

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

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CHAPTER XLIV

**SEXUAL OFFENCES (NOTIFICATION AND
PREVENTION) ORDINANCE**

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**SEXUAL OFFENCES (NOTIFICATION AND
PREVENTION) ORDINANCE 2010**

[18 June 2010]

Ordinances:
3 of 2010
1 of 2016

PART I—PRELIMINARY

1. This Ordinance shall be cited as the Sexual Offences (Notification and Prevention) Ordinance.

Citation

2. This Ordinance shall come into force on the 28th day after it is published.

Commencement

3.—(1) For the purposes of this Ordinance, “caution” means a caution, reprimand or warning given to a person by a police officer in relation to an offence, that—

Meaning of
“cautioned”

- (a) is in writing;
- (b) forms part of that person’s criminal record; and
- (c) contains the information described in subsection (2);

and “cautioned” is to be interpreted accordingly.

(2) The information referred to in subsection (1) is—

- (a) a clear and reliable admission of the offence by the person concerned;
- (b) full and clear details of the offence;
- (c) an explanation of the consequences of receiving a caution, reprimand or warning;
- (c) the signature of the person concerned; and
- (d) the signature of the police officer administering the caution.

PART II—NOTIFICATION REQUIREMENTS

4.—(1) A person is subject to the notification requirements of this Part for the period set out in section 6 (“the notification period”) if—

Persons becoming
subject to notification
requirements

- (a) he or she is convicted of an offence listed in Schedule 1;
- (b) he or she is found not guilty of such an offence by reason of insanity;
- (c) he or she is found to be under a disability and to have done the act charged against him or her in respect of such an offence; or
- (d) he or she is cautioned in respect of such an offence.

(2) A person for the time being subject to the notification requirements of this Ordinance is referred to in this Ordinance as a “relevant offender”.

5.—(1) A person is, from the commencement of this Ordinance until the end of the notification period, subject to

Notification
requirements for
persons charged prior
to the commencement
of this Act

the notification requirements of this Ordinance if, before the commencement of this Ordinance, he or she was convicted of an offence listed in Schedule 1.

(2) Subsection (1) does not apply if the notification period ended before the commencement of this Ordinance.

(3) Subsection (1) does not apply to a conviction before the day this Ordinance commences unless, at the beginning of that day, the person—

- (a) had not been dealt with in respect of the offence;
- (b) was serving a sentence of imprisonment or a term of service detention, or was subject to a community order, in respect of the offence;
- (c) was subject to supervision, having been released from prison after serving the whole or part of a sentence of imprisonment or a period of home detention in respect of the offence; or
- (d) was detained in a hospital or was subject to a guardianship order, following the conviction.

The notification period

6.—(1) The notification period for a person within section 4(1) or 5(1) is the period in the second column of the following Table opposite the description that applies to him or her.

TABLE	
<i>Description of relevant offender</i>	<i>Notification Period</i>
A person who, in respect of the offence, is or has been sentenced to imprisonment for life or to imprisonment for a term of 30 months or more	An indefinite period beginning with the relevant date
A person who, in respect of the offence or finding, is or has been admitted to a hospital subject to a restriction order	An indefinite period beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of more than 6 months but less than 30 months	10 years beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of 6 months or less	7 years beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital without being subject to a restriction order	7 years beginning with that date
A person within section 4(1)(d)	2 years beginning with that date

A person who has been ordered to come up for sentence in respect of the offence if called upon	The period specified in the order
A person of any other description	5 years beginning with the relevant date

(2) Where a person is under 18 on the relevant date, subsection (1) has effect as if for any reference to a period of 10 years, 7 years, 5 years or 2 years there were substituted a reference to one-half of that period.

(3) Subsection (4) applies where a relevant offender within section 4 (1)(a) or 5(1) is or has been sentenced, in respect of two or more offences listed in Schedule 1 —

- (a) to consecutive terms of imprisonment; or
- (b) to terms of imprisonment which are partly concurrent.

(4) Where this subsection applies, subsection (1) has effect as if the relevant offender were or had been sentenced, in respect of each of the offences, to a term of imprisonment which —

- (a) in the case of consecutive terms, is equal to the aggregate of those terms;
- (b) in the case of partly concurrent terms (X and Y, which overlap for a period Z), is equal to X plus Y minus Z.

(5) Where a relevant offender the subject of a finding within section 4(1)(c) is subsequently tried for the offence, the notification period relating to the finding ends at the conclusion of the trial.

(6) In this Part, “relevant date” means —

- (a) in the case of a person within section 4(1)(a) or 5(1), the date of the conviction;
- (b) in the case of a person within section 4(1)(b) or (c), the date of the finding; and
- (c) in the case of a person within section 4(1)(d), the date of the caution.

[(7) In this section, a reference to a sentence of imprisonment includes a sentence of home detention.]

(Inserted by Ordinance No. 1 of 2016)

7.—(1) A relevant offender must, within the period of 3 days beginning with the relevant date (or, if later, the commencement of this Ordinance), notify to the police the information set out in subsection (2).

