



Sex Offender Register

Offenders of any age who are convicted or cautioned with one of the offences listed below will have to go on the Sex Offenders' Register. This applies also if they are found not guilty of such an offence by reason of insanity, or found to be under a disability and to have done the act alleged.

The offences are:

- a) Indecent conduct towards a young child (S1 Indecency with Children Act 1960)
- b) Inciting a girl under 16 to have incestuous sexual intercourse (S54 Criminal Law Act 1977)
- c) Making / showing indecent photograph of a child under 16 (Protection of Children Act 1978)
- d) Fraudulent evasion of duty where the prohibited goods include indecent photographs of a person under 16 (Customs and Excise Management Act 1979 S170)
- e) Possession of an indecent photograph of a child (S160 Criminal Justice Act 1988) if the photographs show a child under 16 if Registration Condition C is made out (below)
- f) Abuse of position of trust (S3 Sexual Offences Amendment Act 2000) if offender is 20 or over

Also, registration will follow for these following offences under Sexual Offences Act 2003

- Automatically
 - Or (where a registration condition is specified) if the registration conditions are made out
 - And where a Sexual Offences Prevention Order is made
 - And where a Risk of Sexual Harm order is made
- 1) Rape (S1) or Assault by penetration (S2)
 - 2) Sexual Assault (S3), - where Registration Condition A applies.
 - 3) Causing Sexual Activity without consent (S4)
 - 4) Rape/Assault by Penetration of a child under 13 (S5-6)
 - 5) Sexual Assault of a child under 13 (S7) – where Registration Condition C applies
 - 6) Causing or Inciting a child under 13 (S8) to engage in sexual activity (S8)
 - 7) Child sexual offences (S9 – S13) – where Registration Condition C applies
 - 8) Arranging or facilitating a child sex offence (S14) – where Registration Condition C applies

- 9) Meeting a Child Following Sexual Grooming (S15)
- 10) Abuse of Position of Trust (S16 – S19) – where Registration Condition D applies
- 11) Familial Child Sex Offences (child incest) (S25 – S26) – where Registration Condition C applies
- 12) Sexual Offences against person with disorder impeding choice/ inducements etc to persons with mental disorders (S30 - S37)
- 13) Sexual Offences by care workers against persons with mental disorders (S38 – S41) – if Registration Condition E applies
- 14) Paying for sexual services of a child (S47) (where the victim is 16 – if Registration Condition C is made out)
- 15) Child prostitution or child pornography offences (S48 – S50) – if Registration Condition C is made out
- 16) Administering a substance with intent to commit a sexual act (S61)
- 17) Committing an offence/ trespass with intent to commit a sexual act (S62- S63) – if Registration Condition A applies
- 18) Sex with an adult relative (adult incest) (S64- S65) – if Registration Condition B applies
- 19) Exposure (S66) – if Registration Condition A applies
- 20) Voyeurism (S67) – if Registration Condition A applies
- 21) Bestiality/ Necrophilia (S69-70) – if Registration Condition B applies

REGISTRATION CONDITIONS

Condition A: Registration will occur in these cases where: -

- a) The offender was under 18, and sentenced to a term of imprisonment for at least 12 months
- b) In any other case;
 - i) the victim was under 18 or
 - ii) the offender was 18 or over and
 - sentenced to any term of imprisonment
 - detained in a hospital
 - made the subject of a community sentence of at least 12 months

Condition B: Registration will occur in these cases where: -

- a) the offender was under 18, and sentenced to imprisonment for at least 12 months or
- b) the offender was 18 or over, and was

- sentenced to any term of imprisonment
- detained in a hospital

Condition C: Registration will occur in these cases where: -

- a) the offender was 18 or over or
- b) the offender was under 18 and sentenced to a term of imprisonment for at least 12 months.

