Isle of Man Government
Reiltys Ellan Vannin

Department of Home Affairs

Rheynn Cooishyn Sthie

GUIDANCE ON SEXUAL HARM PREVENTION ORDERS AND SEXUAL RISK ORDERS MADE UNDER THE SEXUAL OFFENCES AND OBSCENE PUBLICATIONS ACT 2021

GD 2024/0010

Sexual Offences and Obscene Publications Act 2021: Statutory Guidance

Contents

This statutory guidance is issued by the Department of Home Affairs ("the Department") under sections 191 and 202 of the Sexual Offences and Obscene Publications Act 2021 ("the 2021 Act"). It provides guidance to the Chief Constable ("the police") with regards to the exercise of powers to issue Sexual Harm Prevention Orders, Interim Sexual Harm Prevention Orders, Sexual Risk Orders and Interim Sexual Risk Orders.

Section One: Introduction and general principles

There are two civil orders available under Part 10, Division 7 of the 2021 Act which can be made by a court of summary jurisdiction in respect of relevant sex offenders and those who pose a risk of harm: sexual harm prevention orders and sexual risk orders.

Sexual harm prevention orders ("SHPOs") can be made in respect of anyone convicted of or cautioned for a sexual or violent offence who poses a risk of sexual harm to the public in the Isle of Man and/or children or vulnerable adults abroad.

Sexual Risk Orders ("SROs") can be made in respect of any individual (whether or not they have a relevant conviction or caution) who resides in, is in or intends to come to, the Isle of Man and poses a risk of harm to the public in the Island and/or children or vulnerable adults abroad.

Both types of order can place a range of restrictions on individuals depending on the nature of the case, such as limiting their internet use or preventing travel abroad.

Applying for a civil order under the 2021 Act

Whilst both these orders have different purposes and effects, much of the application process is similar. This section should be read alongside the guidance on the relevant order and with the specific provisions in the 2021 Act in relation to each order.

Orders may be applied for by the Chief Constable, by way of a complaint to a court of summary jurisdiction ("the court") (and in the case of SHPOs may be made by the court at the time of sentencing, without an application). The general provisions governing complaints to a court are set out in accordance with the Summary Jurisdiction Act 1989. However, it should be noted that section 207 of the 2021 Act makes clear that section 75 (time limits) of the Summary Jurisdiction Act 1989 does not apply to any complaint under Part 10 of the 2021 Act (i.e. an application for a civil order under that Part). This means that it is not necessary for the evidence in support of an application to relate to conduct which has occurred within the six-month period preceding the application being made (for example where an offender has been abroad or in prison).

An application for an order is made by way of complaint to the court. This means the court will act in its civil capacity and the civil rules of evidence apply and hearsay is admissible. The court should apply the lower civil standard of proof (balance of probabilities) when determining whether the individual, in respect of whom the civil order application is made, is considered to have acted in such a way as to make an order necessary. An application may only be made in relation to a single individual, even if that person may be a member of a larger group. To expedite the process, the police should consider alerting the court prior to making an application to help in its scheduling.

It is recommended that the police first consult the Attorney General's Chambers before making an application. It is worth bearing in mind that, should any case be subject to review under section 164 of the 2021 Act or appeal under section 189 or 199 (as applicable to the relevant order) of the 2021 Act, it is essential to have access to as much information as

possible relating to the reasons and justifications for the original application. It is therefore a requirement that all relevant information is recorded in relation to applications at the time that they are made.

Details of the complaint should be sent to the defendant's last known address or given to the defendant in person pursuant to section 80 of the Summary Jurisdiction Act 1989. Where a child or young person (an offender under the age of 18) is the subject of the application, the individual with parental responsibility should also receive a copy of the details. 'Parental responsibility' has the same meaning as in section 2 of the Children and Young Persons Act 2001. It is suggested that, prior to the hearing, the police consider visiting the defendant to ensure that they understand the seriousness of the complaint and the need to attend court.

Prohibitions

Both SHPOs and SROs may include prohibitions that restrict the individual from doing anything described in the order.

Any prohibition may be imposed, provided the court considers it necessary to protect the public in the Island, or children or vulnerable adults abroad, from sexual harm perpetrated by the individual. This is designed to provide the courts with flexibility on deciding what is appropriate in each individual case. The inclusion of a particular prohibition is not mandatory and there is no set list of the types of requirements that may be placed on the individual.

Gangs

Both SHPOs and SROs have been designed to be applied flexibly to address sexual risk in a range of contexts. This includes in a gang context where there may be an element of sexual violence or exploitation involved, but where this may not necessarily have been the principal issue that has brought the gang activity to the police's attention.

Most incidents of gang-related sexual violence and exploitation take place between young people who are known to each other. Such individuals may not consider themselves perpetrators or victims of sexual violence, and many victims are unlikely to want to report these incidents to the police.
Examples of scenarios in which an application for an SRO or SHPO might be considered include:

- Individual or multiple people sexually assaulting a young person who is associated with a rival gang.
- Young people being forced to have sex with multiple gang members as a means of initiation.
- Gang members distributing non-consensual sexual images or videos of others known to them, particularly where they are under 16.
- Gang members coercing and pressuring a young person into having sex with multiple people by exploiting their fear or lack of understanding of consent, or in exchange for (perceived) status or protection or for other tangible goods.
- Gang members forcing young people to strip or perform sex acts on film as punishment.

The age of perpetrators and victims in a gang-related context mean that safeguarding issues are likely to be a particularly high priority.

Interim orders

It is possible to apply for interim orders (see guidance on specific orders). The purpose of an interim order is to protect the public, or any particular individuals, during any period between the application for a full order and its determination. Breach of any of the prohibitions of an interim order is a criminal offence carrying the same maximum penalty as breach of a full order.

