

125.12 *Power to order What are the Schedule 3 offences?*

Note: When considering this Schedule for the Sexual Offences Prevention Order, the age and sentence qualifications should be ignored, [Sexual Offences Act 2003 s 106](#) (14).

125.17 *'Protecting the public' etc., Definition of*

R v Boyd 2013 EWCA Crim 2384 D was convicted of manslaughter. D admitted to enjoying intercourse with transvestite men. He also admitted that he and others would have intercourse with his dog, which he had specifically trained for such a purpose. D had consensual sexual activity with V. V suffered an internal injury as a result of having an instrument or a hand inserted into his rectum. He died from blood loss. Expert evidence stated the internal injury would have been caused by the insertion of something into V's rectum which would have measured at least 18 cm. The Judge made a SOPO which prohibited D from owning or keeping a dog. The defence said that the prohibitions were required to protect members of the public. Held. This term was to protect humans because as the dog had been especially trained for this activity there was an obvious risk of 'serious psychological injury' to humans. The term was properly included.

125.33 *Contact with children prohibitions*

R v Horn 2014 EWCA Crim 653 D pleaded to child sex image offences. About half of the 90 videos were level 4 or 5. Some involved the rape of children as young as six. D was a deputy headmaster of a primary school with specific responsibilities for child protection. The PSR said he was extremely remorseful and distressed. There was an assessed of a low risk of further offending. Held. There was no suggestion he had assaulted any children in his care. The low risk assessment related to image offences and not contact offences. The prohibition not to contact a child likely to be under 16 and having unsupervised contact with a child under 16 with consent of the child's parents or guardian was quashed.

R v Juneidi 2014 EWCA Crim 996 Pleaded to seven indecent images offences. PSR found no physical risk to children, but a worrying sexual interest in them. Term prohibited seeking employment in which he was likely to come into contact with children under 18, without permission of an officer. Employment prohibition was unnecessary in light of the automatic restrictions placed upon him by the ISA.

125.33a *Geographical prohibitions*

R v F 2014 EWCA Crim 539 LCJ D was convicted of common assault and committing an offence with intent to commit a sexual offence against V, his neighbour. He asked for a blow job in payment for mowing her lawn. D grabbed V's arms and pulled her into the living room onto a couch. D said, "It won't take long" and "it's not that big". V managed to free herself and noticed his flies were unzipped. There was a bruise on one of V's arms. V felt she had no option but to move because of her apprehension if she stayed. D owned his house. Held. D was now prepared to move and live with his daughter. To police that willingness we vary the Restraining Order to add, 'not living within a mile of V's address'.

Note: Although this was a Restraining Order case, the principles seem the same. Ed.

125.35 *Individuals, Being in the company of Employment*

R v Juneidi 2014 EWCA Crim 996 (Pleaded to seven indecent images offences. PSR found no physical risk to children, but a worrying sexual interest in them. Term prohibited seeking employment in which he was likely to come into contact with children under 18, without permission of an officer. Employment prohibition was unnecessary in light of the automatic restrictions placed upon him by the ISA.)

125.39a *Sexual activity prohibitions*

R v Boyd 2013 EWCA Crim 2384 D was convicted of manslaughter. D admitted to enjoying intercourse with transvestite men. He also admitted that he and others would have intercourse with his dog, which he had specifically trained for such a purpose. D had consensual sexual activity with V, the deceased. V suffered internal injury as a result of having an instrument or a hand inserted into his rectum. Expert evidence stated this would have measured at least 18 cm. A term in his SOPO prohibited a) seeking or having sexual relationships of any kind with male transvestites and b) using advertisements or any Internet or telecommunications network for contacting male transvestites. Held. Both terms were flawed. They failed to distinguish between a) homosexual activity between consenting male transvestites and b) dangerous sexual practice which resulted in this fatality. They were neither necessary nor proportionate.

125.41a *Travel restrictions*

See also: *R v Cook* 2014 EWCA Crim 137 (Aged 63 with numerous previous convictions for sexual offences included two attempted rapes (6 years) and breaches of court orders. In breach by using a bus to visit a hospital. In 2013, D masturbated whilst on a London Underground train. Six days later, he wanted to go to hospital to get his hearing aid repaired. New term of ‘Entering any train station or using on any public train or underground train unless authorized by [his] supervising police officer.’ Held. The prohibition does not prevent him from travelling on a train, it requires him to notify the police of his intention to travel so that his movements can be monitored if necessary. Given the nature and extent of his offending, the additional prohibition was proportionate. Appeal dismissed.) For more details see para **127.13** in the **SEXUAL OFFENCES PREVENTION ORDER, BREACH** update.

