



Isle of Man

Ellan Vannin

AT 20 of 2006

SEX OFFENDERS ACT 2006



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SEX OFFENDERS ACT 2006

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AN ACT to amend the law relating to sexual offenders; and for connected purposes.

PART 1 – SEXUAL OFFENCES PREVENTION ORDERS

1 Sexual offences prevention orders: offenders dealt with for listed offences

[P2003/42/104(1)-(3) and 106/42/106(1), (3) and (4)]

- (1) A court may make an order (“sexual offences prevention order”) under this section in respect of a person (“the defendant”) if —
 - (a) subsection (2) or (3) applies to the defendant; and
 - (b) the court is satisfied that it is necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.
- (2) This subsection applies to the defendant where the court deals with him or her in respect of a listed offence.
- (3) This subsection applies to the defendant where the court deals with him or her in respect of a finding that the defendant —
 - (a) is not guilty of a listed offence by reason of insanity, or
 - (b) is under a disability and has done the act charged against the defendant in respect of such an offence.

2 Sexual offences prevention orders: existing offenders in or coming to the Island

[P2003/42/104(1)(a), (4) and 5, 106(4) - (12)]

- (1) A court of summary jurisdiction may make an order under this section (“sexual offences prevention order”) in respect of a person if the court is satisfied that —
 - (a) the defendant is a qualifying offender; and
 - (b) the defendant’s behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.
- (2) The Attorney General may by complaint to the court apply for an order under this section in respect of a person who is believed to be in, or intending to come to, the Island.
- (3) In this section, “qualifying offender” means either —
 - (a) a person who —
 - (i) has been convicted of a listed offence;
 - (ii) has been found not guilty of such an offence by reason of insanity;
 - (iii) has been found to be under a disability and to have done the act charged against that person in respect of such an offence; or
 - (iv) has been cautioned in respect of such an offence; or
 - (b) a person who, under the law in force in a country outside the Island and whether before or after the commencement of this Part —
 - (i) has been convicted of a relevant offence (whether or not punished for it);
 - (ii) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that the person is not guilty by reason of insanity;
 - (iii) such a court has made in respect of a relevant offence a finding equivalent to a finding that the person is under a disability and did the act charged against that person in respect of the offence; or
 - (iv) has been cautioned in respect of a relevant offence.
- (4) In subsection (3)(b), “relevant offence” means an act which —
 - (a) constituted an offence under the law in force in the country concerned, and
 - (b) would have constituted a listed offence if it had been done in the Island.

- (5) An act punishable under the law in force in a country outside the Island constitutes an offence under that law for the purposes of subsection (4), however it is described in that law.
- (6) Subject to subsection (7), on an application under subsection (2) the condition in subsection (4)(b) (where relevant) is to be taken as met unless, on the application of the defendant, the court requires the applicant to prove that the condition is met.
- (7) In this section, behaviour, convictions and findings include those occurring before the commencement of this Part.
- (8) In this section “appropriate date” means the date or (as the case may be) the first date on which the defendant was —
 - (a) convicted of a listed offence;
 - (b) found not guilty of such an offence by reason of insanity;
 - (c) found to be under a disability and to have done the act charged against that defendant in respect of such an offence; or
 - (d) cautioned in respect of such an offence.

3 Sexual offences prevention orders: effect

[P2003/42/107]

- (1) A sexual offences prevention order —
 - (a) prohibits the defendant from doing anything described in the order, and
 - (b) has effect for a fixed period (not less than 5 years) specified in the order or until further order.
- (2) The only prohibitions that may be included in the order are those necessary for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.
- (3) Where —
 - (a) an order is made in respect of a defendant who was a relevant offender immediately before the making of the order, and
 - (b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of Schedule 1 to the *Criminal Justice Act 2001* (“the notification requirements”) while the order (as renewed from time to time) has effect,the defendant remains subject to the notification requirements.
- (4) Where an order is made in respect of a defendant who was not a relevant offender immediately before the making of the order —
 - (a) the order causes the defendant to become subject to the notification requirements from the making of the order until the order (as renewed from time to time) ceases to have effect, and

- (b) Schedule 1 to the *Criminal Justice Act 2001* shall apply to the defendant, subject to the modification that references to the “relevant date” shall be treated as references to the date of service of the order.
- (5) Where a court makes a sexual offences prevention order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

4 Part 1: supplemental

- (1) In this Part —
 - “country” includes territory;
 - “listed offence” means an offence which —
 - (a) is listed in paragraph 2 of Schedule 1 to the *Criminal Justice Act 2001*; and
 - (b) is prescribed for the purposes of this Part by an order made by the Department of Home Affairs.
- (2) An order under subsection (1) shall not come into operation unless it is approved by Tynwald.