Notification requirements: initial notification

(2) The information is —

- (a) the relevant offender’s date of birth;
- (b) his or her name on the relevant date and, where he or she used one or more other names on that date,

each of those names;

- (c) his or her home address on the relevant date;
- (d) his or her name on the date on which notification is given and, where he or she uses one or more other names on that date, each of those names;
- (e) his or her home address on the date on which notification is given;
- (f) the address of any other premises in the Islands at which, at the time the notification is given, he or she regularly resides or stays;
- (g) any prescribed information.

(3) In subsection (2)(g) “prescribed” means prescribed by regulations made by the Governor.

(4) When determining the period for the purpose of subsection (1), there is to be disregarded any time when the relevant offender is—

- (a) remanded in or committed to custody by an order of a court;
- (b) serving a sentence of imprisonment;
- (c) detained in a hospital; or
- (d) outside the Islands.

(5) In this Ordinance, “home address” means, in relation to any person—

- (a) the address of his or her sole or main residence in the Islands, or
- (b) where he or she has no such residence, the address or location of a place in the Islands where he or she can regularly be found and, if there is more than one such place, such one of those places as the person may select.

Notification
requirements: changes

8.—(1) A relevant offender must, within the period of 3 days beginning with—

- (a) his or her using a name which has not been notified to the police under section 7(1) or this subsection,
- (b) any change of his or her home address,
- (c) his or her having resided or stayed, for a qualifying period, at any premises in the Islands the address of which has not been notified to the police under section 7(1) or this subsection,
- (d) any prescribed change of circumstances, or
- (e) his or her release from custody pursuant to an order of a court or from imprisonment[, home detention,] or detention in a hospital,

notify to the police that name, the new home address, the address of those premises, the prescribed details or (as the case may be) the fact that he or she has been released.

(Amended by Ordinance No. 1 of 2016)

(2) In this section—

- (a) “prescribed change of circumstances” means any change—
 - (i) occurring in relation to any matter in respect of which information is required to be notified by virtue of section 7(2)(g), and
 - (ii) of a description prescribed by regulations made by the Governor;
- (b) “the prescribed details”, in relation to a prescribed change of circumstances, means such details of the change as may be so prescribed.

(3) In this section, “qualifying period” means—

- (a) a period of 7 days, or
- (b) two or more periods, in any period of 12 months, which taken together amount to 7 days.

9.—(1) A relevant offender who leaves the Islands—

- (a) must, before he or she leaves, give a notification under subsection (2); and
- (b) if he or she subsequently returns to the Islands, must give a notification under subsection (4).

Notification requirements: travel outside the Islands

(2) A notification under this subsection must be given as soon as reasonably practicable but not less than 24 hours before the date that the relevant offender intends to leave the Islands and must disclose—

- (a) the date on which the offender will leave the Islands;
- (b) the country (or, if there is more than one, the first country) to which he or she will travel and the point of arrival in that country;
- (c) where he or she intends to travel to more than one country outside the Island, the intended point of arrival in each such additional country;
- (d) the identity of any carrier or carriers he or she intends to use for the purposes of departure from and return to the Islands and of travelling to any other point of arrival;
- (e) details of accommodation arrangements for his or her first night outside the Islands;
- (f) in a case in which he or she intends to return to the Islands on a particular date, that date; and

(3) Where—

- (a) a relevant offender has given a notification under subsection (2), and
- (b) at any time prior to his or her intended departure from the Islands, the information disclosed in that notification becomes inaccurate or incomplete as a statement of all the information mentioned in that

subsection which he or she currently holds.

the relevant offender must give a further notification under this section.

(4) A notification under this subsection must be given within 3 days of a relevant offender's return to the Islands and must disclose the date of the relevant offender's return to the Islands.

Method of notification
and related matters

10.—(1) A person gives a notification under this Ordinance by—

- (a) attending at the police station, or
- (b) giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station.

(2) Any notification under this section must be acknowledged; and an acknowledgment under this subsection must be in writing, and in such form as the Governor may direct.

Young offenders:
parental directions

11.—(1) Where a person within the first column of the following Table (“the young offender”) is under 18 when he or she is before the court referred to in the second column of the Table opposite the description that applies to him or her, that court may direct that subsection (2) applies in respect of an individual (“the parent”) having parental responsibility for the young offender.

TABLE	
<i>Description of person</i>	<i>Court which may make the direction</i>
A relevant offender within section 4(1) (a) to (c) or 5(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A relevant offender within section 38(1) (a) to (c)	The court which deals with the offender in respect of the offence or finding
A person who is the subject of a notification order, interim notification order, sexual offences prevention order or interim sexual offences prevention order	The court which makes the order
A relevant offender who is the defendant to an application under subsection (4)	The court which hears the application

(2) Where this subsection applies—

- (a) the obligations that would (apart from this subsection) be imposed by this Ordinance on the young offender are to be treated instead as obligations on the parent, and
- (b) the parent must ensure that the young offender attends at the police station with him, when a notification is being given.

