval Discipline Act 1957,which corresponds to an offence contrary to any provision specified in the first column of Part 1 of that table and which was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table;
- (h) any offence contrary to—
  - (i) section 70 of the Army Act 1955,
  - (ii) section 70 of the Air Force Act 1955, or
  - (iii) section 42 of the Naval Discipline Act 1957,which corresponds to an offence contrary to any provision specified in Part 2 of that table; and
- (i) any offence contrary to section 42 of the Armed Forces Act 2006 where—
  - (i) the corresponding offence under the law of England and Wales is one contrary to a provision specified in the first column of Part 1 of that table, and the offence under the Armed Forces Act 2006 was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table, or
  - (ii) the corresponding offence under the law of England and Wales is one contrary to a provision specified in Part 2 of that table.

Provision	Circumstances
<b>Part 1</b>	
Offences Against the Person Act 1861, section 61	The person with whom the offence was committed was under the age of 16 or did not consent to the act
Offences Against the Person Act 1861, section 62	The person with whom the offence was committed was under the age of 16 or did not consent to the act
Criminal Law Amendment Act 1885, section 11	The person with whom the offence was committed was under the age of 16 or did not consent to the act and the conviction or caution is not a disregarded conviction or caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012
Punishment of Incest Act 1908, section 1	The offence was committed against a child
Punishment of Incest Act 1908, section 2	The offence was committed against a child
Sexual Offences Act 1956, section 1	The offence was committed against an adult
Sexual Offences Act 1956, section 10	The offence was committed against a child
Sexual Offences Act 1956, section 11	The offence was committed against a child
Sexual Offences Act 1956, section 12	The person with whom the offence was committed was under the age of 16 or did not consent to the act and the conviction or caution is not a disregarded conviction or caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012
Sexual Offences Act 1956, section 13	The person with whom the offence was committed was under the age of 16 or did not consent to the act and the conviction or caution is not a disregarded conviction or caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012
Theft Act 1968, section 9(1)(a)	The offence was committed with intent to commit rape before section 9(1)(a) was amended by the Sexual Offences Act 2003
Misuse of Drugs Act 1971, section 4(3)	The person to whom controlled drugs were supplied or offered to be supplied was a child
Customs and Excise Management Act 1979, section 170	The relevant goods were goods which were prohibited to be imported or brought into the United Kingdom, pursuant to section 42 of the Customs Consolidation Act 1876
Female Genital Mutilation Act 2003, section 1	The offence was committed against a child
Female Genital Mutilation Act 2003, section 2	The offence was committed against a child
Female Genital Mutilation Act 2003, section 3	The offence was committed against a child
Sexual Offences Act 2003, section 1	The offence was committed against an adult
Sexual Offences Act 2003, section 2	The offence was committed against an adult
Sexual Offences Act 2003, section 30	The offence was committed against an adult
Sexual Offences Act 2003, section 31	The person caused or incited to engage in sexual activity was an adult
Sexual Offences Act 2003, section 32	The person who was present or in a place from which the person committing the offence could be observed was an adult
Sexual Offences Act 2003, section 33	The person caused to watch the sexual activity in question was an adult
Sexual Offences Act 2003, section 34	The offence was committed against an adult
Sexual Offences Act 2003, section 35	The person induced, threatened or deceived was an adult