PART 2 – RISK OF SEXUAL HARM ORDERS

5 Risk of sexual harm orders: applications and grounds

[P2003/42/123(1), (3) and (4)]

- (1) The High Court may make an order under this section (a “risk of sexual harm order”) in respect of a person (“the defendant”) if the court is satisfied that —
 - (a) the defendant has on at least two occasions, whether before or after the commencement of this section, done an act within subsection (3); and
 - (b) it is necessary to make such an order, for the purpose of protecting children generally or any child from harm from the defendant.
- (2) The Attorney General may apply for an order under this section in respect of a person who is believed to be in, or intending to come to, the Island.
- (3) The acts referred to in subsection (1) are —
 - (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;
 - (e) such other act as may be prescribed by order made by the Department of Home Affairs.
- (4) An order under subsection (3)(e) shall not come into operation unless it is approved by Tynwald.

6 Risk of sexual harm orders: effect

[P2003/42/123(5) - (7)]

- (1) A risk of sexual harm order —
 - (a) prohibits the defendant from doing anything described in the order;
 - (b) has effect for a fixed period (not more than 2 years) specified in the order or until further order.
- (2) The only prohibitions that may be imposed are those necessary for the purpose of protecting children generally or any child from harm from the defendant.
- (3) Where a court makes a risk of sexual harm order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

PART 3 – COMMON PROVISIONS

7 Variations, renewals and discharges

[P2003/42/108 and 125]

- (1) The appropriate court may by order vary, renew or discharge an order to which this section applies.
- (2) This section applies in respect of sexual offences prevention orders and risk of sexual harm orders.
- (3) An application for an order under subsection (1) may be made by —
 - (a) the defendant; or
 - (b) the Attorney General.
- (4) An application under subsection (1) may be made —
 - (a) where the appropriate court is the Court of General Gaol Delivery, in accordance with rules of court;
 - (b) where the appropriate court is the High Court, in accordance with rules of court;
 - (c) in the case of a court of summary jurisdiction, by complaint.

- (5) Subject to subsections (6) to (8), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (3), may make any order, varying, renewing or discharging the order, that the court considers appropriate.
- (6) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of –
 - (a) in the case of sexual offences prevention orders, protecting the public or any particular members of the public from serious sexual harm from the defendant;
 - (b) in the case of risk of sexual harm orders, protecting children generally or any child from harm from the defendant,and any renewed or varied order may contain only such prohibitions as are necessary for this purpose.
- (7) The court must not discharge a sexual offences prevention order nor a risk of sexual harm order without consulting the defendant and the Attorney General.
- (8) The court must not discharge a sexual offences prevention order before the end of 5 years beginning with the day on which the order was made.
- (9) In this section “the appropriate court” means –
 - (a) where the Court of General Gaol Delivery or the High Court made a sexual offences prevention order, the Court of General Gaol Delivery;
 - (b) where a court of summary jurisdiction made a sexual offences prevention order, a court of summary jurisdiction;
 - (c) in the case of a risk of sexual harm order, the High Court.

8 Interim orders

[P2003/42/109/126]

- (1) This section applies where an application for a sexual offences prevention order under section 2(2) or, as the case may be, a risk of sexual harm order under section 5(2) (“the main application”) has not been determined.
- (2) An application for an order under this section (“an interim order”) –
 - (a) in the case of an application to a court of summary jurisdiction –
 - (i) may be made by the complaint by which the main application is made, or
 - (ii) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made, or
 - (b) in the case of an application to the High Court, may be made in accordance with rules of court.

- (3) The court may, if it considers it just to do so, make an interim order, prohibiting the defendant from doing anything described in the order.
- (4) Such an order —
 - (a) has effect only for a fixed period, specified in the order;
 - (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (5) Section 3(3) and (4) applies to an interim order in respect of an application under section 2(2) for a sexual offences prevention order as if references to a sexual offences prevention order were references to an interim order, and with the omission of “(as renewed from time to time)” in both places.
- (6) The applicant or the defendant may, in the case of an application to a court of summary jurisdiction, by complaint or, in the case of an application to the High Court, in accordance with rules of court, apply to the court for the order to be varied, renewed or discharged.

9 Orders and interim orders: appeals

[P2003/42/110/127]

- (1) A defendant may appeal to the High Court against the making of —
 - (a) a sexual offences prevention order —
 - (i) where section 1(2) applied to the defendant, as if the order were a sentence passed on him or her for the offence;
 - (ii) where section 1(3) (but not section 1(2)) applied to the defendant, as if he or she had been convicted of the offence and the order were a sentence passed on him or her for that offence;
 - (iii) where the order was made on an application under section 2(2);
 - (b) an order under section 7, or the refusal to make such an order;
 - (c) an interim order under section 8.
- (2) On any such appeal, the High Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.