The orders that may be made under Part 10, Division 7 of the 2021 Act are public protection tools. Any interference with the offender's right to a private and family life (protected by Article 8 of the European Convention on Human Rights (ECHR)) must be necessary and proportionate to the prevention or detection of crime, the rights and freedoms of others or the protection of health and morals. The risk factor may be of such a degree as to justify an interim order application at the same time as an application for a full order. However, given that such an order will be made before the court has heard and tested all the evidence, great care must be taken to ensure that such a course of action is justified.

It is a matter for the court to decide whether it is just to make an interim order. If an application is properly made and supported, an interim order may be granted. The court may make an interim order if it considers it just to do so.

Whilst recognising that the defendant must be allowed adequate time to prepare, it will not normally be expected that interim hearings will be adjourned, since the purpose of an interim order is to provide a degree of public protection pending the determination of the main application.

Role of the Prosecution Division

The Isle of Man Prosecution Division (IOMPD) would usually make the application for those orders at the point of conviction, based on information from the police. IOMPD would not normally be consulted on individual cases outside this since the orders are civil; however there may be exceptional circumstances where the police will wish to seek their advice. For example, it may be necessary to establish whether any of the conduct or behaviour is subject to ongoing criminal proceedings or should be prosecuted as a criminal matter.

In addition, it is important to remember that the IOMPD will be involved if an order is breached, and the breach prosecuted. It may also be sensible to seek IOMPD advice on the wording of unusual or complex prohibitions to ensure that any breaches of them will be capable of being proved to the criminal standard.

Time limits on use of evidence

Section 207 of the 2021 Act confirms, by disapplying section 75 (time limits) of the Summary Jurisdiction Act 1989, that evidence provided in support of an application does not have to relate to matters occurring during the six-month period preceding the application being made.

Reporting restrictions

The 2021 Act provides automatic anonymity for suspects of various offences until such time as a person is convicted. Section 140 of the 2021 Act requires that this anonymity will be provided without application, however section 144 provides that police officers of or above the rank of superintendent have the ability to make an application to the Court to dispose of such anonymity in certain circumstances.

It is however important to note that this automatic anonymity will only apply to the specific offences in section 142 of the 2021 Act. It does not apply to any proceedings relating to SHPOs or SROs themselves, or breaches of those orders.

Procedure on hearing an application for an order

Section 233 of the 2021 Act confirms that unless Court Rules are put in place, the Court procedure for any case relating to SHPOs and SROs, or their respective interim orders, may be determined by the presiding Deemster or court.

Adjournment and non-attendance at court

There should be no unnecessary delay in hearing SHPO and SRO cases and the police should only seek an adjournment where the interests of justice require it. A court can proceed with an
application in the defendant's absence.

Where prohibitions and/or the notification requirements are being imposed, the breach of which is a criminal offence, it is preferable for the defendant to be present to know what the order is about. However, a defendant must not be allowed to use their absence to delay an outcome, especially in relation to an interim order, the very purpose of which is to avoid such delays leading to gaps in public protection. If the case is adjourned through non-attendance, the Isle of Man Constabulary should write to the defendant explaining that the court may proceed in his absence if they fail to attend on the next occasion.

Oral evidence

In relation to evidence from children and vulnerable witnesses, it is recommended that, due to the strain such a case will place upon them, they should only be called to give evidence in exceptional circumstances. If such evidence is necessary, the procedures in place at the court will be followed.

Service and notification of order

An order may be served on the defendant in person and, where appropriate, a copy of the Notice of Requirement to Register is given to the defendant. Where a child or young person is concerned, a copy is also given to the person with parental responsibility. The defendant is normally expected to wait at court until the order is drawn up and served on them.

Any process for appeal will be made clear to the individual. It will also be made clear that a breach of any of the prohibitions or conditions contained in the order and/or the notification requirements is a criminal offence.

Notification of orders to others concerned

In accordance with any relevant court procedures, a copy of the order, together with a copy of the Notice Requirement to Register form (where appropriate) will be issued to other parties, including the police.

Variation, renewal, and discharge of orders

For SHPOs where the offender is not sentenced to a term of custody and SROs it is possible to apply to the court for an order to be varied, renewed or discharged. An application can be made in relation to either order by the Chief Constable or the defendant; for SHPOs such an application could also be made by a probation officer. A variation, renewal or discharge application should be made to the court which made the order.

It is not possible for a defendant to be subject to more than one of the same type of order (although it is possible to be subject to two or more different types of order). If a court makes a new order in respect of a defendant, any previous order of the same type ceases to have effect. Similarly, unless the court orders otherwise, where it makes an SRO in relation to a person already subject to a Risk of Sexual Harm Order (RSHO) under the Sex Offenders

Act 2006, the earlier order ceases to have effect.

Recording of information - Police National Computer (PNC)

These orders are not a criminal conviction and should not be recorded as such. The orders will not form part of a criminal record.

Arrangements should be made to ensure the necessary information is updated onto the Police National Computer (PNC) and available to all operational police officers/staff in England & Wales.

Additionally, some of the orders require a subject/offender to register under the 2021 Act. An information marker will be added to the local Police database (CONNECT) to ensure this information is available for timely re-call and reflects, with accuracy, the context of the matter, and any notification requirements.

Appeal against an order

Where appropriate, provisions exist for a defendant to appeal against the making of an order. Where an appeal may be brought by a defendant in relation to an order, the appeal is to the Staff of Government Division.

At the hearing of an appeal, the Staff of Government Division may make such further orders as give effect to its determination of the appeal, including incidental or consequential orders.

Any order made by the Staff of Government Division on appeal shall be treated for the purpose of any later application for variation or discharge as if it were the original court order, unless it is an order directing that the application be reheard by the original court (section 199(3) of the 2021 Act).