<b>Provision</b>	<b>Circumstances</b>
Sexual Offences Act 2003, section 36	The person who agreed to be present or in a place from which the person committing the offence could be observed was an adult
Sexual Offences Act 2003, section 37	The person induced, threatened or deceived was an adult
Sexual Offences Act 2003, section 38	The offence was committed against an adult
Sexual Offences Act 2003, section 39	The person caused or incited to engage in sexual activity was an adult
Sexual Offences Act 2003, section 40	The person who was present or in a place from which the person committing the offence could be observed was an adult
Sexual Offences Act 2003, section 41	The person caused to watch the sexual activity in question was an adult
Sexual Offences Act 2003, section 62	The relevant sexual offence was one specified in this Schedule and was intended to be committed in relevant circumstances, if any, specified in this Schedule in relation to that offence
Sexual Offences Act 2003, section 63	The relevant sexual offence was one specified in this Schedule and was intended to be committed in relevant circumstances, if any, specified in this Schedule in relation to that offence
Sexual Offences Act 2003, section 66	The offence was committed against a child under the age of 16
Sexual Offences Act 2003, section 67	The offence was committed against a child under the age of 16
Sexual Offences Act 2003, section 72	The offence committed corresponds to an offence which would lead to automatic inclusion in the children's barred list with the right to make representations
<b>Part 2</b>	
Offences Against the Person Act 1861, section 21	
Offences Against the Person Act 1861, section 52	
Offences Against the Person Act 1861, section 53	
Offences Against the Person Act 1861, section 54	
Offences Against the Person Act 1861, section 55	
Criminal Law Amendment Act 1885, section 2	
Criminal Law Amendment Act 1885, section 3	
Criminal Law Amendment Act 1885, section 5	
Criminal Law Amendment Act 1885, section 6	
Criminal Law Amendment Act 1885, section 7	
Criminal Law Amendment Act 1885, section 8	
Vagrancy Act 1898, section 1	
Children and Young Persons Act 1933, section 1	
Infanticide Act 1938, section 1	
Sexual Offences Act 1956, section 2	
Sexual Offences Act 1956, section 3	
Sexual Offences Act 1956, section 4	
Sexual Offences Act 1956, section 6	
Sexual Offences Act 1956, section 7	

<b>Provision</b>	<b>Circumstances</b>
Sexual Offences Act 1956, section 9	
Sexual Offences Act 1956, section 14	
Sexual Offences Act 1956, section 15	
Sexual Offences Act 1956, section 16	
Sexual Offences Act 1956, section 17	
Sexual Offences Act 1956, section 19	
Sexual Offences Act 1956, section 20	
Sexual Offences Act 1956, section 21	
Sexual Offences Act 1956, section 22	
Sexual Offences Act 1956, section 23	
Sexual Offences Act 1956, section 24	
Sexual Offences Act 1956, section 25	
Sexual Offences Act 1956, section 26	
Sexual Offences Act 1956, section 27	
Sexual Offences Act 1956, section 28	
Sexual Offences Act 1956, section 29	
Sexual Offences Act 1956, section 30	
Sexual Offences Act 1956, section 31	
Mental Health Act 1959, section 128	
Indecency with Children Act 1960, section 1	
Sexual Offences Act 1967, section 4	
Sexual Offences Act 1967, section 5	
Criminal Law Act 1977, section 54	
Protection of Children Act 1978, section 1	
Mental Health Act 1983, section 127	
Child Abduction Act 1984, section 1	
Child Abduction Act 1984, section 2	
Child Abduction Act 1984, section 6	
Criminal Justice Act 1988, section 160	
Sexual Offences (Amendment) Act 2000, section 3	
Nationality, Immigration and Asylum Act 2002, section 145	
Sexual Offences Act 2003, section 3	
Sexual Offences Act 2003, section 4	
Sexual Offences Act 2003, section 4(1)(a)	
Sexual Offences Act 2003, section 9	
Sexual Offences Act 2003, section 10	
Sexual Offences Act 2003, section 11	
Sexual Offences Act 2003, section 12	
Sexual Offences Act 2003, section 14	
Sexual Offences Act 2003, section 15	
Sexual Offences Act 2003, section 16	
Sexual Offences Act 2003, section 17	
Sexual Offences Act 2003, section 18	
Sexual Offences Act 2003, section 19	
Sexual Offences Act 2003, section 20	
Sexual Offences Act 2003, section 25	
Sexual Offences Act 2003, section 26	
Sexual Offences Act 2003, section 47	
Sexual Offences Act 2003, section 48	
Sexual Offences Act 2003, section 49	
Sexual Offences Act 2003, section 50	
Sexual Offences Act 2003, section 52	