Condition D: Registration will occur in these cases where: -

- a) The offender was
 - sentenced to a term of imprisonment
 - detained in a hospital
 - made the subject of a community sentence of at least 12 months

Condition E: Registration will occur in these cases where: -

- a) the offender was under 18 , and sentenced to a term of imprisonment for at least 12 months
- b) in any other case, the offender was 18 or over, and
 - sentenced to any term of imprisonment
 - detained in a hospital
 - made the subject of a community sentence of at least 12 months

REGISTRATION PERIOD

The length of the **Registration Period** depends on the sentence which was imposed OR the duration of any Sexual Offences Prevention Order / Risk of Sexual Harm Order (see later) – **whichever is longer.**

A person sentenced to imprisonment for life, or for a term of 30 months or more (inclusive of any extended licence period, which “counts” for this calculation), or admitted to hospital subject to a Restriction Order	Indefinite registration
A person sentenced to imprisonment for a term of more than six months but less than 30 months (inclusive of any extended licence period, which “counts” for this calculation).	10 years’ registration
A person sentenced to imprisonment for a term of six months or less, or admitted to a hospital <u>not</u> subject to a Restriction Order	7 years’ registration
A person receiving a Conditional Discharge	Registration for the period of the Conditional Discharge.
A person receiving a caution	2 years registration
A person of any other description (non-custodial sentences such as a community penalty or a fine)	5 years’ registration

For an offender aged under 18	A registration period of half the adult equivalent
-------------------------------	---

A suspended sentence “counts” as a sentence of imprisonment.

Where an extended sentence is given, the total sentence is taken into account in determining the registration period. So for example if the court imposes a 6 month period of imprisonment plus a 6 month extended supervision licence, the sentence is 12 months for calculating the notification period, and the registration period would be 10 years rather than 7 years.

Absolute discharges do NOT trigger the notification requirements.

The obligations on those subject to the Sex Offenders Act 1997 require:

- a) the offender to notify the Police of his/her name, date of birth, national insurance number, home address and any other address regularly used at within three days of conviction.
- b) the offender to notify the Police of any subsequent change of name and address within 3 days.
- c) the offender to notify the Police of any address at which the offender stays for a period or periods amounting to 7 days in any 12 months, including hospital and prison, within 3 days.
- d) provide advance details of foreign travel
- e) annual re-confirmation of details

When the person attends for any of these reasons, the police may require the offender to allow them to take his fingerprints and photograph any part of him (i.e. photographs may be taken of an offenders face as well as distinguishing features, such as a tattoo).

Information from the Sex Offenders’ Register may be used by the Police to monitor the activities of individual offenders, or for the prevention or detection of crime, or even shared with other Agencies such as Probation, Social Services, Housing and Education Departments and Health Authorities.

These notification requirements apply to offenders of any age who are convicted or cautioned of the offences previously listed after 1st September 1997.

The provisions of the Act are automatic, and apply even if they have not been announced in open Court.

Where an offender is homeless or has no fixed abode, his “home address” means an address or location where he can be regularly found. This might, for example, be a shelter, a friend’s house, a caravan or a park bench.

FOREIGN TRAVEL

Where a person subject to notification requirements intends to leave the UK for more 3 days, the following required information must be provided in person, at a prescribed police station, no less than 7 days prior to departure:

- the date of departure from the UK

- the point of arrival in that country and his point(s) of arrival in any countries he will be visiting in addition to the initial destination
- the destination country (or, if there is more than one, the first)
- the carrier(s) he intends to use to leave and return to the UK or any other point(s) of arrival while he is outside the United Kingdom (but not internal flights)
- details of his accommodation arrangements for his first night outside the United Kingdom
- his date of re-entry to the United Kingdom
- his point of arrival on his return to the United Kingdom.

Where a person subject to notification requirements does not hold the required information 7 days prior to his intended departure date from the United Kingdom (because, for example, he needs to travel at short notice), he must notify the police 24 hours prior to his departure of his date of departure and his destination country.

Unreasonable failure to comply with the registration requirements, or the deliberate provision of false information, is an offence punishable with up to five years' imprisonment at the Crown Court, or six months' imprisonment, a fine of up to £5,000 or both, in the Magistrates Court.

PARENTAL DIRECTION

Where the person subject to notification requirements is under 18, the court can make a **Parental Direction**.

This means that the court directs the person with parental responsibility for the juvenile offender has to comply with the notification requirements on behalf of the young person.

This means that the parent would be liable to breach proceedings above if the order was not complied with "without reasonable excuse". A reasonable excuse may include the parent making every effort to get the young person to attend the police station, but is unable to do so. It will be up to the court to decide. Where the parent feels that the young person cannot be made to comply, that parent may wish to ask the police to apply to discharge the direction. This would mean that any further breach would result in the young person being prosecuted, not the parent.

