Article:
Thomas, T. and Thompson, D. (2014) New Civil Orders to contain Sexually Harmful Behaviour in the Community. British Journal of Community Justice, 12 (3). pp. 19-33. ISSN 1475-0279

British Journal of Community Justice

ISSN 1475-0279
Vol. 12(3): TBC

NEW CIVIL ORDERS TO CONTAIN SEXUALLY HARMFUL BEHAVIOUR IN THE COMMUNITY

Terry Thomas, Visiting Professor of Criminal Justice Studies, Leeds Metropolitan University & David Thompson, PhD student, University of Leeds

Abstract

This article presents an overview of the new civil orders brought in by the Anti-social Behaviour, Crime and Policing Act 2014 to combat sexually harmful behaviour in the community in the United Kingdom. The two new orders – the Sexual Risk Order and the Sexual Harm Prevention Order – will replace earlier orders available in the Sexual Offences Act 2003. The new orders with their lower evidential thresholds should be easier to obtain and involve less work for the police. They may also present a number of difficulties in terms of human rights and have already been described as 'sweeping' powers and 'tougher' powers. The article looks at the origins of the new law and their subsequent development and seeks to examine these contesting viewpoints of balancing public protection with human rights.

Keywords

Sex offenders**;** sexual harm; sexual offences; public protection; travelling sex offenders; human rights

Introduction

The new Anti-Social Behaviour, Crime and Policing Act which received its Royal Assent on 13th March 2014 contains provisions for two new Orders for the regulation of behaviour likely to cause sexual harm. The two Orders are:

- the Sexual Risk Order; and
- the Sexual Harm Prevention Order

These Orders will replace the existing Sexual Offences Prevention Orders (SOPOs), Risk of Sexual Harm Orders (RSHOs) and Foreign Travel Orders (FTOs) available in the Sexual Offences Act 2003. The Anti-Social Behaviour, Crime and Policing Bill was first published on 4th June 2013 and Home Secretary Theresa May gave notice of amendments to the Bill to include these new Orders on 8th October 2013.

The Orders follow the now familiar hybrid pattern of law involving civil prohibitions and criminal enforcement. An Order will place prohibitions on individuals to desist from certain behaviour and if breached that person commits an offence and becomes liable for prosecution in the criminal courts. The prosecution is, of course, for the technical, administrative offence of breaching conditions and does not, for example, imply any substantive sexual offence has taken place. Some commentators have referred to the 'two-step prohibition' nature of such laws to describe how the civil law is used first and the criminal law follows up if there is breach of the civil order (von Hirsch & Simester, 2006).

The prime movers for the new Orders were the Association of Chief Police Officers (ACPO) who published a report in May 2013 calling for a review of the present arrangements. The existing regime was dismissed as reflecting 'the historic origin of the legislation rather than any purposive logic' (Davies Report, 2013, para5.2).

This article begins by looking at 'the historic origin' of these Orders and the current thinking and campaigning behind the need for the new Orders. It also considers the nature and effect of the new and old Orders with respect to human rights and child protection.

The Existing Orders and Historic Origins

The existing Orders can all be found in the Sexual Offences Act 2003 Part Two.

Sexual Offences Prevention Orders (SOPO)

The Sexual Offences Prevention Order or SOPO has the longest history of the three civil prevention orders to be replaced. The SOPO started life as the Community Protection Order (CPO) and was later renamed as the Sex Offender Order (SOO) when it reached the statute book in 1998; it became the SOPO in 2003.

In one of the first major policies following their election in 1997, the New Labour government introduced their flagship policy of tackling Anti-social Behaviour. It was initially hoped that the Anti-social Behaviour Order or 'ASBO' could be used on those persons/individuals displaying harmful sexual behaviour. As it became apparent that a

separate Order was going to be needed, so the Community Protection Order was introduced to be specifically used with those displaying harmful sexual behaviour (Home Office, 1997: para.3). The secondary need stated for the introduction of the Community Protection Order was to add more names to the recently started sex offender register. The register was launched on 1 September 1997 and was not retrospective. This meant it did not apply to any one committing offences before that date unless they were still in prison or under supervision. Estimates suggested that as many as 110,000 people were living in the community with convictions for sexual offending at that time (Marshall 1997) and the register was simply not going to apply to them. As such, the Community Protection Order was seen as one way of collating these names and ensuring they were on the register (Home Office 1997: para2).