Provision	Circumstances
Sexual Offences Act 2003, section 53	
Sexual Offences Act 2003, section 57	
Sexual Offences Act 2003, section 58	
Sexual Offences Act 2003, section 59	
Sexual Offences Act 2003, section 59A	
Sexual Offences Act 2003, section 61	
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, section 4	
Domestic Violence, Crime and Victims Act 2004, section 5	
Mental Capacity Act 2005, section 44	
Criminal Justice and Immigration Act 2008, section 63	
Coroners and Justice Act 2009, section 62	
Modern Slavery Act 2015, section 2;	

para.3 - the offences specified in this paragraph are—

- (a) any offence contrary to a provision specified in the table set out in this paragraph;
- (b) any offence contrary to—
  - (i) section 70 of the Army Act 1955,
  - (ii) section 70 of the Air Force Act 1955, or
  - (iii) section 42 of the Naval Discipline Act 1957,
 which corresponds to an offence contrary to any provision specified in that table; and
- (c) any offence contrary to section 42 of the Armed Forces Act 2006, where the corresponding offence under the law of England and Wales is one contrary to a provision specified in that table.

Provision
Sexual Offences Act 2003, section 30
Sexual Offences Act 2003, section 31
Sexual Offences Act 2003, section 32
Sexual Offences Act 2003, section 33
Sexual Offences Act 2003, section 34
Sexual Offences Act 2003, section 35
Sexual Offences Act 2003, section 36
Sexual Offences Act 2003, section 37
Sexual Offences Act 2003, section 38
Sexual Offences Act 2003, section 39
Sexual Offences Act 2003, section 40
Sexual Offences Act 2003, section 41

para.4 - the offences specified in this paragraph are—

- (a) the offences contrary to the common law of England and Wales of—
  - (i) murder,
  - (ii) kidnapping,
  - (iii) infanticide;
- (b) the offences contrary to the common law of Scotland of—
  - (i) murder,

- (ii) rape, where the offence was committed against a child,
  - (iii) sodomy, unless every person involved in the offence was aged 16 or over and was a willing participant,
  - (iv) indecent assault, where the offence was committed against a child,
  - (v) clandestine injury to women, where the offence was committed against a child,
  - (vi) abduction of a woman or a girl with intent to rape, where the offence was committed against a child,
  - (vii) assault with intent to rape or ravish, where the offence was committed against a child;
- (c) an offence contrary to the common law of Scotland involving lewd, indecent or libidinous behaviour or practices, where the offence was committed against a child under the age of 16;
- (d) the offences contrary to the common law of Northern Ireland of—
- (i) murder,
  - (ii) rape, where the offence was committed against a child,
  - (iii) kidnapping,
  - (iv) infanticide;
- (e) any offence contrary to a provision specified in the first column of Part 1 of the table set out in this paragraph, where it was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table;
- (f) any offence contrary to a provision specified in Part 2 of that table;
- (g) any offence contrary to—
- (i) section 70 of the Army Act 1955,
  - (ii) section 70 of the Air Force Act 1955, or
  - (iii) section 42 of the Naval Discipline Act 1957,
- which corresponds to an offence contrary to any provision specified in the first column of Part 1 of that table and which was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table;
- (h) any offence contrary to—
- (i) section 70 of the Army Act 1955,
  - (ii) section 70 of the Air Force Act 1955, or
  - (iii) section 42 of the Naval Discipline Act 1957,
- which corresponds to an offence contrary to any provision specified in Part 2 of that table; and
- (i) any offence contrary to section 42 of the Armed Forces Act 2006 where—
- (i) the corresponding offence under the law of England and Wales is one contrary to a provision specified in the first column of Part 1 of that table, and the offence under the Armed Forces Act 2006 was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table, or

- (ii) the corresponding offence under the law of England and Wales is one contrary to a provision specified in Part 2 of that table.

