

# Court orders and notices

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This module provides MOSOVO (management of sexual or violent offenders) officers, as well as other officers and staff involved in investigating and prosecuting sexual offences. It provides information about the different types of court orders and notices that are available to apply for restrictive conditions or positive obligations on individuals who pose a risk of sexual harm to the public in the UK and abroad.

The section provides an overview of the orders set out in Part 2 of the Sexual Offences Act 2003 (SOA) and those later introduced by Schedule 5 to the Anti-social Behaviour, Crime and Policing Act 2014 and sections 174 to 183 of the Police, Crime, Sentencing and Courts Act 2022 (PCSC). It provides links to further guidance and advice on making an application for an order, as well as information relating to monitoring and enforcement.

## Orders to prevent sexual harm

A range of orders is available to police to prevent sexual harm and safeguard potential victims. The suitability of a particular order depends on the nature of the risk posed by the individual offender and the circumstances involved. MOSOVO officers should have regard to the full [government guidance on Part 2 of the Sexual Offences Act \(SOA\)](#) when considering or making any application.

MOSOVO officers should carry out an assessment on a case-by-case basis in order to determine the most appropriate order to use. It is often appropriate to include the views of partner agencies in this assessment. It is always necessary to do so when the defendant is under 18 years of age.

## Repealed orders

MOSOVO officers may manage individuals who are subject to a repealed order. In particular, MOSOVO officers should be aware the sexual offences prevention order (SOPO), the risk of sexual

harm order (RSHO) and foreign travel order (FTO) were replaced by the Sexual Harm Prevention Order (SHPO) and Sexual Risk Order (SRO) on 8 March 2015 following amendments to the Sexual Offences Act 2003 by the Anti-social Behaviour, Crime and Policing Act 2014.

Scottish SOPOs and RSHOs remain enforceable in England and Wales.

For a summary of these changes see [Protection from sexual harm and violence](#).

## Sexual harm prevention order (SHPO)

<b>Relevant legislation</b>	Sexual Offences Act 2003 (sections 103A to 103K).
<b>Purpose</b>	To apply for restrictive conditions or positive obligations to prevent harmful behaviour of offenders who have been convicted of a sexual or violent or other dangerous offence listed in or <a href="#">Schedule 3</a> or <a href="#">Schedule 5</a> of the 2003 Act.
<b>Effect</b>	The order will have specific conditions – either prohibitions and/or positive obligations to mandate aspects of the offender's risk management plan. Additionally, it requires the offender to become subject to the notification requirements for the duration of the order (if they are not already subject).
<b>Test</b>	The order is necessary for protecting the public or any particular members of the public from sexual harm from the defendant, or protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside of the United Kingdom. This is on the balance of probability.

<b>Duration</b>	Five years to indefinite.  Foreign travel restrictions can last for up to five years, after which they may be renewed.
<b>Failure to comply</b>	Breach of any prohibition of an order is a criminal offence, with a maximum penalty of five years' imprisonment.

## Sexual risk order (SRO)

<b>Relevant legislation</b>	Sexual Offences Act 2003 (sections 122A to 122K).
<b>Purpose</b>	To apply for restrictive conditions or positive obligations to prevent the harmful behaviour of any individual who has not been cautioned for or convicted of an offence in <u>Schedule 3</u> or <u>Schedule 5</u> of the SOA 2003, but who poses a risk of sexual harm.
<b>Effect</b>	The order will have specific conditions – either prohibitions and/or positive obligations to mandate aspects of the offender's risk management plan. Additionally, it requires the defendant to become subject to full notification requirements for the duration of the order.

<b>Test</b>	<p>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 (one of the following):</p> <p>(a) protecting the public or any particular members of the public from harm from the defendant,</p> <p>(b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the defendant outside the United Kingdom</p> <p>This is on the balance of probability.</p>
<b>Duration</b>	<p>Two years to indefinite.</p> <p>Foreign travel restrictions can last for up to five years, after which they may be renewed.</p>
<b>Failure to comply</b>	<p>Breach of any prohibition of a full or interim order is a criminal offence with a maximum penalty of five years' imprisonment.</p> <p>Offenders who breach an order also become subject to a limited form of notification requirements.</p>

## Foreign travel restrictions

SHPOs and SROs may both contain foreign travel prohibitions in order to protect children or vulnerable adults abroad. Restrictions may include prohibition on travelling to a certain country or countries named or described in the order, or all countries outside the UK. Further information

about foreign travel restrictions can be found at [page 54 of the government guidance on Part 2 of the SOA](#).

Section 172 of the PCSC 2022 requires the courts to have due regard to the [list of countries](#) provided by the National Crime Agency (NCA), where children are at high risk of sexual abuse or sexual exploitation.

The relevant MOSOVO staff should be aware of or attend every hearing regarding a foreign travel prohibition and should ensure that the court confirms with the offender which police station to attend to surrender their passport(s). The court should also confirm the time limit for attendance and surrender of passport(s). (Note – the definition of passport is extended in the SOA 2003 to include documents that could be used, in some or all circumstances, in place of a passport – for example, an ID card). See also [His Majesty's Passport Office watch list](#).