125.44 *Minimum and maximum length*

R v Wilkins 2014 EWCA Crim 1175 D pleaded to sexual activity with a child (×4) and making indecent photographs. He formed a relationship with a woman over the Internet. She had two daughters aged 10 and 15. D moved in with them and began to sexually abuse the elder daughter by touching her breasts and vagina and then tried to remove her clothing. She resisted but he was too strong. He inserted his finger into her vagina. There were 23 images at levels 1 to 4 found on his computer. D was aged 56 and had convictions for indecent assault in 1982 and 1991. The Judge imposed an indefinite SOPO. Held. Though the terms of the order needed amending, there was nothing wrong with an indefinite order. These were serious offences carried out by a man with relevant previous convictions and had shown no insight into the harm caused by such offending. There was a significant risk of further similar offending from D at this time and no indication when, if at all, that risk might diminish to the extent that the order may become unnecessary. Moreover, D was allowed to apply to vary or discharge the order. Indefinite order upheld.

125.45 *On the facts, how long should the order be?*

R v Juneidi 2014 EWCA Crim 996 (Pleaded to seven indecent images offences. PSR found no physical risk to children, but a worrying sexual interest in them. As defendant had sought to address his offending by paying for psychotherapy, 10 years not indefinite.)

125.48 *Life sentences, Combined with*

R v Watts 2014 EWCA Crim 1211 D pleaded guilty to the rape of a child and kidnapping. The Judge gave him life and a SOPO. The defence appealed. The prosecution pointed out there were differences between the sanction for breach of a licence and the penalties after a conviction for breach of a SOPO. He also said a breach of a SOPO would be more apparent on the record so life and a SOPO was appropriate. Held. We agree with the distinctions. We don't say the two orders can never be combined. Release is only on very considered terms. A breach of licence for a life prisoner is not likely to generate a short recall. We do not think there is the necessity of a further public trial rather than a prompt recall. The usual rule ought to be an indeterminate sentence needs no SOPO, unless there is some very unusual feature which means a SOPO could add something useful, rather than tying the hands of the offender managers later. We quash the SOPO because the conditions [D should be under] are best left when release is about to take place.

Note: The advantage of imposing a SOPO over release conditions is that the SOPO operates immediately. Consequently a SOPO can prohibit activity in prison which the prison regime does not prohibit. Ed.

125.33 Contact with children prohibitions

R v Fryer 2014 EWCA Crim 775 D pleaded to sexual activity with a child. V was aged 15. D was a longstanding family friend. They developed a full sexual relationship and V became pregnant. The Judge imposed a SOPO prohibiting him from, among other things, having any unsupervised contact of any kind with a person under the age of 16 other than inadvertent contact or with the child's parent/guardian's consent. Held. There was no suggestion that D took an interest in boys. Order amended to prohibit unsupervised contact with any female under 16 (other than inadvertent or with the child's parent/guardian's consent).

125.61 Applications

Sadler v Worcester Magistrates' Court 2014 EWHC 1715 (Admin) D was convicted of serious sexual offences in Romania including buggery of a young boy. D returned to the UK. On three occasions a 15 year old boy, NP, had stayed at D's flat. An interim SOPO was made. The police subsequently found the boy at D's address. A stand-alone SOPO was made. D's appeal to the Crown Court was dismissed. After the 5-year limit had expired, D applied to discharge the order. The respondent called evidence that D had not undergone treatment and that on up to 50 occasions he had travelled to countries inferentially as a sex tourist. NP gave evidence that nothing sexual had occurred between D and himself, either before or after the imposition of the SOPO. The District Judge said that the starting point had to be that the SOPO was properly made and D could not seek to undermine the finding that in 2007 D posed a serious risk of sexual harm. He continued the order, varying the order having regard to *R v Smith* 2011. D's appeal to the Crown Court was again dismissed. The defence submitted that NP's evidence was highly relevant and the Judge was wrong to ignore it because if it had been available in 2007, the order would not have been made. Held. The District Judge was correct to conclude that evidence should not be adduced to establish that the SOPO should not have been made. When the application is to discharge...a change of circumstances is necessary, otherwise the application is no more than an appeal against the original order. There was no change of circumstance since the order was made, so appeal dismissed.