Provision	Circumstances
<b>Part 1</b>	
Offences Against the Person Act 1861, section 61	The person with whom the offence was committed was under the age of 16 or did not consent to the act
Criminal Law Amendment Act 1885, section 11	The person with whom the offence was committed was under the age of 16 or did not consent to the act and the conviction or caution is not a disregarded conviction or caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012
Punishment of Incest Act 1908, section 1	The offence was committed against a child or the other party to the offence did not consent to the act
Punishment of Incest Act 1908, section 2	The offence was committed against a child or the other party to the offence did not consent to the act
Sexual Offences Act 1956, section 10	The offence was committed against a child or the other party to the offence did not consent to the act
Sexual Offences Act 1956, section 11	The offence was committed against a child or the other party to the offence did not consent to the act
Sexual Offences Act 1956, section 12	The person with whom the offence was committed was under the age of 16 or did not consent to the act and the conviction or caution is not a disregarded conviction or caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012
Sexual Offences Act 1956, section 13	The person with whom the offence was committed was under the age of 16 or did not consent to the act and the conviction or caution is not a disregarded conviction or caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012
Theft Act 1968, section 9(1)(a)	The offence was committed with intent to commit rape before section 9(1)(a) was amended by the Sexual Offences Act 2003
Misuse of Drugs Act 1971, section 4(3)	The person to whom controlled drugs were supplied or offered to be supplied was a child
Customs and Excise Management Act 1979, section 170	The relevant goods were goods which were prohibited to be imported or brought into the United Kingdom, pursuant to section 42 of the Customs Consolidation Act 1876
Female Genital Mutilation Act 2003, section 1	The offence was committed against a child
Female Genital Mutilation Act 2003, section 2	The offence was committed against a child
Female Genital Mutilation Act 2003, section 3	The offence was committed against a child
Sexual Offences Act 2003, section 66	The offence was committed against a child under the age of 16

<b>Provision</b>	<b>Circumstances</b>
Sexual Offences Act 2003, section 67	The offence was committed against a child under the age of 16
Sexual Offences Act 2003, section 72	The offence committed corresponds to an offence leading to automatic inclusion in the adults' barred list with the right to make representations
<b>Part 2</b>	
Offences Against the Person Act 1861, section 21	
Offences Against the Person Act 1861, section 52	
Offences Against the Person Act 1861, section 53	
Offences Against the Person Act 1861, section 54	
Offences Against the Person Act 1861, section 55	
Offences Against the Person Act 1861, section 62	
Criminal Law Amendment Act 1885, section 2	
Criminal Law Amendment Act 1885, section 3	
Criminal Law Amendment Act 1885, section 4	
Criminal Law Amendment Act 1885, section 5	
Criminal Law Amendment Act 1885, section 6	
Criminal Law Amendment Act 1885, section 7	
Criminal Law Amendment Act 1885, section 8	
Vagrancy Act 1898, section 1	
Children and Young Persons Act 1933, section 1	
Infanticide Act 1938, section 1	
Sexual Offences Act 1956, section 1	
Sexual Offences Act 1956, section 2	
Sexual Offences Act 1956, section 3	
Sexual Offences Act 1956, section 4	
Sexual Offences Act 1956, section 5	
Sexual Offences Act 1956, section 6	
Sexual Offences Act 1956, section 7	
Sexual Offences Act 1956, section 9	
Sexual Offences Act 1956, section 14	
Sexual Offences Act 1956, section 15	
Sexual Offences Act 1956, section 16	
Sexual Offences Act 1956, section 17	
Sexual Offences Act 1956, section 19	
Sexual Offences Act 1956, section 20	
Sexual Offences Act 1956, section 21	
Sexual Offences Act 1956, section 22	
Sexual Offences Act 1956, section 23	
Sexual Offences Act 1956, section 24	
Sexual Offences Act 1956, section 25	
Sexual Offences Act 1956, section 26	
Sexual Offences Act 1956, section 27	
Sexual Offences Act 1956, section 28	
Sexual Offences Act 1956, section 29	
Sexual Offences Act 1956, section 30	
Sexual Offences Act 1956, section 31	
Mental Health Act 1959, section 128	
Indecency with Children Act 1960, section 1	
Sexual Offences Act 1967, section 4	
Sexual Offences Act 1967, section 5	
Criminal Law Act 1977, section 54	
Protection of Children Act 1978, section 1	