Disqualification Order

The Crown Court will make a **Disqualification Order** on a person who has committed an offence against a child and meets Registration Condition E. This is a discretionary order for offenders aged under 18, but mandatory for offenders aged 18 or over unless the defendant can convince the court that it is unlikely that any further offences will be committed against a child. The effect of the order is to disqualify the person from working with children in the future. This order can also be made on any other offender who has committed a child sex offence IF the court is satisfied that it is necessary.

"Working with children" includes working with children in paid or unpaid positions whose normal duties involve caring for, training, supervising or being in sole charge of children, and positions whose normal duties involve unsupervised contact with children under arrangements made by a responsible person, for example, a parent.

Where a Disqualification Order has been made, it is an offence for a disqualified individual knowingly to apply for, or undertake, any work whether paid or voluntary with children. It is also an offence for an employer knowingly to offer such work to a disqualified individual, or to allow a disqualified individual to continue in such work. For both offences the maximum penalty is six months' imprisonment or a fine up to the statutory maximum or both in the Magistrates Court, and five years' imprisonment or a fine or both in the Crown Court.

A Disqualification Order applies for life. It is possible to appeal against the making of an order by means of an appeal against sentence. It is also possible, after a specified period (10 years for adults and 5 years for juveniles), to apply for a review of the Disqualification Order by the Care Standards Tribunal, set up under Section 9 of the Protection of Children Act 1999.

Sexual Offences Prevention Order

A Court will make a **Sexual Offences Prevention Order (SOPO)** in respect of any of the offences listed above where the court is satisfied that the person has done the act charged and it is necessary to make such an order for "protecting the public or any particular members of the public from serious physical or psychological harm caused by the defendant committing one or more of the sexual offences listed". This applies to people who plead guilty or are found guilty, and also if they are found not guilty of such an offence by reason of insanity, or found to be under a disability and to have done the act alleged.

A SOPO prevents an offender doing anything described in the order for a period of no less than 5 years. Any breach of the order can be dealt with by a maximum of 5 years' imprisonment in the Crown Court, and the Court is not permitted to deal with a breach by way of conditional discharge. A SOPO can be renewed, varied or discharged (though not within 5 years without the consent of the chief officer of police). Whilst the SOPO is in effect, the offender remains subject to the notification requirements.

The Court considers the risk presented by the defendant namely:

- the likelihood of the offender committing a sexual offence
- the imminence of that offending
- the seriousness of the harm resulting from it

The court will need to be satisfied that there is a reasonable cause to believe that an order is necessary to protect the public, or individual members of the public, from serious sexual harm.

In deciding what prohibitions to put in the order, the court must consider

- Would an order minimise the risk of harm to the public / any particular members of the public?
- Is it proportionate?
- Can it be policed effectively?

Notification order

Notification Orders and interim Notification Orders are intended to protect the public in the UK from the risks posed by sex offenders who have been convicted, cautioned, warned or reprimanded for sexual offences committed overseas.

Such persons may be British or foreign nationals convicted, cautioned etc abroad of a relevant offence.

Essentially, a Notification Order requires the person concerned to register their details to the police (covered by Part 2 of the Sexual Offences Act 2003) as if they had been convicted in the UK. An application for a Notification Order is made to the magistrates' court acting in its civil capacity.

An offender who is the subject of a Notification Order will be required to comply with the notification requirements (as stated above), dating from the date of conviction, not the later date of registration.

Foreign Travel Order

Police can apply for a **Foreign Travel Order** (FTO) which now last a maximum length of 5 years.

Foreign Travel Orders are civil preventative orders intended to prevent offenders with convictions for sexual offences against children from travelling abroad where there is evidence that they intend to commit sexual offences against children abroad.

An offender subject to an FTO preventing him from travelling to any country will be required to surrender his passport, if the court believes that there will be a child at risk up to the age of 18.

Breach of a Foreign Travel Order, without reasonable excuse, is a criminal offence. An offender convicted of such an offence on summary conviction (in a Magistrates' Court) will be liable to a term of imprisonment of up to six months or to a fine or both; an offender convicted on indictment (in a Crown Court) will be liable to a term of imprisonment of up to five years. The court can not, by virtue of section 122(3), make an order for conditional discharge.

Risk of Sexual Harm Order

A **Risk of Sexual Harm Order** (RoSHO) is a civil order that can be applied for by the police against a person thought to pose a risk of sexual harm to children aged under 16

A RoSHO can be made if an adult of 18 or over has engaged in a course of conduct involving any of the acts listed below on at least two occasions towards a child aged under 16 AND there is reasonable cause to believe that an order is necessary to protect a child or children from him.