(3) A direction under subsection (1) takes immediate effect and applies—

- (a) until the young offender attains the age of 18 ; or
- (b) for such shorter period as the court may, at the time the direction is given, direct.

(4) A police officer may, by complaint to the Magistrate's Court, apply for a direction under subsection (1) in respect of a relevant offender ("the defendant") who the officer believes is under 18.

12.—(1) A person within subsection (2) may apply to the Magistrate's Court for an order varying, renewing or discharging a direction under section 11(1).

Parental directions:
variations, renewals
and discharges

(2) The persons are—

- (a) the young offender;
- (b) the parent;
- (c) a police officer.

(3) 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 (2), may make any order, varying, renewing or discharging the direction, that the court considers appropriate.

13.—(1) Subject to section 14, a person commits an offence if he or she—

Offences relating to
notification

- (a) fails, without reasonable excuse, to comply with section 7(1), 8(1), 9(1) or 11(2)(b); or
- (b) notifies to the police, in purported compliance with section 7(1), 8(1) or 9(1), any information which he or she knows to be false.

(2) A person guilty of an offence under this section is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$500 or both.

(3) A person commits an offence under paragraph (a) of subsection (1) on the day on which he or she first fails, without reasonable excuse, to comply with section 7(1), 8(1) or 9(1), and continues to commit it throughout any period during which the failure continues; but a person must not be prosecuted under subsection (1) more than once in respect of the same failure.

14.—(1) A relevant offender to whom subsection (2) applies may apply to the Supreme Court for an order suspending his or her obligation to comply with any notification requirements under this Ordinance.

Suspension
from notification
obligations

(2) This subsection applies to a relevant offender if—

- (a) a period of 15 years has passed (ignoring any period during which the relevant offender was

serving a sentence of imprisonment, remanded in or committed to custody by an order of a court, or detained in a hospital) since the relevant date;

- (b) he or she did not become the subject of a life-long reporting period under a corresponding Act whilst in a foreign jurisdiction before becoming the subject of such a period in the Islands; and
- (c) he or she is not on parole in respect of a relevant offence.

(3) In this section “relevant date” has meaning given by section 6(6).

(4) On an application made under subsection (1), the Supreme Court may make an order suspending the relevant offender’s obligation to comply with his or her notification requirements under this Part, provided that—

- (a) the Court is satisfied that the relevant offender does not pose a risk to the sexual safety of one or more persons or of the community; and
- (b) in deciding whether to make the order, the Court takes into account—
 - (i) the seriousness of the relevant offence
 - (ii) the period of time since the relevant offence was committed
 - (iii) the age of relevant offender, the age of the victims of that offence, and the difference in age between the relevant offender and the victims of that offence, as at the time the relevant offence was committed;
 - (iv) the relevant offender’s present age;
 - (v) the relevant offender’s total criminal record;
 - (vi) any other matter the Court considers appropriate.

(5) A police officer is to be a party to any proceedings under this section. The police officer may make submissions in opposition to, or in support of, the making of an order under this section.

(6) The Court may not award costs in respect of proceedings under this section.

(7) An applicant in respect of whom the Court refuses to make an order under this section is not entitled to make a further application under subsection (1) until 5 years have elapsed from the date of the refusal, unless the Court orders otherwise at the time of the refusal.

(8) An order made under this section ceases to have effect if, at any time after the making of the order, the relevant offender again becomes subject to notification requirements

under section 4(1).

15.—(1) Subsection (2) applies where on any date a person is —

Certificates for purposes of this Ordinance

- (a) convicted of an offence listed in Schedule 1;
- (b) found not guilty of such an offence by reason of insanity; or
- (c) found to be under a disability and to have done the act charged against him or her in respect of such an offence.

(2) If the court by or before which the person is so convicted or found —

- (a) states in open court —
 - (i) that on that date he or she has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged against him or her, and
 - (ii) that the offence in question is an offence listed in Schedule 1, and
- (b) certifies those facts, whether at the time or subsequently,

the certificate is, for the purposes of this Part, evidence of those facts.

(3) Subsection (4) applies where on any date a person is cautioned in respect of an offence listed in Schedule 1.

(4) If the police officer —

- (a) informs the person that he or she has been cautioned on that date and that the offence in question is an offence listed in Schedule 1, and
- (b) certifies those facts, whether at the time or subsequently, in writing sworn or affirmed before a Registrar of the Supreme Court,

the certificate is, for the purposes of this Part, evidence of those facts.

16.—(1) This section applies to information notified to the police under section 7 or 8.

Supply of information to Governor etc. for verification

(2) A police officer may, for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, supply information to which this section applies to —

- (a) the Governor,
- (b) a person providing services to the Governor in connection with a relevant function, for use for the purpose of verifying the information.

(3) In relation to information supplied under subsection (2) to any person, the reference to verifying the information is a reference to —

- (a) checking its accuracy by comparing it with information held—
 - (i) where the person is the Governor, by him or her in connection with the exercise of a relevant function, or
 - (ii) where the person is within subsection (2)(b), by that person in connection with the provision of services referred to there, and
- (b) compiling a report of that comparison.

