



Home Office

Rt Hon Damian Green MP
MINISTER OF STATE FOR POLICING AND CRIMINAL JUSTICE

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Nicola Blackwood MP
House of Commons
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Dear Nicola,

08 OCT 2013

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL: STRENGTHENING CIVIL ORDERS UNDER THE SEXUAL OFFENCES ACT 2003

I have seen new clause 5 which you have tabled for Report stage as part of your commendable *Childhood Lost* campaign. The new clause provides for a new child sexual abuse prevention order which would replace the existing risk of sexual harm order provided for in the Sexual Offences Act 2003 (the 2003 Act). In doing so, it seeks to address the serious weaknesses in the current civil preventative order regime under the 2003 Act identified in the report, published in May, by Hugh Davies QC into the workings of the current regime. As you know, that report concluded that the existing regime is not fit for purpose and is failing to deliver the quality of protection children deserve from sexual abuse. The report recommended a rationalisation and strengthening of the existing preventative orders available under the 2003 Act (risk of sexual harm orders being one of four such orders, the other being: notification orders; sexual offences prevention orders; and foreign travel orders). The Government endorses this conclusion and so welcomes your new clause, but we believe there is an opportunity here to go further by streamlining and reinforcing the civil order regime in the 2003 Act in a way that affords enhanced protection for both children and vulnerable adults. To that end, I have today tabled a number of amendments to the Bill which will deliver the improvements you have sought through new clause 5 and more. I very much hope that on this basis you would feel able to support the Government amendments.

It may assist if I explain in a little detail the approach taken in new clauses *Sexual harm prevention orders and sexual risk orders, etc* and *Saving and transitional provision* and new *Schedule Amendments of Part 2 of the Sexual Offences Act 2003*. The latter amends the 2003 Act by introducing two new civil orders, namely a “sexual harm prevention order” (to replace sexual offences prevention orders and foreign travel orders) and a “sexual risk order” (to replace risk of sexual harm orders). These new orders will be available to protect any person in the UK from the risk of sexual harm (and children or vulnerable adults elsewhere).

The key elements of the new sexual harm prevention order will be as follows:

- It will be made by the magistrates’ court (or in some cases the youth court, Crown Court or Court of Appeal) on application by a chief officer of police or the Director General of the National Crime Agency.
- An order may be made in relation to a person who has been convicted of or cautioned for one of the sexual or other offences listed in Schedules 3 or 5 to the 2003 Act (or an equivalent offence in an overseas jurisdiction).
- The court must also be satisfied that:
 - (a) in a case where the court is considering making an order immediately following conviction and sentence, that it is necessary to make an order for the purpose of protecting the public generally or any particular member of the public from the defendant, or protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom; and
 - (b) in a case where the court is considering making an order in a free standing application, the court must also be satisfied that the defendant’s behaviour since the date of his or her conviction makes it necessary to make an order for one of the purposes described in (a) above.

In effect, we are replacing the existing test of “risk of serious sexual harm” with a test of “risk of sexual harm”. As with the existing orders under the 2003 Act, the court will need to be satisfied to the criminal standard of proof that the test for making an order has been met. (See new section 103A of the 2003 Act for the grounds for making an order.)

- An order may prohibit the defendant from doing anything described in it. Any such prohibition (which, as now in a foreign travel order, may include an overseas travel ban) must be necessary for the purpose of protecting any person or persons generally from sexual harm caused by the defendant or, in relation to acts done by the person concerned outside the United Kingdom, protecting any person or persons generally aged under 18 or who is a vulnerable adult from sexual harm. An order would also have the effect of making the person subject to the notification requirements in the 2003 Act

(commonly referred to as the “sex offenders’ register”). (See new sections 103C, 103D and 103G.)

- The other features of the new order, including its duration (new section 103C(2) and 103D(1)), variation and discharge (new section 103E), interim orders (new section 103F), appeals (new section 103H) and offence in respect of breach (new section 103I) will broadly replicate existing provision in the 2003 Act as it applies to the current orders. New section 103J (and 122J in relation to sexual risk orders) places the Home Secretary under a duty to issue guidance to chief officers and the Director General of the NCA in relation to the exercise of their powers in relation to the new orders.

The sexual risk order will build substantially on the existing risk of sexual harm order and will replicate many of its features (see new sections 122A to 122J). The key changes will relate to the basis on which the application may be made and the range of prohibitions available under it. For the new sexual risk order, an application may be made by a chief officer or the Director General of the National Crime Agency if it appears to either of them that the person concerned has done any act of a sexual nature (at present there must be at least two sexual acts of a specified type) as a result of which they consider it to be necessary for an order to be made. The new order may be made in relation to any person and the prohibitions which may be imposed in it are those which are necessary for the purpose of protecting the public generally or any particular member of the public from the defendant, or protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom. Again, the court would apply the criminal standard of proof.

In another enhancement to the existing regime, the sexual risk order would include a specific notification requirement which applies whilst the order has effect. A person made the subject of an order would be required to notify the police of their name and home address within 3 days of the order being served. The subject of an order must also notify the police of any change to the name or address previously notified, with 3 days of the change taking place. (See new section 122F)

New clause *Saving and transitional provision* includes appropriate transitional provisions from the old to the new regimes. Any existing orders still in force five years after commencement will automatically be treated as a sexual harm prevention order or a sexual risk order, as appropriate.

The new regime will extend to England and Wales, although any prohibitions imposed by a new order will apply throughout the United Kingdom and, as a result, breach of such a prohibition will be an offence in Scotland and Northern Ireland as it is in England and Wales. (See new section 136ZA). Subsection (2) of new clause *Sexual harm prevention orders and sexual risk orders, etc* (coupled with the amendments to clause 151) makes the necessary changes to the extent provisions in the 2003 Act to achieve this end.

The amendment to Schedule 8, inserting new Part 1A, makes consequential amendments to the 2003 Act and other enactments.

We have prepared a supplementary ECHR memorandum (attached) setting out our assessment of the compatibility of these provisions with the Convention rights.

I am copying this letter to Yvette Cooper, David Hanson, Keith Vaz (Chair, Home Affairs Select Committee), Dr Hywel Francis (Chair, Joint Committee on Human Rights), Baroness Smith of Basildon, Baroness Browning and Baroness Hamwee. I am also placing a copy of this letter and enclosure in the Library of the House and on the Bill page of the Government website¹.

Yours,



Rt Hon Damian Green MP

¹ <https://www.gov.uk/government/organisations/home-office/series/anti-social-behaviour-crime-and-police-bill>