## Passport surrender

An offender who is the subject of a SHPO or SRO prohibiting them from travelling to all countries outside the UK is required to surrender their passport(s) at a police station specified in the order. The station reception staff at that location should be briefed accordingly. Any attempts to surrender passport(s) or other travel documents at another location will be refused and dealt with as a breach of the order.

If an offender attends a police station having been instructed to surrender their passport(s), the following procedure is suggested.

1. Check the passport(s) against other available identity documents to verify their identity.
2. Seize the passport(s) following local procedures for seizing property.
3. Issue a receipt acknowledging possession of the document.
4. Store the passport(s) in accordance with local force procedures regarding property retention.
5. Confirm with the MOSOVO officer that the passport has been surrendered.

Each MOSOVO unit is responsible for keeping original documents secure and ensuring sufficient audit trails exist on ViSOR. This will support proving a case in court if a foreign travel prohibition is breached.

## Failure to surrender passport(s)

If the offender fails without reasonable excuse to surrender their passport(s), they are breaching their SHPO or SRO.

To effectively enforce foreign travel prohibitions, it is essential that any person who fails to surrender their passport is swiftly brought to justice and the passport(s) recovered. As such situations are rare, officers and staff should seek the advice of a supervisor on how to deal with the offender. It may be appropriate to arrest the person for the offence at this point to secure and preserve evidence, or to hold a voluntary interview under caution. If either option is not appropriate in the circumstances, officers and staff should use local tasking and coordinating procedures to ensure that action is taken at the earliest opportunity and in any case within 24 hours.

#### **His Majesty's Passport Office watch list**

Foreign travel restrictions can be imposed, for example, under a SHPO by virtue of Section 103D of the SOA 2003.

Requests should be made electronically and authorised in the email chain. This ensures that any attempts to hide the existence of a passport or to claim it has been lost but not formally reported are identified. This also records the police interest in the subject with HMPO.

See [\*\*Travelling abroad\*\*](#) for more information on offenders who are planning to travel or are known to have travelled abroad.

## **Making an application for a SHPO or SRO**

When making an application for a SHPO or SRO, MOSOVO officers should have regard to the full Home Office [\*\*government guidance on part 2 of the SOA\*\*](#). In particular [\*\*pages 39 to 56\*\*](#) cover general principles for applications for these orders. Forces may also issue their own guidance on local processes and procedures relating to the civil orders.

## **Consultation**

As well as consulting partner agencies when making an application for an order, MOSOVO officers should ensure that they routinely consult their force legal department, and, where necessary, the Crown Prosecution Service on matters such as the wording of unusual or complex prohibitions to ensure that any breaches are capable of being proved to the criminal standard.

## Positive obligations

In the case of applications for positive obligations on a SHPO or SRO, authority of an inspector will be required beforehand. Additional consultation with partner agencies will also be needed to ensure that positive obligations are clear, unambiguous and are directly correlated to the sexual harm posed by the offender and all obligations are lawful, necessary and proportionate.

### **British Transport Police (BTP)/Ministry of Defence Police (MDP)**

Section 171 of the PCSC 2022 gives the power for BTP and/or MDP to apply for SHPO and SRO.

### **Electronic monitoring requirements**

Section 178 of the PCSC 2022 has not been enacted at present.

### **Foreign travel prohibition**

Section 172 of the PCSC 2022 requires that, if a list has been published under section 172 of the PCSC 2022 and has not been withdrawn, police must have regard to the list in considering:

- (a) whether a person has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for a SHPO to be made for the purpose of protecting children generally, or any particular children, from sexual harm from that person outside the United Kingdom
- (b) whether to apply for a prohibition on foreign travel (section 103D of the SOA 2003) to be included in any such order for that purpose

## Obtaining a notification to register details with the police

Notification orders are covered in sections 97 to 103 of the SOA 2003.

Section 169 of the PCSC 2022 removes the necessity for court application for a notice.

A notice places a requirement on offenders who have been convicted or cautioned of sexual offences abroad to comply with the notification requirements under Part 2 of the SOA 2003 as if they have been convicted or cautioned in the UK. A notification issued against a person will require them to become subject to the notification requirements set out in section 82 of the SOA 2003 and become a 'registerable sexual offender'.

Notices are required for British-born offenders who are being deported after serving a sentence abroad for a 'registerable sex offence'. They are also required for foreign national offenders (FNOs) who are arrested for other offences in your police area and an ACRO police check reveals that they have been convicted of a relevant offence abroad.

The offence abroad must be equivalent to an offence under **Schedule 3 of the SOA 2003**.

A notice can be administered with an inspector's authority in the police area where the offender currently resides, or where the offender is intending to reside.

To administer a notice, the police must be satisfied that the following three criteria are met.