(4) The supply of information under this section is to be taken not to breach any restriction on the disclosure of information (however arising or imposed).

(5) This section does not affect any power existing apart from this section to supply information.

(6) In this section—

“relevant function” means—

- (a) a function relating to social security, child support, employment or training,
- (b) a function relating to passports.

Supply of information
by Governor etc.

17.—(1) A report compiled under section 16 may be supplied by—

- (a) the Governor, or
- (b) a person within section 16(2)(b),

to a police officer.

(2) Such a report may contain any information held—

- (a) by the Governor, in connection with the exercise of a relevant function, or
- (b) by a person within section 16(2)(b) in connection with the provision of services referred to there.

(3) Where such a report contains information within subsection (2), the police officer to whom it is supplied—

- (a) may retain the information, whether or not used for the purposes of the prevention, detection, investigation or prosecution of an offence under this Ordinance, and
- (b) may use the information for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Ordinance), but for no other purpose.

(4) Subsections (4) to (6) of section 16 apply in relation to this section as they apply in relation to section 17.

Information about
release or transfer

18.—(1) This section applies to a relevant offender who is serving a sentence of imprisonment or is detained in a hospital.

(2) The Superintendent of Her Majesty’s Prison Pitcairn must give notice to a Police officer of any occasion when an

offender is released or a different person becomes responsible for the offender.

(3) The regulations may make provision for determining who is to be treated for the purposes of this section as responsible for an offender.

19.—(1) If on an application made by a police officer a Magistrate is satisfied that the requirements in subsection (2) are met in relation to any premises, the Magistrate may issue a warrant authorising a police officer—

Power of entry and search of relevant offender's home address

(a) to enter the premises for the purpose of assessing the risks posed by the relevant offender to which the warrant relates; and

(b) to search the premises for that purpose.

(2) The requirements are—

(a) that the address of each set of premises specified in the application is an address falling within subsection (3);

(b) that the relevant offender is not one to whom subsection (4) applies;

(c) that it is necessary for a police officer to enter and search the premises for the purpose mentioned in subsection (1)(a); and

(d) that on at least two occasions a police officer has sought entry to the premises in order to search them for that purpose and has been unable to obtain entry for that purpose.

(3) An address falls within this subsection if—

(a) it is the address which was last notified in accordance with this Part by a relevant offender to the police as his or her home address; or

(b) there are reasonable grounds to believe that a relevant offender resides there or may regularly be found there.

(4) This subsection applies to a relevant offender if he or she is—

(a) remanded in or committed to custody by order of a court;

(b) serving a sentence of imprisonment;

(c) detained in a hospital; or

(d) outside the Islands.

(5) A warrant issued under this section must specify the one or more sets of premises to which it relates.

(6) The warrant may authorise the police officer executing it to use reasonable force if necessary to enter and search the premises.

(7) The warrant may authorise entry to and search of premises on more than one occasion if, on the application, the Magistrate is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose mentioned in subsection (1)(a).

(8) Where a warrant issued under this section authorises multiple entries, the number of entries authorised may be unlimited or limited to a maximum.

(9) In this section a reference to the relevant offender to whom the warrant relates is a reference to the relevant offender—

- (a) who has in accordance with this Ordinance notified the police that the premises specified in the warrant are his or her home address; or
- (b) in respect of whom there are reasonable grounds to believe that he or she resides there or may regularly be found there.

(10) Any police officer exercising a power of entry and search under this section must—

- (a) identify themselves to any occupant of the relevant premises; and
- (b) show and explain the warrant under which he or she is acting.

PART III—NOTIFICATION ORDERS

Notification orders:
applications and
grounds

20.—(1) A police officer may, by complaint to the Magistrate’s Court, apply for an order under this section (a “notification order”) in respect of a person (“the defendant”) if it appears to him or her that the following two conditions are met with respect to the defendant.

(2) The first condition is that under the law in force in a country outside the Islands—

- (a) the defendant has been convicted of a relevant offence (whether or not he or she has been punished for it),
- (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that the defendant is not guilty by reason of insanity,
- (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that the defendant is under a disability and did the act charged against him or her in respect of the offence, or
- (d) the defendant has been cautioned in respect of a relevant offence.

(3) The second condition is that the period set out in section

6 (as modified by subsections (2) and (3) of section 21) in respect of the relevant offence has not expired.

(4) If on the application it is proved that the conditions in subsections (2) and (3) are met, the court must make a notification order.

(5) In this section and section 21, “relevant offence” has the meaning given by section 22.