10 Offence: breaches of orders or interim orders

[P2003/42/113 and 128]

- (1) A person commits an offence if, without reasonable excuse, that person does anything which he or she is prohibited from doing by —
 - (a) a sexual offences prevention order;
 - (b) a risk of sexual harm order;
 - (c) an interim order.

- (2) A person guilty of an offence under this section is liable —
 - (a) on summary conviction, to custody for a term not exceeding 6 months or a fine not exceeding £5,000 or both;
 - (b) on conviction on information, to custody for a term not exceeding 5 years.
- (3) Where a person is convicted of an offence under this section, it is not open to the court by or before which that person is convicted to make, in respect of the offence, an order for conditional discharge.

11 Effect of conviction etc of an offence under section 10 in respect of a risk of sexual harm order

[P2003/42/129]

- (1) This section applies to a person (“the defendant”) who —
 - (a) is convicted of an offence under section 10(1)(b);
 - (b) is convicted of an offence under section 10(1)(c) in respect of an interim order made in the case of an application for a risk of sexual harm order;
 - (c) is found not guilty of such an offence by reason of insanity;
 - (d) is found to be under a disability and to have done the act charged against the defendant in respect of such an offence; or
 - (e) is cautioned in respect of such an offence.
- (2) Where —
 - (a) a defendant was a relevant offender immediately before this section applied to him or her, and
 - (b) the defendant would (apart from this subsection) cease to be subject to the notification requirements while the relevant order (as renewed from time to time) has effect,the defendant remains subject to the notification requirements.
- (3) Where the defendant was not a relevant offender immediately before this section applied to him or her —
 - (a) this section causes the defendant to become subject to the notification requirements from the time the section first applies to him or her until the relevant order (as renewed from time to time) ceases to have effect, and
 - (b) this Part applies to the defendant, subject to the modification that references to the “relevant date” shall be treated as references to the date on which this section first applies to the defendant.
- (4) In this section “relevant order” means —
 - (a) where the conviction, finding or caution within subsection (1) is in respect of a breach of a risk of sexual harm order, that order;

- (b) where the conviction, finding or caution within subsection (1) is in respect of a breach of an interim order, any risk of sexual harm order made on the hearing of the application to which the interim order relates or, if no such order is made, the interim order.

12 Part 3: supplemental

[P2003/42/124(2) - (7)]

- (1) In Part 2 and in this Part —
- “**child**” means a person under 16;
- “**image**” means an image produced by any means, whether of a real or imaginary subject;
- “**sexual activity**” means an activity that a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider to be sexual.
- (2) For the purposes of Part 2 and this Part, an image or communication is sexual if —
- (a) any part of it relates to sexual activity, or
- (b) a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider that any part of the image or communication is sexual.

PART 4 – GENERAL

13 Interpretation: general

- (1) In this Act —
- “**cautioned**” means cautioned by a constable in respect of a listed offence which, at the time when the caution is given, the cautioned person has admitted;
- “**court**” means the High Court, the Court of General Gaol Delivery or a court of summary jurisdiction as the case requires;
- “**defendant**” has the meaning given by section 1(1) or 5(1) as the case requires;
- “**disability**” means any physical or mental impairment;
- “**interim order**” means an order under section 8 in respect of an application for a sexual offences prevention order or an application for a risk of sexual harm order as the case requires;
- “**listed offence**” has the meaning given in section 4;
- “**notification requirements**” has the meaning given in section 3(3);
- “**protecting children generally or any child from harm from the defendant**” means protecting children generally or any child from physical or

psychological harm, caused by the defendant doing acts within section 5(3);

“protecting the public or any particular members of the public from serious sexual harm from the defendant” means protecting the public in the Island or any particular members of that public from serious physical or psychological harm, caused by the defendant committing one or more listed offences;

“relevant offender” means a person who is for the time being subject to the notification requirements;

“risk of sexual harm order” has the meaning given in section 5;

“sexual offences prevention order” means an order under section 1 or 2.

(2) Pending the coming into force of any rules of court under this Act, proceedings under this Act shall be made in such manner and shall be subject to such conditions as the court receiving the application shall direct.

14 Amends Schedule 3 to the *Legal Aid Act 1986* by adding items 14 and 15.]

15 Amends Criminal Justice Act 2001

(1) [Amends paragraph 1(2) of Schedule 1 to the *Criminal Justice Act 2001* by inserting head (aa) after head (a).]

(2) [Amends paragraph 2(1)(a) of Schedule 1 to the *Criminal Justice Act 2001* by inserting sub-head (xx).]

16 Short title and commencement

(1) This Act may be cited as the Sex Offenders Act 2006.

(2) This Act shall come into force on such day as the Department of Home Affairs may by order appoint and different days may be so appointed for different provisions and for different purposes.¹

ENDNOTES

Table of Endnote References

¹ ADO (whole Act) 15/12/2006 (SD758/06).