There is no provision for automatic stay of an order pending appeal. However, at the hearing of an appeal, it is open for the Staff of Government Division to make any incidental order, for example to suspend the operation of a prohibition pending the outcome of the appeal, where this appears to the Staff of Government Division to be just.

In order for the Staff of Government Division to determine an appeal, the police should provide a copy of the original application by complaint for an order, the full order, and the notice of appeal to the court.

Breach of an order

A breach of any aspect of a civil order made under Part 10, Division 7 of the 2021 Act and/or the notification requirement imposed through such an order is a criminal offence.

Prosecutions for breaches will be conducted by the IOMPD. Cases will be reviewed in the normal way in accordance with the Prosecution Code, and sufficient evidence will need to be gathered before breach proceedings are commenced.

Cases are triable either summarily or on information. Any cases against children and young people will normally be heard by a court sitting as a juvenile court.

The standard of proof will be the criminal standard i.e. 'beyond reasonable doubt'.

Under the 2021 Act, the maximum penalty on summary conviction (for either breach of an order or for breach of the notification requirements) is a term not exceeding twelve months custody or a fine or both. On information, the maximum penalty is five years' custody. Children and young persons are usually dealt with in a Juvenile court where the maximum

custodial sentence for a young person is 6 or 12 months' custody (pursuant to sections 19 and 24 of the Summary Jurisdiction Act 1989 respectively) or a fine of £2,500.

For breach of all orders and the notification requirements, provision is made for a defence of reasonable excuse.

Section Two: Children who commit sexual offences

Orders may be made in relation to children and young persons. Children and young people will be subject to the same procedure, and their cases will be dealt with by a juvenile court. Part 8 of the Children and Young Persons Act 2001 ("the 2001 Act") applies to children and young persons in such proceedings.

When applying for an SHPO or an SRO in relation to a young person, the following principles should apply:

- The early consultation and participation of the Youth Offending Team (YOT) in the application process.
- That 14-17-year-olds made subject to civil injunctions in relation to harmful sexual behaviour are offered appropriate interventions to reduce their harmful behaviour.
- That the nature and extent of that support is based on a structured assessment that considers the needs of the young person and the imminent risk.
- That the welfare of the child or young person is the paramount consideration, in line with local safeguarding procedures.
- That the requirements of all other orders and sentences that may already be in existence are considered to ensure that any requirements made by these orders do not restrict a young person's ability to complete other current orders or sentences, and the combined burden of requirements is considered to ensure the young person has the capacity to comply.

Safeguarding children and young people

Under section 17 of the Safeguarding Act 2018, the police must ensure:

'a) the police's functions are exercised having due regard to –

(i) the need to safeguard and promote the welfare of children; and

(ii) the need to safeguard and protect vulnerable adults;

b) any services provided by another person pursuant to arrangements made by police in the exercise of the police's functions are provided having due regard to that need.'.

Applicants should liaise with children's services partners to ensure that arrangements for the application of these powers are aligned with any existing safeguarding and protection plans.

For more information on safeguarding young people, applications should refer to the statutory guidance on inter-agency working to safeguard and promote the welfare of children: Safeguarding Together 2019.

Section Three: Sexual harm prevention orders

Summary

SHPOs and interim SHPOs are intended to protect the public from offenders convicted of a sexual or violent offence who pose a risk of sexual harm to the public by placing prohibitions on their behaviour. The SHPO and interim SHPO also require the offender to notify their details to the police (as set out in Part 210 of the 2021 Act) for the duration of the order.

An SHPO can be made either:

- By a court when it deals with the defendant following a conviction for an offence listed in Schedule 3 or Schedule 4 to the 2021 Act, or a finding that the defendant is not guilty of such an offence by reason of insanity, or that the defendant is under a disability but has done the act charged in respect of the offence.
- By complaint made to a court by the Chief Constable in respect of a defendant with a previous conviction for an offence listed in Schedule 3 or Schedule 4 to the Act or a finding that the defendant is not guilty of such an offence by reason of insanity or that the defendant is under a disability but has done the act charged or a caution received in respect of the offence.

In both cases, the court must be satisfied that it is necessary to make an SHPO for the purpose of protecting the public (or any particular members of the public) in the Island, or children or vulnerable adults (or any particular children or vulnerable adults) abroad, from sexual harm from the offender. In the case of a complaint made by the Chief Constable, the Chief Constable must be able to show that the offender has acted in such a way since their conviction as to make the order necessary.

Effect of the sexual harm prevention order

An order whether full or interim, prohibits the offender from doing anything described in it. The prohibitions must be necessary to protect the public in the Island, or children and vulnerable adults abroad, from sexual harm perpetrated by the offender. The order has the effect of requiring them to become subject to the notification requirements for the duration of the order. This requirement exists in parallel to the notification requirements that are automatically applied as the result of meeting the relevant thresholds for a conviction or caution set out in section 151 of the 2021 Act.

The minimum duration for a full order is five years. The lower age limit is 10, which is the age of criminal responsibility, but where the defendant is under the age of 16 an application for an order should only be considered exceptionally.

The prohibitions listed in the order should be written in such a way as to be easily understood and enforceable.

Purpose and scope of sexual harm prevention orders

When considering applying for an SHPO or interim SHPO, the following should be borne in mind:

a) Orders can be made in relation to a person who has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged, or cautioned etc. for an offence listed in either Schedule 3 or Schedule 4 to the 2021 Act either in the Isle of Man or overseas (see below). This includes offenders whose convictions etc. pre-date the commencement of the 2021 Act.

b) Given the fundamental purpose of an SHPO is to protect the public from sexual harm, a key factor to be considered is the risk presented by the defendant. Risk in this context should include reference to:
   1) the likelihood of the offender committing a sexual offence;
   2) the imminence of that offending, and
   3) the potential harm which may result from it.