21.—(1) Where a notification order is made—

Notification orders:
effect

- (a) the application of this Part to the defendant in respect of the conviction, finding or caution to which the order relates is subject to the modifications set out below, and
 - (b) subject to those modifications, the defendant becomes or (as the case may be) remains subject to the notification requirements of this Part for the notification period set out in section 6.
- (2) The “relevant date” means—
- (a) in the case of a person within section 20(2)(a), the date of the conviction;
 - (b) in the case of a person within section 20(2)(b) or (c), the date of the finding;
 - (c) in the case of a person within section 20(2)(d), the date of the caution.
- (3) In section 6—
- (a) references, except in the Table, to a person (or relevant offender) within any provision of section 4 are to be read as references to the defendant;
 - (b) the reference in the Table to section 4(1)(d) is to be read as a reference to section 20(2)(d);
 - (c) references to an order of any description are to be read as references to any corresponding disposal made in relation to the defendant in respect of an offence or finding by reference to which the notification order was made;
 - (d) the reference to offences listed in Schedule 1 is to be read as a reference to relevant offences.
- (4) In section 7 references to the commencement of this Ordinance are to be read as references to the date of service of the notification order.
- (5) In section 14, the reference to the “relevant date” is to be read as a reference to the “relevant date” under subsection (2) of this section.

22.—(1) “Relevant offence” in sections 20 and 21 means an act which—

Sections 20 and 21:
relevant offences

- (a) constituted an offence under the law in force in the

country concerned, and

- (b) would have constituted an offence listed in Schedule 1 if it had been done in any part of the Islands.

(2) An act punishable under the law in force in a country outside the Islands constitutes an offence under that law for the purposes of subsection (1) however it is described in that law.

(3) Subject to subsection (4), on an application for a notification order the condition in subsection (1)(b) is to be taken as met unless, not later than 10 days from the date of service of the application, the defendant serves on the applicant a notice—

- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his or her opinion met,
- (b) showing his or her grounds for that opinion, and
- (c) requiring the applicant to prove that the condition is met.

(4) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (3).

23. A defendant may appeal to the Supreme Court against the making of a notification order.

PART IV—SEXUAL OFFENCES PREVENTION ORDERS

24.—(1) A court may make an order under this section in respect of a person (“the defendant”) where any of subsections (2) to (4) applies to the defendant and—

- (a) where subsection (4) applies, it is satisfied that 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;
- (b) in any other case, it 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 an offence listed in Schedule 1.

(3) This subsection applies to the defendant where the court deals with him or her in respect of a finding—

- (a) that the defendant is not guilty of an offence listed in Schedule 1 by reason of insanity, or

Sexual offences
prevention orders:
applications and
grounds

- (b) that the defendant is under a disability and has done the act charged against him or her in respect of such an offence.
- (4) This subsection applies to the defendant where—
 - (a) an application under subsection (5) has been made to the court in respect of him or her, and
 - (b) on the application, it is proved that he or she is a qualifying offender.
- (5) A police officer may by complaint to the Magistrate's Court apply for an order under this section in respect of a person if it appears to the officer that—
 - (a) the person is a qualifying offender, and
 - (b) the person has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.

25.—(1) In this Ordinance, “sexual offences prevention order” means an order under section 24.

Section 24:
supplemental

(2) Subsections (3) to (8) apply for the purposes of section 24.

(3) “Protecting the public or any particular members of the public from serious sexual harm from the defendant” means protecting the public in the Islands or any particular members of that public from serious physical or psychological harm, caused by the defendant committing one or more offences listed in Schedule 1.

(4) Acts, behaviour, convictions and findings include those occurring before the commencement of this Ordinance.

(5) “Qualifying offender” means a person within subsection (6) or (7).

(6) A person is within this subsection if, whether before or after the commencement of this Ordinance, he or she—

- (a) has been convicted of an offence listed in Schedule 1,
- (b) has been found not guilty of such an offence by reason of insanity,
- (c) has been found to be under a disability and to have done the act charged against him or her in respect of such an offence, or
- (d) has been cautioned in respect of such an offence.

(7) A person is within this subsection if, under the law in force in a country outside the Islands and whether before or after the commencement of this Ordinance—

- (a) he or she has been convicted of a relevant offence (whether or not he or she has been punished for it),
- (b) a court exercising jurisdiction under that law has

made in respect of a relevant offence a finding equivalent to a finding that he or she is not guilty by reason of insanity,

- (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he or she is under a disability and did the act charged against him or her in respect of the offence, or
- (d) he or she has been cautioned in respect of a relevant offence.

(8) “Appropriate date”, in relation to a qualifying offender, means the date or (as the case may be) the first date on which he or she was convicted, found or cautioned as mentioned in subsection (6) or (7).

(9) In subsection (7), “relevant offence” means an act which—

- (a) constituted an offence under the law in force in the country concerned, and
- (b) would have constituted an offence listed in Schedule 1 if it had been done in any part of the Islands.

(10) An act punishable under the law in force in a country outside the Islands constitutes an offence under that law for the purposes of subsection (9), however it is described in that law.

(11) Subject to subsection (12), on an application under section 24(5) the condition in subsection (9)(b) (where relevant) is to be taken as met unless, not later than 10 days after being served with the application, the defendant serves on the applicant a notice—

- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his or her opinion met,
- (b) showing his or her grounds for that opinion, and
- (c) requiring the applicant prove that the condition is met.