The Community Protection Order was renamed as the Sex Offender Order (SOO) in the Crime and Disorder Act 1998 (ss2-4). It was applied for by the police in a magistrates' court if a person with a conviction was considered a cause for concern, displaying inappropriate behaviour and the SOO was necessary to 'protect the public from serious harm'. 'Serious harm' was originally as defined by the Criminal Justice Act 1991 s31 (3) and later the Powers of Criminal Courts Act 2000:

> In this Act any reference, in relation to an offender convicted of a violent or sexual offence, to protecting the public from serious harm from him shall be construed as a reference to protecting members of the public from death or serious personal injury, whether physical or psychological, occasioned by further such offences committed by him (Powers of Criminal Courts Act, 2000, s161 (4))

When the SOO was made it outlined the behaviour that was to be prohibited and any breach was to be dealt with in the criminal courts. The Police Reform Act 2002 amended the law to allow for interim emergency SOOs.

The civil provisions covering sex offenders were again updated in 2003 when the SOPO was created in the Sexual Offences Act 2003 when the SOO was merged with the Restraining Order (RO). As with the SOO's, the police applied to the magistrates' court for them to be imposed to prevent 'serious sexual harm' defined as:

> protecting the public in the United Kingdom 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 3 (Sexual Offences Act 2003 s106(3)).

SOPOs were made by magistrates with, again, a list of prohibited activities in them. The Home Office states that:

> [A SOPO] may, for example, prohibit someone from undertaking certain forms of employment such as acting as a home tutor to children. It may also prohibit the offender from engaging in particular activities such as visiting chat rooms on the internet. The behaviour prohibited by the order might

> well be considered unproblematic if exhibited by another member of the public – it is the offender's previous offending behaviour and subsequent demonstration that he may pose a risk of further such behaviour, which will make him eligible for an order. (Home Office, 2010:50)

The commission of any of these activities would lead to a criminal prosecution for a breach offence having been committed; breach of the SOPO was dealt with as a criminal offence and was punishable on summary conviction by a fine and/or maximum 6 months imprisonment or on indictment by up to 5 years imprisonment (Sexual Offences Act 2003 ss104-113).

Foreign Travel Orders (FTO)

As well as the introduction of SOPOs in the Sexual Offences Act 2003, a new Foreign Travel Order (FTO) was introduced; the Order was designed to prevent certain people travelling abroad.

Registered sex offenders had to notify the police of their international travel plans if they were going abroad for more than eight days (Sex Offenders (Notice Requirement) (Foreign Travel) Regulations 2001 No. 1846) but after campaigning by ECPAT (End Child Prostitution and Trafficking) this eight day period was reduced to three days (Sexual Offences Act 2003 (travel Notification Requirements) Regulations 2004 No. 1220). Notice of travel was to be made to the police at least seven days prior to travel.

Since 2012, the three day period has also been reduced and now notice for *any* travel abroad must be given by those on the UK sex offender register (Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012 No. 1876). The Home Office has stated that there are three reasons for this:

> First, it enables local police to know the whereabouts of sex offenders and, in doing so, avoids sex offenders claiming that they have not complied with the notification requirements of the 2003 [Sexual Offences] Act because they were overseas. Second, it enables the police, where appropriate, to inform other jurisdictions that a sex offender is intending to visit their country. The information provided by the foreign travel notification requirements assist the police in making sensible judgements about whether to pass information about the risk an offender poses to other jurisdictions in order to prevent an offence from being committed overseas. Third, it gives the police the opportunity to decide whether to apply for a Foreign Travel Order to prevent the offender travelling abroad. (Home Office, 2012a, p.22)

Convicted sex offenders might travel internationally to engage in so-called 'sex tourism' and sexually exploit children in other countries where poverty drove young people into prostitution and laws about ages of consent were less rigorously enforced. Registrants might also use travel to avoid the 'management' arrangements of sex offender registers, civil orders, probation supervision and similar policies and procedures and they might also be trying to avoid the domestic pre-employment screening of certain occupations that

would prevent them from working with - and thereby possibly abusing - children (Thomas, 2013).