<b>Provision</b>	<b>Circumstances</b>
Mental Health Act 1983, section 127	
Child Abduction Act 1984, section 1	
Child Abduction Act 1984, section 2	
Child Abduction Act 1984, section 6	
Criminal Justice Act 1988, section 160	
Sexual Offences (Amendment) Act 2000, section 3	
Nationality, Immigration and Asylum Act 2002, section 145	
Sexual Offences Act 2003, section 1	
Sexual Offences Act 2003, section 2	
Sexual Offences Act 2003, section 3	
Sexual Offences Act 2003, section 4	
Sexual Offences Act 2003, section 4(1)(a)	
Sexual Offences Act 2003, section 5	
Sexual Offences Act 2003, section 6	
Sexual Offences Act 2003, section 7	
Sexual Offences Act 2003, section 8	
Sexual Offences Act 2003, section 9	
Sexual Offences Act 2003, section 10	
Sexual Offences Act 2003, section 11	
Sexual Offences Act 2003, section 12	
Sexual Offences Act 2003, section 14	
Sexual Offences Act 2003, section 15	
Sexual Offences Act 2003, section 16	
Sexual Offences Act 2003, section 17	
Sexual Offences Act 2003, section 18	
Sexual Offences Act 2003, section 19	
Sexual Offences Act 2003, section 20	
Sexual Offences Act 2003, section 25	
Sexual Offences Act 2003, section 26	
Sexual Offences Act 2003, section 47	
Sexual Offences Act 2003, section 48	
Sexual Offences Act 2003, section 49	
Sexual Offences Act 2003, section 50	
Sexual Offences Act 2003, section 52	
Sexual Offences Act 2003, section 53	
Sexual Offences Act 2003, section 57	
Sexual Offences Act 2003, section 58	
Sexual Offences Act 2003, section 59	
Sexual Offences Act 2003, section 59A	
Sexual Offences Act 2003, section 61	
Sexual Offences Act 2003, section 62	
Sexual Offences Act 2003, section 63	
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, section 4	
Domestic Violence, Crime and Victims Act 2004, section 5	
Mental Capacity Act 2005, section 44	
Criminal Justice and Immigration Act 2008, section 63	
Coroners and Justice Act 2009, section 62	
Modern Slavery Act 2015, section 2	

### 3.9.2.8. Persons aged under 18

#### **SVGA 2006 Sch.3: Barred lists**

para.24(4) - for the purposes of determining whether any of the criteria is satisfied in relation to a person, ignore–

- (a) any offence committed before he attained the age of 18;
- (b) any order or direction made before that time.

para.24(7) - for the purposes of sub-paragraph (4) an offence committed over a period of time must be treated as committed on the last day of the period.

### 3.9.2.9. Appeals

#### **SVGA 2006 s.4<sup>1804</sup>: Appeals**

s.4(1) - an individual who is included in a barred list may appeal to the Upper Tribunal against–

- (b) a decision under paragraph 2, 3, 5, 8, 9 or 11 of Schedule 3 to include him in the list;
- (c) a decision under paragraph 17, 18 or 18A of that Schedule not to remove him from the list.

s.4(2) - an appeal under subsection (1) may be made only on the grounds that DBS has made a mistake–

- (a) on any point of law;
- (b) in any finding of fact which it has made and on which the decision mentioned in that subsection was based.