(12) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (11).

SOPOs: effect

26.—(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 this Ordinance 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 of this Ordinance from the making of the order until the order (as renewed from time to time) ceases to have effect, and
- (b) this Ordinance applies to the defendant, subject to the modification set out in subsection (5).

(5) The “relevant date” is the date of service of the order.

(6) 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.

(7) Section 25(3) applies for the purposes of this section and section 27.

27.—(1) A person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a sexual offences prevention order.

SOPOs: variations,
renewals and
discharges

(2) The persons are—

- (a) the defendant;
- (b) a police officer

(3) An application under subsection (1) may be made—

- (a) where the appropriate court is the Supreme Court, in accordance with rules of court;
- (b) in any other case, by complaint.

(4) Subject to subsections (5) and (6), 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 (2), may make any order, varying, renewing or discharging the sexual offences prevention order, that the court considers appropriate.

(5) 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 protecting the public or any particular members of the public from serious sexual harm from the defendant (and any renewed or varied order

may contain only such prohibitions as are necessary for this purpose).

(6) The court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of the defendant and a police officer.

(7) In this section “the appropriate court” means—

- (a) where the Supreme Court or the Court of Appeal made the sexual offences prevention order, the Supreme Court;
- (b) where a Magistrate’s court made the order, that court.

Interim SOPOs

28.—(1) This section applies where an application under section 24(5) (“the main application”) has not been determined.

(2) An application for an order under this section (“an interim sexual offences prevention order”)—

- (a) may be made by the complaint by which the main application is made, or
- (b) 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.

(3) The court may, if it considers it just to do so, make an interim sexual offences prevention 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 26(3) to (5) apply to an interim sexual offences prevention order as if references to an order were references to such an order, and with the omission of “as renewed from time to time” in both places.

(6) The applicant or the defendant may by complaint apply to the court that made the interim sexual offences prevention order for the order to be varied, renewed or discharged.

SOPOs and interim
SOPOs: appeals

29.—(1) A defendant may appeal against the making of a sexual offences prevention order—

- (a) where section 24(2) applied to him or her, as if the order were a sentence passed on him or her for the offence;
- (b) where section 24(3) (but not section 24(2)) applied to him or her, 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;

- (c) where the order was made on an application under section 24(5), to the Supreme Court.

(2) A defendant may appeal to the Supreme Court against the making of an interim sexual offences prevention order.

(3) A defendant may appeal against the making of an order under section 27, or the refusal to make such an order—

- (a) where the application for such an order was made to the Supreme Court, to the Court of Appeal;
 (b) in any other case, to the Supreme Court.

(4) On an appeal under subsection (1)(c), (2) or (3)(b), the Supreme 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.

(5) Any order made by the Supreme Court on an appeal under subsection (1)(c) or (2) (other than an order directing that an application be re-heard by the Magistrate's Court) is for the purpose of section 27(7) or 28(6) (respectively) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Supreme Court).

30.—(1) A person commits an offence if, without reasonable excuse, he or she does anything which he or she is prohibited from doing by—

- (a) a sexual offences prevention order;
 (b) an interim sexual offences prevention order;

(2) A person guilty of an offence under this section is liable to imprisonment for a term not exceeding 5 years or a fine not exceeding \$5,000 or both.

(3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he or she is convicted to give, in respect of the offence, an order to come up for sentence if called upon.

PART V—RISK OF SEXUAL HARM ORDERS

31.—(1) A police officer may by complaint to the Magistrate's Court apply for an order under this section (a "risk of sexual harm order") in respect of a person aged 18 or over ("the defendant") if it appears to the officer that—

- (a) the defendant has on at least two occasions, whether before or after the commencement of this Part, done an act within subsection (2), and
 (b) as a result of those acts, there is reasonable cause to believe that it is necessary for such an order to be made.

Offence: breach of SOPO or interim SOPO

Risk of sexual harm orders: applications, grounds and effect

- (2) The acts 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.
- (3) On the application, the court may make a risk of sexual harm order if it 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 (2); 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.
- (4) Such an order—
- (a) prohibits the defendant from doing anything described in the order;
 - (b) has effect for a fixed period (not less than 2 years) specified in the order or until further order.
- (5) 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.
- (6) 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.

Section 31:
interpretation

32.—(1) Subsections (2) to (7) apply for the purposes of section 31.

(2) “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 31(2).

(3) “Child” means a person under 16.

(4) “Image” means an image produced by any means, whether of a real or imaginary subject.

(5) “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.

(6) A 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 communication is sexual.

- (7) An image 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 is sexual.

33.—(1) A person within subsection (2) may by complaint to the Magistrate's Court apply for an order varying, renewing or discharging a risk of sexual harm order.

RSHOs: variations,
renewals and
discharges

- (2) The persons are—
- (a) the defendant;
 - (b) a police officer.

(3) Subject to subsections (4) and (5), 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 (2), may make any order, varying, renewing or discharging the risk of sexual harm order, that the court considers appropriate.