The police having been notified of a registered sex offender's travel plans had to decide whether or not to apply for a Foreign Travel Order (FTO) that would prevent such travel and the possible abuse of children. The police had to demonstrate to the court that the person concerned had convictions for sexual offences and that the defendant had been acting in such a way as to give reasonable cause to believe that an FTO is necessary. Applications for an Order must be made by a chief officer of police with evidence of a detailed risk assessment. The FTO was made by magistrates if they were satisfied that there was a proven risk of 'serious sexual harm' to children and lasted for a designated time period of up to five years. Serious sexual harm meant:

> protecting persons under 18[1] generally or any particular person under 18 from serious physical or psychological harm caused by the defendant doing, outside the United Kingdom, anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom (Sexual Offences Act 2003 s115 (2))

Once again breach of the FTO was dealt with as a criminal offence and was punishable on summary conviction by a fine or maximum 6 months imprisonment and/or on indictment by up to 5 years imprisonment (Sexual Offences Act 2003 ss114 – 122).

Risk of Sexual Harm Orders (RSHO)

The Risk of Sexual Harm Order was another preventative order created by the Sexual Offences Act 2003. The RSHO was specifically designed to target the 'grooming' of children and young people which is carried out with a view to committing sexual offences. This was something which had been discussed for a number of years but seemed to have taken on a new urgency with the advent of the internet and social networking arrangements providing the means to groom anonymously and at a distance. The person concerned needed to have committed two out of four acts as defined in the Act and the RSHO was made by a magistrate; breach of the prohibitions in the Order constituted a criminal offence (Sexual Offences Act 2003 ss123-129) .

The RSHO was controversial in that – unlike the SOPO and FTO – an application did not require the person concerned to have any prior convictions for sexual offences. In theory it was now possible to be imprisoned for breach of a RSHO without having committed any substantive sexual offence. In other words *anyone* was now a potential sex offender if the police thought they had sufficient evidence even if that evidence was still insufficient to be used for a criminal trial. Such thinking underlies the Home Office's guidance at this time to stop using the phrase 'Schedule 1 offender' which related to the offences against children listed in Schedule 1 of the Children and Young Persons Act 1933 and to replace it with the phrase 'a person identified as presenting a risk, or potential risk, to children' (Home Office 2005: para4).

[1] The age was raised from 16 by the Policing and Crime Act 2009 s23(1)

The Criticisms

The criticisms of all these Orders were varied. They were criticised for being ineffective, too difficult to obtain and therefore very underused. Whilst Foreign Travel Orders to stop sex offenders travelling abroad, for example, could be numbered in single figures, similar Orders (Football Banning Orders) to stop travelling football hooligans had been made in their thousands:

> Only five foreign travel bans have been issued under the current system, compared with 3,000 for football hooligans. (BBC News, 2008)

As Table 1 shows the actual figures were reported annually to parliament; in the case of FTOs the numbers were fairly static.