   To obtain an order, the police will need to establish that there is a reasonable cause to believe that an order is necessary to protect the public (or individual members of the public) in the Isle of Man, or children or vulnerable adults (or individual children or vulnerable adults) abroad from sexual harm.

c) Care needs to be taken that the prohibitions in the order can be justified. The key questions that need to be asked when considering the terms of an order are:
   1) Would an order minimise the risk of harm to the public or to any particular members of the public?
   2) Is it proportionate?
   3) Can it be policed effectively?

d) While there is a need to strike a careful balance between the rights of the defendant and the need to protect the community, the need for such orders is dictated by the importance of protecting the public, in particular children and vulnerable adults. As a prohibitive rather than a punitive measure, the SHPO enables this to be done without recourse to the criminal law.

It must be remembered that the only prohibitions which can be imposed by an SHPO are those which are necessary for the purpose of protecting the public from sexual harm from the defendant. These can, however, be wide ranging. An order may, for example, prohibit someone from undertaking certain forms of employment such as acting as a home tutor to children, place restrictions on their travel overseas and/or prohibit them from engaging in certain activities on the internet.

The decision of the UK Court of Appeal in R v Smith and Others [2011] EWCA Crim 1772 reinforces the need for the terms of an SHPO to be tailored to the specific circumstances of the case. SHPOs may be used to limit and manage internet use by an offender where it is considered proportionate and necessary to do so. The behaviour prohibited by the order might well be considered unproblematic if exhibited by another member of the public - it is the offender's previous offending behaviour and subsequent demonstration that they may pose a risk of further such behaviour which will make them eligible for an order.

An SHPO or interim SHPO is a serious measure and breach of any prohibition contained in it, without reasonable excuse, is a criminal offence. Every effort needs to be made to ensure the defendant understands this position, and that the defendant attends the hearing of the application and is given the opportunity to state their case.

Schedule 4: Violent and other dangerous offences

As stated above, in addition to the sexual offences listed in Schedule 3, an SHPO may be made in relation to a defendant with a conviction, caution or finding for an offence listed in Schedule 4 of the 2021 Act. These offences are primarily violent offences, including the offence of murder, but it remains possible that in some instances these offences may be sexually motivated. SHPOs may only be made where it is necessary for the purposes of

protecting the public from sexual harm, it is not possible to take out an SHPO in relation to a violent offender if there is only a risk of the offender committing a violent offence. In such cases, other measures, may need to be considered instead.

The list of offences is in Schedule 4 of the 2021 Act.

Imposing a sexual harm prevention order at the point of conviction

An SHPO can be made by a court to impose prohibitions on the offender from the point of conviction, in cases where this is necessary to protect the public from sexual harm from that offender.

An SHPO may be made in respect of an offender convicted etc. of an offence listed in Schedule 3 or Schedule 4 to the 2021 Act. Any sentence or age thresholds found in Schedule 3 (which apply for the purposes of the notification requirements) are disregarded for the purposes of making an SHPO.

No application is necessary for the court to make an SHPO at the point of sentence, although the prosecutor may wish to invite the court to consider making an order in appropriate cases. The court may also ask Pre-Sentence Report writers to consider the suitability of an SHPO on a non-prejudicial basis.

To make an SHPO in this way, the court must be satisfied that the offender presents a risk of sexual harm to the public (or particular members of the public) and that an order is necessary to protect
against this risk. The evidence presented to the trial is likely to be a key factor in the court's decision, together with the offender's previous convictions and the assessment of risk presented by the probation service in any pre-sentence report. In coming to that decision, the court may take into consideration the range of other options available to it in respect of protecting the public. The prohibitions contained in an SHPO must be included in the court's committal warrant provided to the Prison Service. The restrictions must also be detailed in the certificate part of the notice to the police (and others) issued by the court. The court may also consider issuing the defendant with a notice of requirement to register (which should be copied to the police).

Criteria for police seeking a sexual harm prevention order on free standing application

The police and other agencies should keep under constant review whether an SHPO is appropriate for the registered sex offenders and violent offenders they manage. Where an offender is behaving in a way that suggests they might commit a sexual offence, the police should actively consider whether to apply for an order. The police must demonstrate two things to the court to make a valid application:

- that the person is a 'qualifying offender', that is to say that they have been convicted or cautioned, found not guilty by reason of insanity, or found to be under a disability and to have done the act charged, in respect of an offence listed in Schedule 3 or Schedule 4 to the 2021 Act. This also applies to acts done outside the island where such an act would have constituted an offence under the law in the country concerned and Schedule 3 or 4 of the 2021 Act had the act occurred in the island. Spent convictions can also be relied on by the police in applying for an SHPO; and
- that, since the 'appropriate date' the person has acted in such a way as to give reasonable cause to believe that an order is necessary to protect the public, or any member of the public, in the Isle of Man or children or vulnerable adults abroad,

from sexual harm from the offender.

'Appropriate date', as defined in section 182 of the 2021 Act, means the first date on which the defendant received a conviction, caution, or was subject to a finding etc. for a relevant sexual offence listed in Schedule 3 or Schedule 4. The 2021 Act requires that the behaviour must have occurred since the first conviction for a relevant offence. As section 75 of the Summary Jurisdiction Act 1989 does not apply to applications for these orders, (by virtue of section 207 of the 2021 Act) the evidence can come from any time after the date of the conviction to satisfy the test that the order is necessary to protect the public.

'Sexual harm'

'Sexual harm' is defined in section 182 of the 2021 Act as meaning:

> '…physical or psychological harm caused –
>
> a) by the person committing one or more offences listed in Schedule 3, or
> b) (in the context of harm outside the Island) by the person doing, outside the Island, anything which would constitute an offence listed in Schedule 3 if done in the Island.'