(4) 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 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).

(5) The court must not discharge an order before the end of 2 years beginning with the day on which the order was made, without the consent of the defendant and a police officer.

- (6) Section 32(2) applies for the purposes of this section.

34.—(1) This section applies where an application for a risk of sexual harm order ("the main application") has not been determined.

Interim RSHOs

(2) An application for an order under this section ("an interim risk of sexual harm order")—

- (a) may be made by the complaint by which the main application is made, or
- (b) 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.

(3) The court may, if it considers it just to do so, make an interim risk of sexual harm 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) The applicant or the defendant may by complaint apply to the court that made the interim risk of sexual harm order for the order to be varied, renewed or discharged.

RSHOs and interim
RSHOs: appeals

35.—(1) A defendant may appeal to the Supreme Court—

- (a) against the making of a risk of sexual harm order;
(b) against the making of an interim risk of sexual harm order; or
(c) against the making of an order under section 34, or the refusal to make such an order.

(2) On any such appeal, the Supreme 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.

(3) Any order made by the Supreme Court on an appeal under subsection (1)(a) or (b) (other than an order directing that an application be re-heard by the Magistrate's Court) is for the purpose of section 34(5) to be treated as if it were an order of the Magistrate's Court (and not an order of the Supreme Court).

Offence: breach of
RSHO or interim
RSHO

36.—(1) A person commits an offence if, without reasonable excuse, he or she does anything which he or she is prohibited from doing by—

- (a) a risk of sexual harm order; or
(b) an interim risk of sexual harm order.

(2) A person guilty of an offence under this section is liable to imprisonment for a term not exceeding 5 years or a fine not exceeding \$5,000 or both.

(3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he or she is convicted to give, in respect of the offence, an order to come up for sentence if called upon.

Effect of conviction
etc. of an offence
under section 36

37.—(1) This section applies to a person (“the defendant”) who—

- (a) is convicted of an offence under section 36 of this Ordinance;
(b) is found not guilty of such an offence by reason of insanity;
(c) is found to be under a disability and to have done the act charged against him or her in respect of such an offence; or
(d) 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 of this Ordinance 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 of this Ordinance 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 Ordinance applies to the defendant, subject to the modification set out in subsection (4).
- (4) The “relevant date” is the date on which this section first applies to the defendant.
- (5) 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 risk of sexual harm order, any risk of sexual harm order made on the hearing of the application to which the interim risk of sexual harm order relates or, if no such order is made, the interim risk of sexual harm order.

SCHEDULE 1**SEXUAL OFFENCES FOR PURPOSES OF NOTIFICATION
REQUIREMENTS****Section 4**

1. An offence under section 1 of the Sexual Offences Act 1956 (rape).
2. An offence under section 5 of that Act (intercourse with girl under 13).
3. An offence under section 6 of that Act (intercourse with girl under 16), if the offender was 20 or over.
4. An offence under section 10 of that Act (incest by a man), if the victim or (as the case may be) other party was under 18.
5. An offence under section 12 of that Act (buggery) if—
 - (a) the offender was 20 or over, and
 - (b) the victim or (as the case may be) other party was under 18.
6. An offence under section 13 of that Act (indecency between men) if—
 - (a) the offender was 20 or over, and
 - (b) the victim or (as the case may be) other party was under 18.
7. An offence under section 14 of that Act (indecent assault on a woman) if—
 - (a) the victim or (as the case may be) other party was under 18, or
 - (b) the offender, in respect of the offence or finding, is or has been—
 - (i) sentenced to imprisonment for a term of at least 30 months; or
 - (ii) admitted to a hospital subject to a restriction order.
8. An offence under section 15 of that Act (indecent assault on a man) if—
 - (a) the victim or (as the case may be) other party was under 18, or
 - (b) the offender, in respect of the offence or finding, is or has been—
 - (i) sentenced to imprisonment for a term of at least 30 months; or
 - (ii) admitted to a hospital subject to a restriction order.
9. An offence under section 16 of that Act (assault with intent to commit buggery), if the victim or (as the case may be) other party was under 18.
10. An offence under section 28 of that Act (causing or encouraging the prostitution of, intercourse with or indecent assault on girl under 16).
11. An offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards young child).
12. An offence under section 54 of the Criminal Law Act 1977 (inciting girl under 16 to have incestuous sexual intercourse).
13. An offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children), if the indecent photographs or pseudo-photographs showed persons under 16 and—
 - (a) the conviction, finding or caution was before the commencement of this Ordinance, or
 - (b) the offender—
 - (i) was 18 or over, or