Table 1: FTOs Made

Year	FTOs Made
2006-07	3
2007-08	1
2008-09	12
2009-10	15
2010-11	22
2011-12	14
2012-13	13

(MoJ 2013:13)

It could have been argued that this meant there was simply a low demand for Foreign Travel Orders but actually the counter argument was made that the Orders should be made easier to obtain. Related to this, another allegation was that civil orders were just an easier way of policing with their lower threshold of proof being 'balance of probability' rather than the higher 'beyond all reasonable doubt' proof required in criminal proceedings. This criticism had been in part answered by the courts who had also seen this problem and had ruled that civil orders such as SOOs and ASBOs should be applied for using the more rigorous criminal proceedings level of proof *(R (on the application of McCann) v Manchester Crown Court [2002] UKHL 39).*

Some questioned the need for the use of civil orders at all when perhaps straightforward prosecutions might be better. This was particularly so in the case of RSHOs when a previous conviction was not even necessary when it came to applying to magistrates (Liberty, 2003). Others pointed out that in the case of the RSHOs, two of the four criteria that had to be met included two that were actually offences in themselves:

> Engaging in sexual activity involving a child or in the presence of a child;
> Causing or inciting a child to watch a person engaging in sexual activity or look at a moving or still image that is sexual (Sexual Offences Act 2003 s123(3) (a) and (b))

The assumption being that again prosecution (rather than an application) could have been attempted (Craven et al, 2006; 2007).

Concern had also been expressed about what exactly constitutes the 'negative prohibition' that these Orders imposed. The police had sometimes worded the language of the SOPO, for example, to enable a *de facto* 'positive requirement' to be added. A police right of entry to the home of someone could not be written into a SOPO, because that would have been a 'positive requirement'. The police, however, had been known to re-word this 'right of entry' and make it a 'negative prohibition' by, for example, saying the person concerned 'must not deny access' to a police officer. The Appeal Court described such police tactics as 'draconian' because it effectively created a continuing search warrant lasting at least five years *(Thompson [2009] EWCA Crim 3258).*

The Campaign for Change

The current calls for change have come from campaign groups such as ECPAT UK (End Child Prostitution, and Trafficking) and 'Childhood Lost'; both have been supported by the police.

ECPAT, has a long history of campaigning against travelling sex offenders who have been taking advantage of jurisdictions with lax laws and law enforcement to sexually exploit children; an activity sometimes referred to as 'sex tourism'. As we have seen, registered sex offenders originally only had to notify the police of their international travel plans if they were going abroad for more than eight days (2001) but after campaigning by ECPAT this eight day period was reduced to three days (in 2008) and then in 2012, this was required for any international travel, however short in length.

The police have supported ECPAT:

> The recommendation to introduce a requirement to notify the Police of all travel outside of the United Kingdom, regardless of the duration of the trip, is strongly supported. (ACPO, 2009)

Since August 2012 notification is required from registered sex offenders for *'any'* time period at all spent abroad (Sexual Offences Act 2003 (Notification Requirements) (England & Wales) Regulations 2012 no. 1876 Regulation 5). At the time the Home Office confirmed that:

> [the] requirements introduced by these Regulations were ***identified by practitioners and experts as a priority area*** where action is required to prevent relevant offenders from seeking to exploit gaps in the system. (Home Office, 2012b, emphasis added)

Although little evidence had been produced to show that people were travelling abroad for less than three days to abuse children, Christine Beddoe, Director of ECPAT UK, clearly regarded it as a victory for her organisation declaring 'we are…delighted that the government has finally heeded ECPAT UK's call to close the '3-day loophole' (ECPAT, 2012)

It is this same combination of 'experts' and 'practitioners' who have now campaigned for a change in the civil orders to make them easier to obtain.

The Practitioners

The practitioners have primarily been the police. The Association of Chief Officers of Police (ACPO) Child Protection and Abuse Investigation Working Group commissioned a report to highlight deficiencies in the existing regime of civil orders and make proposals for change. The resulting Davies Report was published 15 May 2013 (Davies 2013). The working group looked at no original research but reference is made in the report to an unpublished MSc dissertation completed part-time by one of the police members of the working group at the University of Portsmouth (Gedden, 2010).

The Experts

The experts in this case are the campaign groups ECPAT and 'Childhood Lost'; other campaign groups including the NSPCC and 'Save the Children' have supported them (see e.g. Children's Society et al., 2013). 'Childhood Lost' was a group formed in the first part of 2013 by Nicola Blackwood MP and others (see http://www.childhoodlost.co.uk/) based on the experiences of 'localised grooming' by gangs in the Oxford area.