- (a) engaging in sexual activity involving a child or in the presence of a child;
- (b) causing or inciting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual;
- (c) giving a child anything that relates to sexual activity or contains a reference to such activity;
- (d) communicating with a child, where any part of the communication is sexual.

This means that there must be evidence to indicate that the adult has, on at least two occasions, engaged in sexually explicit conduct or communication towards a child and that an order is necessary to prevent harm to children occurring in the future.

The court can make an order only if it is satisfied that it is necessary for the purpose of protecting children generally or any individual child from harm from the defendant.

The order entitles the court to prohibit the defendant from doing anything described in it. The minimum duration of an order is 2 years. The order is intended as a preventative measure to deter unlawful or harmful sexual activity with, or conduct towards, a child. Breach of an order, without reasonable excuse, is a criminal offence that is triable either summarily or on indictment with a maximum penalty on indictment of five years imprisonment.

The Multi-Agency Public Protection Arrangements (MAPPA)

All registered sexual offenders in England and Wales are eligible for the MAPPA (Multi-Agency Public Protection Arrangements).

Offenders eligible for MAPPA are identified and information is gathered / shared about them across relevant agencies such as children's services, housing, health and youth offending teams. The nature and level of the risk of harm they pose is assessed and a risk management plan is implemented to protect the public.

- 1) **Registered sexual offenders** (Category 1) – i.e. sexual offenders who are subject to the notification requirements set out in this guidance;
- 2) **Violent offenders** (Category 2) – offenders sentenced to imprisonment/detention for 12 months or more, or detained under hospital orders (in relation to murder or offences specified in schedule 15 of the Criminal Justice Act 2003). This category also includes a small number of sexual offenders who do not qualify for registration and offenders subject to disqualification orders prevent them from working with children; and
- 3) **Other Dangerous Offenders** (Category 3) – offenders who do not qualify under categories 1 or 2 but who currently pose a risk of serious harm, there is a link between the offending and the risk posed, and they require active multi-agency management.

Vetting and Barring

There is a vetting and barring scheme for set up by the **Independent Safeguarding Authority (ISA)**, the designed to prevent unsuitable people working with children and vulnerable adults. Adults will be vetted if they see the same group of children or vulnerable people once a week or more.

Certain employers (those working in 'regulated activity') have a legal duty to refer people to the ISA (usually following their own disciplinary processes) when they have harmed a child or vulnerable adult, or there was a risk of harm. Anyone barred by the ISA cannot work or volunteer with the vulnerable group or groups from which they are barred.

- a person who is barred by the Independent Safeguarding Authority from working with children or vulnerable adults will be breaking the law if they work or volunteer, or try to work or volunteer with those groups
- an organisation that knowingly employs a barred individual to work with children or vulnerable adults will also be breaking the law

Criminal Records Bureau (CRB)

The **Criminal Records Bureau** provides information for employers recruiting for posts that involve working with children or vulnerable adults. Employers designated as childcare organizations are obliged to apply for this information, and other employers are encouraged to do so.

The CRB searches police records and, in relevant cases, information held by the Independent Safeguarding Authority (ISA) and issues a CRB certificate to the applicant and employer to help them to make an informed recruitment decision.

Under the Rehabilitation of Offenders Act 1974 a person with a criminal record is not required to disclose any spent convictions unless the position they are applying for, or are currently undertaking, is listed as an exception under the Act.

CRB checks are only available where an employer is entitled to ask exempted questions. The Exceptions Order acts as the gateway for access to the CRB checking service and lists those occupations, professions and positions considered to be exempt from the Rehabilitation of Offenders Act.

You can find out whether your intended job will qualify by contacting customerservices@crb.gsi.gov.uk. The checking service currently offers two levels of CRB check, standard and enhanced. To qualify for the higher level of CRB check, the position must also meet one of the criteria set out in The Police Act 1997 (Criminal Records) Regulations.

Both Standard and Enhanced CRB checks provide the same basic information, namely:

- held on the Police National Computer (PNC), including convictions, cautions, reprimands and warnings in England and Wales, and most of the relevant convictions in Scotland and Northern Ireland may also be included.

In addition to the information held on PNC, Enhanced checks also provide information:

- held by local police forces and other agencies, relating to relevant non conviction information
- held on lists maintained by the Independent Safeguarding Authority (if requested).

Dunn & Baker – Here to help you

Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.