- (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
14. (1) An offence under section 170 of the Customs and Excise Management Act 1979 (penalty for fraudulent evasion of duty etc.) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (indecent or obscene articles), if the prohibited goods included indecent photographs of persons under 16 and—
- (a) the conviction, finding or caution was before the commencement of this Part, or
 - (b) the offender—
 - (i) was 18 or over, or
 - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- (2) For the purposes of this section—
- (a) a person is to be taken to have been under 16 at any time if it appears from the evidence as a whole that he or she was under that age at that time;
 - (b) section 7 of the Protection of Children Act 1978 (interpretation) applies.
15. An offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of a child), if the indecent photographs or pseudo-photographs showed persons under 16 and—
- (a) the conviction, finding or caution was before the commencement of this Part, or
 - (b) the offender—
 - (i) was 18 or over, or
 - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
16. An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust), if the offender was 20 or over.
17. An offence under section 1 or 2 of the Sexual Offences Act 2003 (rape, assault by penetration).
18. An offence under section 3 of that Act (sexual assault) if—
- (a) where the offender was under 18, he or she is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months;
 - (b) in any other case—
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been—
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community-based sentence of at least 12 months.
19. An offence under any of sections 4 to 6 of that Act (causing sexual activity without consent, rape of a child under 13, assault of a child under 13 by penetration).
20. An offence under section 7 of that Act (sexual assault of a child under 13) if the offender—
- (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
21. An offence under any of sections 8 to 12 of that Act (causing or inciting a child under 13 to engage in sexual activity, child sex

- offences committed by adults).
22. An offence under section 13 of that Act (child sex offences committed by children or young persons), if the offender is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.
 23. An offence under section 14 of that Act (arranging or facilitating the commission of a child sex offence) if the offender—
 - (a) was 18 or over, or
 - (b) is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.
 24. An offence under section 15 of that Act (meeting a child following sexual grooming etc).
 25. An offence under any of sections 16 to 19 of that Act (abuse of a position of trust) if the offender, in respect of the offence, is or has been—
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community-based sentence of at least 12 months.
 26. An offence under section 25 or 26 of that Act (familial child sex offences) if the offender—
 - (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
 27. An offence under any of sections 30 to 37 of that Act (offences against persons with a mental disorder impeding choice).
 28. An offence under any of sections 38 to 41 of that Act (care workers for persons with mental disorder) if—
 - (a) where the offender was under 18, he or she is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case, the offender, in respect of the offence or finding, is or has been—
 - (i) sentenced to a term of imprisonment,
 - (ii) detained in a hospital, or
 - (iii) made the subject of a community-based sentence of at least 12 months.
 29. An offence under section 47 of that Act (paying for sexual services of a child) if the victim or (as the case may be) other party was under 16, and the offender—
 - (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
 30. An offence under section 48 of that Act (causing or inciting child prostitution or pornography) if the offender—
 - (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
 31. An offence under section 49 of that Act (controlling a child prostitute or a child involved in pornography) if the offender—
 - (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
 32. An offence under section 50 of that Act (arranging or facilitating child prostitution or pornography) if the offender—

- (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
33. An offence under section 61 of that Act (administering a substance with intent).
34. An offence under section 62 or 63 of that Act (committing an offence or trespassing, with intent to commit a sexual offence) if—
- (a) where the offender was under 18, he or she is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case—
 - (i) the intended offence was an offence against a person under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been—
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community-based sentence of at least 12 months.
35. An offence under section 64 or 65 of that Act (sex with an adult relative) if—
- (a) where the offender was under 18, he or she is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case, the offender, in respect of the offence or finding, is or has been—
 - (i) sentenced to a term of imprisonment, or
 - (ii) detained in a hospital.
36. An offence under section 66 of that Act (exposure) if—
- (a) where the offender was under 18, he or she is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case—
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been—
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community-based sentence of at least 12 months.
37. An offence under section 67 of that Act (voyeurism) if—
- (a) where the offender was under 18, he or she is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case—
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been—
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community-based sentence of at least 12 months.
38. An offence under section 69 or 70 of that Act (intercourse with an animal, sexual penetration of a corpse) if—
- (a) where the offender was under 18, he or she is or has been

- sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been—
- (i) sentenced to a term of imprisonment, or
 - (ii) detained in a hospital.
39. An offence under section 63 of the Criminal Justice and Immigration Act 2008 (possession of extreme pornographic images) if the offender—
- (a) was 18 or over, and
 - (b) is sentenced in respect of the offence to imprisonment for a term of at least 2 years.
40. A reference in a preceding paragraph to an offence includes—
- (a) a reference to an attempt, conspiracy or incitement to commit that offence, and
 - (b) a reference to aiding, abetting, counselling or procuring the commission of that offence.
41. A reference in a preceding paragraph to an offence (“offence A”) includes a reference to an offence under Part 2 of the Serious Crime Act 2007 in relation to which offence A is the offence (or one of the offences) which the person intended or believed would be committed.
42. A reference in a preceding paragraph to a person’s age is—
- (a) in the case of an indecent photograph, a reference to the person’s age when the photograph was taken;
 - (b) in any other case, a reference to his or her age at the time of the offence.
43. In this Schedule “community-based sentence” has the same meaning as in the Sentencing Ordinance.
- [44. In this Schedule, a reference to a sentence of imprisonment includes a sentence of home detention.]

(Inserted by Ordinance No. 1 of 2016)