The Davies Report recommended one new Order to simplify matters – the Child Sexual Offence Prevention Order. The whole tenor of the report is that this is all about protecting children and therefore it is mostly 'self-evident' what has to be done:

> The simplification we propose removes arbitrary pre-requisites that have no logic within the reality of the criminality involved. (Davies Report, para12.2.2)

Some would argue that these 'pre-requisites' were actually checks and balances to ensure that the imposition of these orders was proportionate and compatible with the 1950 European Convention on Human Rights.

Otherwise, evidence for change was limited and the statistics in the Report were not plentiful; the commentary in the report noted the limitations:

> the evidence as to these procedural matters tends to be anecdotal. (Davies Report, 2013, para6.9.4)

and enigmatically:

> The numbers – inadequate as they are in terms of data collection – do not lie. (ibid: para8.3.1)

The Report recommended that only one previous conviction should in future be required and that the need to prove 'serious sexual harm' had taken place should be repealed:

> We resist the term 'serious', borrowed from existing legislation, since it presupposes that there is some category of sexual harm that may be caused

> to a child that is not intrinsically serious or that is not worthy of prevention (ibid: para2.6)

The result is a much lower threshold to argue for the imposition of an order.

The Parliamentary Debate

Nicola Blackwood MP took her amendment to the Anti-social Behaviour, Crime and Policing Bill into the House of Commons. Blackwood's new Clause 5 had renamed the original Child Sexual Offences Prevention Order of the Davies Report to the Child Sexual Abuse Prevention Order. In the event the Clause was withdrawn because the Home Office's own amendments introduced on the same day were considered to go even further and '[Nicola Blackwood] and the House agree that the Government amendments will deliver what new Clause 5 was intended to achieve' (Hansard HC Debates, 2013, col.495)

There were arguably serious human rights and civil liberties implications in these amendments to the Anti-social Behaviour, Crime and Policing Bill. Questions of 'liberty' 'freedom of movement' and degrees of 'privacy' were present. Registered sex offenders had only recently successfully appealed in the UK Supreme Court that elements of registration in itself breached Article 8 of the European Convention on Human Rights – the right to privacy *((R (on the application of F (by his litigation friend F)) and Thompson (FC) (Respondents) v. Secretary of State for the Home Department (Appellant) [2010] UKSC 17).* In the parliamentary debate however, none of these issues were discussed. Even the House of Lords/House of Commons Joint Committee on Human Rights was not given the opportunity to consider the relevant parts of the Bill. The Committee reported on the Bill generally but had to state:

> On 8 October…the eve of our agreeing this Report, the Government tabled amendments to the Bill to reform the civil orders under the Sexual Offences Act 2003. We were…given no warning in advance that the Government intended to introduce such ***amendments which clearly have human rights implications***. We are pursuing with the Leader of the House of Commons our concerns about the recurring inadequacy of the time available to scrutinise the human rights compatibility of significant Government amendments to Bills. (emphasis added) (House of Lords/House of Commons 2013: para9)

Whether this avoidance of human rights scrutiny by the government was accidental or deliberate is hard to fathom. The Conservative part of the Coalition government has never been that enamoured of the European Convention or the Human Rights Act.

The New Orders

The Anti-social Behaviour, Crime and Policing Act Section 113 along with Schedule Five and Six have amended the Sexual Offences Act 2003 to introduce the new Sexual Harm Prevention Order and the Sexual Risk Order (Sexual Offences Act 2003 ss103A-K and 122A-K respectively).

The Sexual Harm Prevention Order

The Sexual Harm Prevention Order (SHPO) requires two conditions to have been met. The defendant has firstly to have committed an offence listed in Schedule 3 or 5 of the 2003 Act and thereby become a 'qualifying offender'. Schedule 3 lists the offences that lead to registration as a sex offender and Schedule 5 lists other offences that could lead to registration. Any defendant who has been found not guilty of any of these offences because of mental health problems or who was unable to be tried because they were 'under a disability' may also be made the subject of a SHPO if the second condition is met.
The second condition is that the court believes the Order is necessary to protect the public or an individual from sexual harm from the defendant whether that harm might be inflicted in the UK or overseas. As with SOPOs, that SHPOs replace, applications must be made to the magistrates' court.