s.4(3) - for the purposes of subsection (2), the decision whether or not it is appropriate for an individual to be included in a barred list is not a question of law or fact.

s.4(4) - an appeal under subsection (1) may be made only with the permission of the Upper Tribunal.

s.4(5) - unless the Upper Tribunal finds that DBS has made a mistake of law or fact, it must confirm the decision of DBS.

s.4(6) - if the Upper Tribunal finds that DBS has made such a mistake it must–

- (a) direct DBS to remove the person from the list, or
- (b) remit the matter to DBS for a new decision.

s.4(7) - if the Upper Tribunal remits a matter to DBS under subsection (6)(b)–

- (a) the Upper Tribunal may set out any findings of fact which it has made (on which DBS must base its new decision); and
- (b) the person must be removed from the list until DBS makes its new decision, unless the Upper Tribunal directs otherwise.

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<sup>1804</sup> Commencement: Section 4(8) in force 31 December 2007, SI 2007/3545 art.2(d). Otherwise in force 19 May 2008, SI 2008/1320 art.2(b).



### 3.9.2.10. Breach

#### **SVGA 2006 s.7<sup>1805</sup>: Barred person not to engage in regulated activity**

- s.7(1) - an individual commits an offence if he—
- (a) seeks to engage in regulated activity from which he is barred;
  - (b) offers to engage in regulated activity from which he is barred;
  - (c) engages in regulated activity from which he is barred.
- s.7(2) - a person guilty of an offence under subsection (1) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.
- s.7(3) - it is a defence for a person charged with an offence under subsection (1) to prove that he did not know, and could not reasonably be expected to know, that he was barred from that activity.
- s.7(4) - it is a defence for a person charged with an offence under subsection (1) to prove—
- (a) that he reasonably thought that it was necessary for him to engage in the activity for the purpose of preventing harm to a child or vulnerable adult (as the case may be),
  - (b) that he reasonably thought that there was no other person who could engage in the activity for that purpose, and
  - (c) that he engaged in the activity for no longer than was necessary for that purpose.
- s.7(5) - for the purposes of this section, Schedule 4 is modified as follows—
- (a) in paragraph 1, sub-paragraphs (1)(b) and (2)(a) must be disregarded.
- s.7(6) - in relation to an offence committed before the commencement of section 282(3) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (2)(b) to 12 months must be taken to be a reference to six months.

#### **SVGA 2006 s.9<sup>1806</sup>: Use of barred person for regulated activity**

- s.9(1) - a person commits an offence if—
- (a) he permits an individual (B) to engage in regulated activity from which B is barred,
  - (b) he knows or has reason to believe that B is barred from that activity, and
  - (c) B engages in the activity.

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<sup>1805</sup> Commencement: 12 October 2009, SI 2009/2611 art.2 and Sch.1.

<sup>1806</sup> Commencement: 12 October 2009, SI 2009/2611 art.2 and Sch.1.

- s.9(2) - a personnel supplier commits an offence if–
- (a) he supplies an individual (B) to another (P),
  - (b) he knows or has reason to believe that P will make arrangements for B to engage in regulated activity from which B is barred, and
  - (c) he knows or has reason to believe that B is barred from that activity.
- s.9(3) - a person guilty of an offence under this section is liable–
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.
- s.9(4) - it is a defence for a person charged with an offence under this section to prove–
- (a) that he reasonably thought that it was necessary for the barred person to engage in the activity for the purpose of preventing harm to a child or vulnerable adult (as the case may be),
  - (b) that he reasonably thought that there was no other person who could engage in the activity for that purpose, and
  - (c) that the barred person engaged in the activity for no longer than was necessary for that purpose.
- s.9(5) - for the purposes of this section, Schedule 4 is modified as follows–
- (a) in paragraph 1, sub-paragraphs (1)(b) and (2)(a) must be disregarded.
- s.9(6) - in relation to an offence committed before the commencement of section 282(3) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (3)(b) to 12 months must be taken to be a reference to six months.