The fact that the legislation refers to 'sexual harm' does not mean that the police must prove beyond reasonable doubt that the offender intends death or serious physical or psychological injury by their actions. What must be proved is that the offender has acted, since the appropriate date, in such a way as to make it necessary that an SHPO is made to protect the public or any particular members of the public from sexual harm from them. The police do not have to call for evidence from any potential victim and hearsay evidence is admissible.

Decision to apply for an order

Where the police (or others such as probation or prison staff) have concerns about a sexual, violent or other dangerous offender in the community, either arising from their own observations or from concerns expressed by another agency, they will need to assess the risk posed by the offender to decide whether to apply for an order. The Chief Constable can apply to the courts for an SHPO in relation to an offender who may not yet reside in the Isle of Man but is intending to come there. The offender may, for example, be in prison but due to be released and is expected to live in the Island. Likewise, the application does not have to rely on 'risky' behaviour taking place in the Isle of Man. An application can be made in relation to such behaviour taking place anywhere.

Such an assessment will need to be done as quickly as possible, and in consultation as appropriate with other agencies, such as the probation service and social services or perhaps in the context of Manx Public Protection Arrangements (M-PPA). It has become standard practice to present to the court a report assessing the risk an offender poses.

The police, if practicable, should explain to the offender at the earliest possible opportunity that:

- a decision has been made to apply for an order against them;
- the reasons for that decision (including the meaning of the term 'sexual harm'), and
- the offender should seek legal advice at the earliest possible opportunity in order that the advocate dealing with the application can contact the defendant's legal representative.

The defendant's cooperation with this process cannot be enforced, either by the police or

the courts, and they are not required to instruct a lawyer to represent them. Any cooperation would be purely voluntary. Nevertheless, if an offender is prepared to receive support to help them avoid committing a sexual offence, and appropriate support can be identified and made available, this may be considered as an alternative to an application for an SHPO or could run alongside such an order.

Before applying for an order in relation to a child or young person aged between 10 and 17 (inclusive), the police should consult the social services department and partner agencies, who may have assessed or supervised the child or young person following their earlier offending or have other relevant contact with such individuals or their families.

Where an offender is known to have suffered from a mental disorder in the past or appears to be suffering from a mental disorder at the time, advice should be sought through the relevant social services department. Any assessment of the need for an order should include consideration by psychiatric services of whether the defendant should be referred for admission to hospital, if necessary, under the Mental Health Act 1998. It should be noted however, that these are practical considerations to be borne in mind and not obstacles to applying for an order. In some cases, such factors may strengthen the case for making an order.

Assessment of present risk

When assessing the present risk posed by a sex offender, a number of factors should be taken into account:

- the risk that a sexual offence will be committed - the purpose of an SHPO is to protect the public and this concern should be given primary consideration in any assessment;
- the potential harm resulting from such an offence;
- the date, nature and circumstances of the previous conviction or convictions and any pattern which is identified;
- the offender's current circumstances and how these might change (e.g., work placements or environments, housing, family and other relationships, stress, drink or drugs, proximity to schools/playgrounds etc.);
- the disclosure implications if an order is sought, and how the court process might affect the ability to manage the offender in the community;
- an assessment of the accuracy and relevance of the information about the individual (including an assessment of the status of those expressing concern and their reasons for doing so);
- the nature and pattern of the behaviour giving rise to concern, including any predatory behaviour which may indicate a likelihood of re-offending;
- the extent of compliance, or otherwise, with previous sentences, court orders or supervision arrangements, and
- co-operation or otherwise with therapeutic help and its outcome.

Increasingly, as part of M-PPA, the responsibility for the management of sex and violent offenders is a joint responsibility of the police and the Isle of Man Prison and Probation Service (IOMPPS). To assess risk, they will need to consult other organisations and professionals as appropriate.

Where an offender poses a risk to children, the development of prohibitions to be included in an application for an SHPO must be made following reference to the Manx Care Initial Response Team.

Applying for a sexual harm prevention order or interim SHPO

The general principles set out in Section One of this guidance apply. It is for the court to decide what prohibitions are necessary in the light of the evidence it hears.

Section 187 of the 2021 Act allows the police to apply for an interim SHPO where an application for a full order has been made or is being made at the same time but has not yet been determined.

SHPOs are a public protection tool requiring a high degree of police resources and some interference with the offender's right to a private and family life (Article 8 of the ECHR). The risk factor may be of such a degree as to justify an interim order application at the same time as an application for a full order but given that such an order will be made before the court has heard and tested all the evidence, great care must be taken to ensure that such a course of action is justified.

Role of the Isle of Man Prosecution Division (IOMPD)

It is important to remember that the IOMPD will be involved if an order is breached. Where there are unusual circumstances or particular complexity, it may be sensible to seek their advice on the wording of the prohibitions in the proposed order to ensure they will be enforceable by way of a criminal prosecution for breach.

Satisfying a court of the need to make a sexual harm prevention order

A court must apply the civil standard and, therefore, be satisfied on the balance of probabilities that the defendant has carried out the relevant acts, before making an order. The court must exercise judgement and assess whether an order is necessary to protect the public from (in this context) sexual harm.

The applicable rules of evidence in relation to hearsay are the civil rules. The Administration of Justice Act 2008 and the High Court Rules 2009, therefore, apply and allow the introduction of hearsay evidence in hearings for applications for SHPOs.