The new Order does not require the applicant to prove 'serious' sexual harm – as the old orders did - and refers only to 'sexual harm' defined as physical or psychological harm caused:

> (a) by the person committing one or more offences listed in Schedule 3, or
> (b) (in the context of harm outside the United Kingdom) by the person doing, outside the United Kingdom, anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom (Sexual Offences Act 2003 s103B (1))

The Sexual Harm Prevention Order prohibits the defendant from doing anything described in the order for at least five years and maybe longer. This prohibition could include foreign travel although this can only be for a maximum of five years; it could be extended after that period; Interim SHPOs may also be made. Breach of a SHPO is an offence punishable on summary conviction to a maximum six months imprisonment or a fine or on indictment to imprisonment for a maximum of five years.

The Sexual Risk Order

The new Sexual Risk Order (SRO) effectively replaces the RSHOs and allows for Orders to be made on people without any previous convictions. The only qualifying condition is that:

> the defendant has…done an act of a sexual nature as a result of which there is reasonable cause to believe that it is necessary for a sexual risk order to be made (Sexual Offences Act 2003 s122A (2))

The question immediately arises as to why this 'act of a sexual nature' is not prosecuted; especially as we are saying that the public needs protecting.

The police make applications for a SRO to the magistrates' court. The court must decide if the defendant has:

> done an act of a sexual nature as a result of which it is necessary to make such an order for the purpose of:

> (a) protecting the public or any particular members of the public from harm from the defendant, or
> (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the defendant outside the United Kingdom. (Sexual Offences Act 2003 s122A (6))

Neither are confined to child sex offenders but could cover sexual offending against anybody of any age. Both the SRO and the SHPO requires the individual subject to the Order to stop any behaviour described in the Order or a criminal offence is committed which could lead to a custodial sentence.

Conclusions

Writing 16 years ago in the context of an ever more punitive criminal justice system the late Barbara Hudson perceptively predicted:

> It is also likely that unchecked punitiveness in relation to offences where corroborative evidence is difficult to obtain will lead to the adoption of civil law standards of proof but with such cases resulting in criminal law punishments. (Hudson, 1998)

The new civil orders added to the Anti-social Behaviour, Crime and Policing Act continue the trend toward policing by civil orders rather than prosecutions and will become far easier for the police to obtain. They have already been described as 'tougher' (Casciani, 2013) and as giving the police 'sweeping' new powers (Wright, 2013).

On Channel 4 News, Director of Liberty Shami Chakrabarti described the two new Orders as a 'soft option' and civil orders of this kind a 'distraction from the main event'; the 'main event' being arrest and prosecution (Channel 4 News, 2013.

The Davies Report on which the new laws are based is arguably not a rigorous piece of research. Phrases such as 'the numbers – inadequate as they are in terms of data collection – do not lie' (Davies Report 2013 ibid: para.8.3.1) highlight this lack of rigour. In the House of Commons Nicola Blackwood MP described the report as having been 'written ***independently*** by Hugh Davies QC and a team of experts' (Hansard HC Debates, 2013, col.482, emphasis added). Davies himself has described his report as 'a well-researched (multi-agency) ***independent*** report' (PACE, 2014, emphasis added).

Just how 'independent' the report was and who it was 'independent from' was not made clear. Hugh Davies is a QC who is also a member of the ACPO child protection executive board and has completed various pieces of work for the police; ACPO commissioned the report. Davies chaired the working group made up of two police officers, an Operations Manager from CEOP (Child Exploitation and On-line Protection section of the National Crime Agency) and someone from the Border Force National Intelligence Unit; it is hard to see this as an 'independent' group, let alone a 'multi-agency' group. Where were the probation officers, the social workers, magistrates and representatives from organisations like NOTA?