Variation, renewal and discharge of sexual harm prevention orders

The general principles set out in Section One of this guidance apply. An order cannot be discharged within five years of it being made without the agreement of both parties. Variation might be necessary for:

- deletion of unnecessary conditions, for example, if the risk is perceived to have reduced due to a given set of personal circumstances, for example, medical reasons, or
- addition of supplementary conditions, for example, if an additional group needing protection from risk was identified, although there may be instances when a new order should be sought.

To impose additional prohibition(s), they must be necessary for the purpose of protecting the public or any particular members of the public from sexual harm from the defendant.

A renewal may be needed where the original order is close to expiry, the police have cause to believe that the defendant continues to pose a risk and the order continues to be necessary. An order may only be renewed or varied to impose additional prohibitions if it is necessary to do so for the purpose of protecting the public or any particular members of the public from sexual harm from the defendant.

Appeal against a sexual harm prevention order

The general principles set out in Section One of this guidance apply. Section 189 of the 2021 Act provides a right of appeal to the Staff of Government Division against the making of an SHPO or an interim SHPO. The defendant may appeal against either the making of an order; or against the making (or refusal to make) an order varying, renewing or discharging an SHPO.

Breach of an order

Breach of an SHPO or interim SHPO, without reasonable excuse, is a criminal offence. An offender convicted of such an offence on summary conviction will be liable to a penalty of twelve months' custody or to a fine or both. An offender convicted on information will be liable to a penalty of five years' custody. The court cannot, by virtue of section 190(4) of the 2021 Act make an order for conditional discharge.

Section Four: Sexual risk orders

Summary

A sexual risk order (SRO) is a civil order which can be sought by the police against an individual who has not been convicted, cautioned etc. of a Schedule 3 or Schedule 4 offence (or any other offence) but who is nevertheless thought to pose a risk of harm.

An SRO may be applied for by complaint to a court of summary jurisdiction by the Chief Constable.

An SRO may be made in respect of an individual who has done an act of a sexual nature, as a result of which, there is reasonable cause to believe that it is necessary to make an order to protect the public from harm

Effect of the sexual risk order

An order, whether full or interim, prohibits the offender from doing anything described in it. The prohibition(s) must be necessary to protect the public on the Isle of Man, or children or vulnerable adults abroad, from harm from the offender.

The order also requires the individual to notify the police of their name and address (this information must be updated and notified to the police within three days if it changes at any point) while the order has effect. The minimum duration for a full order is two years and has effect for a fixed period as specified in the order or until a further order is made. There is no maximum duration for an order but if an SRO contains a foreign travel restriction, that aspect may last a maximum of five years. The lower age limit is 10, which is the age of criminal responsibility.

Criteria for seeking a sexual risk order

Where an individual has done an act of a sexual nature which suggests that they pose a risk of harm to the public on the Isle of Man or children or vulnerable adults abroad, the Chief Constable may apply to a court of summary jurisdiction held by a High Bailiff or Deputy High Bailiff for a sexual risk order.

'Act of a sexual nature'

'Act of a sexual nature' is not defined in legislation, and therefore a court will determine whether behaviour constitutes such an act considering the individual circumstances of the behaviour and its context.

The term intentionally covers a broad range of behaviour. Such behaviour may, in other circumstances and contexts, have innocent intentions. It also covers acts that may not in themselves be sexual but have a sexual motive and/or are intended to allow the perpetrator to move on to sexual abuse.

Prevention of harm

The requirement that a Sexual Risk Order is necessary to prevent harm means that those with a genuine and benevolent interest (such as those providing advice on sexual health matters, for example) are not caught by the legislation.

Decision to apply for a sexual risk order

The overriding principle is that an SRO should never be pursued in the alternative to a prosecution where conduct is criminal. An SRO is a means to lay information before a court that will enable that court to determine whether an order is necessary to protect the public

(or any particular members of the public) from harm from the defendant.

The Chief Constable can make an application for an SRO. The assessment process to be undertaken by the police will need to consider the degree of risk that the individual poses at that time. It is suggested that, where appropriate, the assessment should be carried out in consultation with other relevant agencies, such as the probation service, social services, education services and other child protection agencies.

The key factor in assessing whether an SRO is necessary is whether an individual's actions indicate that they present a risk of harm to the public in the Isle of Man, or children or vulnerable adults abroad.

Assessment of risk

Assessment of how an individual's safety can best be assured should be informed by consideration, where relevant, of:

- The nature of the behaviour giving rise to concern and any pattern associated with this behaviour. This may include behaviour that is concerning because of the intentions of the individual (such as spending time alone with children); of potential relevance to this would be associates, previous complaints to the police and informal warnings.
- The nature and extent of the potential harm.
- An assessment of the accuracy and currency of the information about the individual (including an assessment of the status of those expressing concern and their reasons for doing so).
- The individual's current circumstances and how these might change, including employment, training, housing, who they live with and where, any addictions, health problems etc.
- Where, in appropriate cases, the child, vulnerable person or other witness would be required to or able to give evidence.
- The relevance of any previous convictions, cautions, reprimands or final warnings.
- Compliance or otherwise with any previous sentences, court orders or supervision arrangements (this does not necessarily have to be in relation to a sexual offence).
- Compliance or otherwise with therapeutic help and its outcome.

Section 207 of the 2021 Act makes clear that time limits under section 75 of the Summary Jurisdiction Act 1989 does not apply to complaints made by the Chief Constable in Part 10, Division 7 of the 2021 Act, which include an SRO.

Applications to protect children

An SRO may be used in situations where an adult may be planning to meet a child for sexual purposes but has not yet arranged this. In circumstances where such a meeting has been arranged, and the adult has met the child or travelled to the meeting, the police will wish to consider bringing criminal proceedings under section 18 of the 2021 Act.

An SRO should not be used as a substitute for prosecuting criminal behaviour but is advisable in circumstances where the behaviour of the adult gives reason to believe that the child is (or other
children are) at risk from the defendant's conduct and intervention at an early stage is possible and necessary to protect the child (or children).