The final member of the working group was Christine Beddoe the Director of ECPAT UK. There has always been a close relationship between the police and ECPAT UK. Beddoe and Davies had previously published together (Beddoe & Davies, 2009) and the Davies Report, although commissioned by ACPO, is only available from them through the ECPAT UK web site. ECPAT also managed to put out a press release supporting the Davies report the day *before* it was formally published (ECPAT, 2013).

All in all, the standing given to the Davies Report in Parliament and by MPs has to be more rigorously questioned, particularly as the narrow focus of the report appears to have the sole aim of promoting the introduction of new orders for the police. This is especially concerning given that this report has been the cornerstone upon which the SRO and SHPOs have been introduced and lessened the protections afforded to individuals and effectively bypasses the protections of criminal evidence burdens.

The SRO has also been criticised by the Chair of the Law Society's Criminal Law Committee:

> 'it is a dangerous move to take away the requirement for a conviction to make a restrictive order, not least because the order will be interpreted as proof that you committed the offence and that you are indeed a paedophile. Also if you…resist the restrictions [in the civil court], you are effectively telling the prosecution in advance how you intend to conduct your defence – giving the prosecution two bites of the cherry' (quoted in Rayner, 2013)

On the wider brief of the Anti-social Behaviour, Policing and Crime Act the House of Commons Home Affairs Committee has criticised what it refers to as the ever widening approach towards all forms of anti-social behaviour now being taken:

> Each time successive Governments have amended the ASB regime, the definition of anti-social behaviour has grown wider, the standard of proof has fallen lower and the punishment for breach has toughened. This arms race must end. We are not convinced that widening the net to open up more kinds of behaviour to formal intervention will actually help to deal with the problem at hand (House of Commons, 2013 para 35)

This is far from a new phenomenon, with six law professors reporting as far back as 1998 that the then 'flagship' ASBO policy was at risk of drawing evermore people, sometimes unnecessarily, into the criminal justice system with its low standards of proof and violation of due process (Ashworth et al., 1998).

Whether or not the new Orders will be used to any greater extent compared to the old ones remains to be seen. A Barnardo's report on child sexual exploitation in the UK accepted the potential of the Orders but has already suggested the government should at least:

> Carry out a review of their use and effectiveness after 12 months of coming into force, in light of the limited use of existing civil prevention orders. (Barnardo's, 2014:21)

Practitioners will eventually become familiar with the new orders and no doubt in time will use it far beyond the intentions of the original SOOs from which they are descended. Important questions will remain about how effective these measures are in actually preventing 'harm' from occurring especially by a determined recidivist, or the extent to which they are an even easier measure to bypass the formal due process controls.

Important questions will also arise about human rights. Human rights are currently having a difficult time with respect to criminal justice policies amid a growing resistance to the human rights discourse in political agendas. This is particularly true of sex offenders and potential sex offenders which reflects the low esteem they are accorded (Spencer 2009).

At the time of writing (August 2014) no commencement date has been announced for the new Orders.

References

ACPO (Association of Chief Officers of Police) (2009) *Memorandum of the Policing and Crime Bill 2009 Part 2 Clauses 21-24 Submitted to House of Commons Policing and Crime Bill Committee Session 2008-9* ACPO: London.

Ashworth, A., Gardner, J., Morgan, R., Smith, A., von Hirsch, A. and Wasik, M. (1998) Neighbouring on the Oppressive: the government's 'Community Safety Order' proposals. *Criminal Justice* 16(1), 7-14.

Barnardo's (2014) *Report of the Parliamentary inquiry into the effectiveness of legislation for tackling child sexual exploitation within the UK* (Chair Sarah Champion MP), Barnardo's, Ilford.

BBC News (2008) Laws tighten on paedophile travel, 20 August (available at http://news.bbc.co.uk/1/hi/uk_politics/7571451.stm. Accessed 26th July 2014.