Grooming

Under section 18 of the 2021 Act, it is an offence to meet a child following sexual grooming. Section 19 of the 2021 Act also makes it an offence to communicate in a sexual way with a child under 16 for the purpose of obtaining sexual gratification.

An SRO may be used to prevent behaviour that could be considered grooming but may not reach the threshold for that offence or involve sexual communication with a child.

Grooming is the name given to conduct whereby an individual communicates with or behaves towards another person to achieve a desired outcome. The 2021 Act refers to the sexual grooming of a child which refers to the conduct of an adult communicating with or behaving towards a child with the aim of engaging them in unlawful sexual activity. This may include establishing a relationship with the child as a confidante or friend. It may be done, for example, via a relationship with the child's parent, directly through a position of care or proximity to the child or online via the internet.

Grooming activity might include, but is not limited to, developing a relationship with the child in which an atmosphere of secrecy is encouraged, or diverting the young person away from their family, friends and daily life. Normally, the perpetrator will ask the child, sometimes using inducements or threats, to keep the communication between them secret. This behaviour may be facilitated either through face-to-face contact, telephone, mobile phone, the internet and all manner of forms of written communication.

An example could involve an older person befriending a child or young teenager over the internet, perhaps with the older person assuming a fictional teenager's identity. The two may meet in an internet chat room, and then develop a one-to-one communication, by email, online chat, text messaging and/or telephone. The older person will then arrange to meet the child for sexual activity. However, it is important to note that if the communication is sexual, it is an offence under section 19 of the 2021 Act. The SRO should not be used as a substitute for prosecuting criminal behaviour.

There are cases where the communication towards the child may involve no explicit sexual content and is aimed at simply gaining the child's confidence. It is only when there is evidence that the adult intends to meet the child with the intent of committing a sexual offence against them, either then or subsequently, that a criminal charge under the offence of 'meeting a child following sexual grooming etc.' in section 18 of the 2021 Act can be brought.

In certain cases, such as spending time with children alone, the behaviour is not sexual by itself but may become so because of the intentions of the adult. Simply befriending or sharing hobbies with a child (unless there is explicitly sexual content or other disturbing aspects to the behaviour such as excessive secrecy, activities taking place in a locked room etc.) is not a sufficient basis for a civil order application.

In order to be convicted of the section 18 criminal offence (meeting a child following sexual grooming etc.), the defendant must be 18 or over and must have met or communicated with the child on at least one occasion, following which they meet, arrange to meet or travel with the aim of meeting in any part of the world, with the intention of then doing something to or in respect of the child during or after any meeting, which would, if done in the Isle of Man, amount to an offence under Part 2 of the 2021 Act.

Section 19 of the 2021 Act makes it an offence for a person aged 18 or over to intentionally communicate with a child under 16, who the adult does not reasonably believe to be 16 or over, where the communication is sexual or is intended to encourage the child to make a

communication which is sexual.

This offence is designed to deter any attempt at grooming children or encouraging them to communicate sexually at the earliest possible stage. It is intended to enable early intervention to stop, and punish, those who seek sexual gratification from engaging with children. Accordingly, an SRO should only be considered in cases of grooming where the communication is not sexual.

Applying for a sexual risk order or interim sexual risk order

It is not necessary for the defendant to have a prior conviction for a sexual, or any, offence to apply for an SRO. The court can make an order if it is satisfied that it is necessary for the purpose of protecting the public in the Isle of Man or children or vulnerable adults abroad.

The order entitles the court to prohibit the defendant from doing anything described in it. The minimum duration of an order is two years. The order is intended as a preventative measure to protect the public in the Isle of Man, or children or vulnerable adults abroad, from harm.

Breach of an order, without reasonable excuse, is a criminal offence which may be tried either summarily or on information with a maximum penalty on information of five years' custody and
twelve months' custody and a fine of level 5 on the standard scale on summary trial. Breach of an order will also make the offender subject to the notification requirements from the time of breach until the remainder of that order. Where there is a breach of an interim SRO, and subsequently a full SRO is made on the hearing of the application to which the interim order relates then the individual remains subject to the notification requirements until the SRO ceases to have effect. If no such order is made, the individual remains subject to the notification requirements for the duration of the interim SRO (see section 201 of the 2021 Act).

Making a sexual risk order

The general principles set out in Section One of the guidance apply.

The police may apply for an interim SRO either at the time they make the full application or where an application has been made for an SRO, but it has not yet been determined. The purpose of an interim SRO is to protect the public, including children and vulnerable adults outside the Isle of Man, during any period between the making of the application for an SRO and its determination. To all intents and purposes, an interim SRO is a temporary SRO, imposing such prohibitions as the court considers appropriate. Breach of any of the prohibitions of an interim SRO without reasonable excuse is a criminal offence carrying the same maximum penalty as a breach of a full SRO and triggers the notification requirements.

As with the SHPO, for the purposes of an SRO, a court should apply the civil standard of proof ('balance of probabilities'), rather than the criminal standard of proof, when determining whether the individual the application is made in respect of has done the act of a sexual nature specified in the application, as a result of which there is reasonable cause to believe that it is necessary for an SRO to be made. This is in line with other civil orders, for example Domestic Abuse Protection Orders (DAPO) as introduced in the Domestic Abuse Act 2020.

The applicable rules of evidence in relation to hearsay are the civil rules. The Administration of Justice Act 2008 and the High Court Rules 2009 will therefore apply and allow the introduction of hearsay evidence in hearings for applications for SROs.