Beddoe, C. and Davies, H. (2009) Toxic human exports *The Guardian* 9 March

Casciani, D. (2013) Tougher sex offender restrictions sought buy campaigners, BBC News 27 August (available at http://www.bbc.co.uk/news/uk-23844385. Accessed 24th March 2014.

Channel 4 News 26 August 2013 – available at http://www.channel4.com/news/sex-offenders-children-rape-overseas-abuse - accessed 14 July 2014.

Children's Society, NSPCC, Save the Children, Barnardo's, Action for Children (2013) *Sexual Harm Prevention Orders, Sexual Risk Orders and Child Sexual Abuse Prevention Orders Briefing on Anti-Social Behaviour, Crime and Policing Bill* Report Stage House of Commons 14 October

Craven, S., Brown, S., and Gilchrist, E. (2006) Sexual grooming of children: review of literature and theoretical considerations *Journal of Sexual Aggression* 12, 287-299.

Craven, S., Brown, S., and Gilchrist, E. (2007) Current responses to sexual grooming: Implications for prevention *Howard Journal of Criminal Justice,* 46, 60-71.

Davies Report (2013) *Civil Prevention Orders Sexual Offences Act 2003: ACPO commissioned review of the existing statutory scheme and recommendations for reform* 15 May ACPO, London. Available at http://www.ecpat.org.uk/sites/default/files/the_davies_review.pdf Accessed 30 December 2013.

ECPAT (2012) *ECPAT UK campaign success – UK Government to close the '3-day loophole' on overseas travel by British sex offenders* (press release) 8th March

ECPAT (2013) Weak UK laws put children at risk of sexual abuse, warns ACPO report (press release) 14 May

Gedden, J. (2010) *Home and Away: the divergent responses to prosecuting British child sex offenders offending in the UK against those offending abroad* (unpublished MSc Dissertation University of Portsmouth at http://eprints.port.ac.uk/964/)

Home Office (1997) *Community Protection Order: a Consultation Paper*, November, Home Office, London.

Home Office (2005) *Guidance on Offences against Children* (Circular 16/2005), London.

Home Office (2012a) *Guidance on Part Two of the Sexual Offences Act 2003*, August London.

Home Office (2012b) *HO has introduced measures which will extend and strengthen the system of notification requirements placed on registered sex offenders* (Press Release) 2 March

House of Commons (2013) *The draft Anti-social Behaviour Bill: pre-legislative scrutiny* Home Affairs Committee - Twelfth Report of Session 2012-13 HC 836-1

House of Lords/House of Commons (2013) Human Rights Joint Committee 4th Report Session 2013-14 *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill* HL Paper 56/HC 713

Hudson, B. (1998) Restorative Justice: the challenge of sexual and racial violence *Journal of Law and Society* 25(2): 237-56.

Marshall, P. (1997) *The Prevalence of Convictions for Sexual Offending*, Research Finding No. 55 Research and Statistics Directorate, Home Office, London

MoJ (Ministry of Justice) (2013) *Multi-Agency Public Protection Arrangements Annual Report 2012/13* 20 October, MoJ Statistics Bulletin, London

PACE (Parents against Child Sexual Exploitation) 12 May 2014 available at http://www.paceuk.info/changes-sexual-risk-order-system-opportunity-empower-parents-part-1/ - accessed 14 July 2014

Spencer, D. (2009) Sex Offender as *Homo Sacer Punishment and Society* 11(2): 219-240

Thomas, T. (2013) 'The Travelling Sex Offender: monitoring movements across International Borders' in Harrison, K. and Rainey, B. (eds.) (2013) *The Wiley Blackwell Handbook of Legal and Ethical Aspects of Sex Offender Treatment and Management*, Wiley-Blackwell, Chichester

von Hirsch, A. and Simester, A. (eds) (2006) *Incivilities: regulating offensive behaviour*, Hart, Oxford.

Wright, O. (2013) New Home Office rules give police sweeping powers to curb sex offenders, *The Independent*, 9 October.