The court will impose prohibitions on the defendant in accordance with the terms of an order. In formulating these prohibitions, the court may be assisted by the prohibitions sought by the police in their application, but the decision is for the court. It is important to note that the prohibitions contained in the order must be only those which are necessary for the purpose of protecting the public, including children and vulnerable adults outside the Isle of Man, from physical or psychological harm. The prohibitions must be proportionate to the risk posed by the defendant.

They should be specific wherever possible in time and place so that it is readily apparent to the defendant what does and does not constitute a breach.

Service and notification of order

The general principles set out in Section One apply.

The minimum duration for an order is two years. There is no maximum duration for an order, an order has effect for a fixed period which should be specified in the order. The police should monitor each order actively to ensure that it meets the need for protection of the community and is still necessary for this purpose.

Effect of the sexual risk order

An order, whether full or interim, can contain restrictions on the behaviour of the defendant, i.e., it can require them not to do something.

The court may only impose prohibitions in the order that are necessary to protect the public from harm from the defendant. As a preventative rather than a punitive measure, the order is designed to address, without recourse to the criminal law, behaviour that puts the public at risk of harm. Only prohibitions necessary to protect the public from harm can be included.

The activities prohibited by the order may include those that, if carried out in respect of those over the age of consent, might be unremarkable. It is the court's assessment whether such activities would cause physical or psychological harm to children in general or to a specific child under 16 to make these prohibitions necessary. The prohibitions in the order will be tailored to the case and to the specific harm the defendant poses. They could, for example, require the offender to have no further contact with a particular child, either in person or over the internet, or not to go to a particular place at which they have previously engaged in, for example sexually explicit conduct or communication towards a child.

Note that if an SRO contains an off-Island travel restriction, that aspect may last a maximum of five years.

Notification Requirement

The sexual risk order does not make the individual subject to the notification requirements for registered sex offenders (although conviction for breach of such an order does – see above and section 201 of the 2021 Act). However, it does require the individual to notify to the police:

- their name and
- home address.

This information must be notified to the police within three days of the order being made, and any subsequent changes to this information must also be notified within three days (section 198 of the 2021 Act).

Variation, renewal and discharge of a sexual risk order

Variation or discharge of an order is sought by way of an application by complaint to the court. Such application can be made by either the Chief Constable, or by the defendant.

Discharge of an SRO

An order cannot be discharged within two years of it being made without the agreement of the Chief Constable and the defendant.

Variation of an SRO

Variation might be necessary for deletion of unnecessary prohibitions if, for example, the individual moves area. Variation might be necessary for the addition of supplementary prohibitions if, for example, an additional group needing protection from risk was identified. However, there may be instances when a new order should be sought.

Renewal of an SRO

A renewal may be needed where the original order is close to expiry and the police have cause to believe that the defendant continues to pose a risk and the order continues to be necessary. An order may only be renewed or varied to impose additional prohibitions if it is necessary to do so for the purposes of protecting the public in the Isle of Man, or children or vulnerable adults abroad, from harm from the defendant. Only prohibitions that are necessary for this purpose may be imposed.

Appeal against an order

The general principles, set out in Section One of the guidance, apply.

Any appeal by the defendant against the making of an SRO, an interim order, an order renewing, varying or discharging an order or a refusal to make such an order is to be made to the Staff of Government Division.

Breach of a sexual risk order

Breach of an SRO or interim SRO, without reasonable excuse, is a criminal offence. An offender convicted of such an offence on summary conviction will be liable to a term of custody of up to twelve months or to a fine of level 5 on the standard scale or both; an offender convicted on information will be liable to a term of five years' custody (section 200(3) of the 2021 Act). The court cannot, by virtue of section 200(3) of the 2021 Act make an order for conditional discharge.

A conviction, caution etc. for breach of an SRO or interim SRO will render the defendant subject to the notification requirements in Part 10, Division 1 of the 2021 Act. These requirements will remain in place for the duration of the SRO the breach of which gave rise to the conviction etc.

Section Five: SHPOs and SROs: Foreign Travel Restrictions

Both the sexual harm prevention order and the sexual risk order may contain off-Island travel prohibitions where necessary for the purpose of protecting children or vulnerable adults abroad. Restrictions may include:

- a prohibition on travelling to any country outside the Isle of Man named or described in the order;
- a prohibition on travelling to any country outside the Isle of Man, other than a country named or described in the order, or
- a prohibition on travelling to any country outside the Isle of Man.

It is not necessary to establish or specify the type of sexual activity which a defendant intends to engage in.

It is important to note that the activity abroad which would constitute causing harm to the child or vulnerable adult does not have to be illegal in the foreign country where it is intended to take place. For example, an SHPO or SRO can prevent an offender from travelling to a foreign country to engage in a sexual activity with a child aged 14 even if sexual activity with a child aged 14 is not an offence in the country concerned.

An offender subject to an SHPO or SRO prohibiting them from travelling to all countries outside the Isle of Man will be required to surrender their passport(s) at a police station specified in the order. It is an offence for an offender to fail to surrender their passport as required by the order.

Duration of restrictions and orders with additional conditions

Foreign travel restrictions contained within either an SHPO or SRO may have a minimum duration of five years. If an individual continues to pose a risk, the police may apply to the court for the SHPO or SRO to be renewed.

Where an order contains additional (i.e. non-travel related) restrictions with a duration longer than five years:

- if the individual does not pose an ongoing risk which requires foreign travel restrictions, no further action is necessary, and the individual should continue to comply with the remaining conditions set out in the order.
- if the individual does continue to pose a risk which warrants foreign travel restrictions, the police may apply to the court to vary the order for these restrictions to continue.

Notification requirements - notification of foreign travel

Where an offender is subject to the notification requirements of Part 10, Division 1 of the 2021 Act information on foreign travel must be supplied to the police in compliance with the foreign travel notification requirements set out in section 158 (and regulations as made under it).