- The offender has been (a) convicted of a relevant offence; or (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that P is not guilty by reason of insanity; or (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that P is under a disability and did the act charged against P in respect of the offence; or (d) P has been cautioned in respect of a relevant offence.
- That the conviction, finding or caution occurred on or after 1 September 1997; or the conviction or finding occurred before 1 September 1997 but the defendant was sentenced on or after 1 September 1997 or had yet to be dealt with in respect of it; or the conviction or finding occurred before 1 September 1997 but on that date the defendant was under sentence in respect of the offence.
- The section 82 notification period in respect of the relevant offence has not yet expired.

If the above requirements are met, the police may administer a notice.

## **Step 1 – Information gathering**

You must be able to prove that the offender has been: (a) convicted of a relevant offence; or (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that P is not guilty by reason of insanity; or (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that P is under a disability and did the act charged against P in respect of the offence; or (d) P has been cautioned in respect of a relevant offence.

It no longer matters whether the offender is in your area. Any police officer can issue a notice if authorised by an inspector.

Officers should make initial contact with the source of that information, for example ACRO. They may already be making enquiries to obtain further information so don't duplicate others' efforts. If they are not, officers should make contact with the relevant embassy in the UK (of the country where the offence allegedly occurred). Speak with the Interpol liaison officer if they have one, or anyone they direct you to who deals with deportees.

You should request the following.

- Certificate of conviction – some countries will not provide these but try to obtain any local documentation that formally cites the sexual conviction at a certain court on a certain date for the particular offender.
- Summary of case facts.
- Do they have information as to the intentions of the offender when they return to the UK? Where do they intend to reside? Have they access to funds? Are family expecting them? Do they require any assistance from any government agency on arrival in UK? (National insurance number, GP, press protection).

## **Step 2 – Contact the inspector**

If you are satisfied that you can fulfil the criteria for issuing a notice, make contact with the relevant inspector for authority to issue the notice and use the national paperwork.

## **Step 3 – Serve the notice**

Once you have the necessary paperwork, serve the offender with the notice, explain the registration requirements and the role of the relevant offender management unit. Request a voluntary DNA sample, fingerprints and photograph. A voluntary DNA sample would enable police to load the sample onto the national database and this would therefore become searchable.

## **Step 4 – After issuing the notice**

The offender should be provided with the list of specified police stations in their area they are going to reside.

Inform the offender of their right of appeal.

Make a witness statement of your actions in the event that the offender claims that they were unaware of what to do or where to go.

Contact the Police National Computer (PNC) bureau. Send a copy of the notice. They will add to the UK PNCID record. ACRO will update the record with any foreign conviction.

If the offender will not be under your direct management, contact the relevant unit responsible for managing sex offenders to ensure they are aware that a notice has been issued and the offender has three days to register.

## **Appeal against the issue of the notice**

The person may appeal to a magistrate's court against the decision to give them a notice for various grounds specified in Section 96ZD of the SOA 2003.

For a young person subject to a notice, a parent may also appeal.

## **Standard of proof**

For both SHPOs and SROs, the balance of probability is now the standard of proof for application pre-charge.

Deciding whether or not an order is an appropriate intervention to protect the public is a separate consideration, however, and is decided on the balance of probabilities.

Hearsay evidence is admissible when applying for civil orders. Proof of acts or behaviour can come from a number of sources including victims, witnesses, police officers, probation officers, psychologists and psychiatrists.

Staff should consider using expert evidence in the form of a report or statement from the expert who has had dealings with the defendant. The author of the report should be available to give evidence at the hearing.

## **Disclosure in court**

Civil orders may be applied for in any magistrates' court acting for a local justice area that includes: (a) any part of a relevant police area, or (b) any place where it is alleged that the person acted in a way mentioned in subsection (4)(b).

## **Positive requirements**

The requirements must be necessary for the purpose of protecting the public, or any particular members of the public, from sexual harm in the case of the SHPO and harm in the case of the SRO from the defendant.

The meaning of 'sexual harm' is defined in the SOA 2003 as physical or psychological harm caused by the defendant committing one or more offences listed in **Schedule 3** of the SOA or by the person doing outside the UK anything which would constitute an offence listed in Schedule 3 if done in the UK.

All requirements should be necessary, proportionate, specific and enforceable. They should result from analysing the circumstances of the individual case and should be influenced by advice and information from partner agencies and services. Officers and staff should seek legal advice on the precise wording of particular requirements.

## Offenders who may not yet be in a particular area

An order can be applied for in relation to an offender who may not yet be in a particular area but who is intending to go there (for example, an offender due to be released from prison). An order may prohibit the offender from doing anything specified in it.

For further information, see **R v Smith and others [2011] EWCA Crim 1772**. The Court of Appeal emphasised the importance of tightly drafting terms used in prohibitions and ensuring they are proportionate and not oppressive.

## Monitoring and enforcement of orders

Whenever a court order or sentence for public protection is in place, police forces should work with other agencies where appropriate, to ensure that offenders understand the requirements of each order or sentence.

Once a civil order is obtained, the MOSOVO unit is responsible for updating all local and national databases (for example, PNC, and ViSOR). Systems should also be in place to ensure that police officers and staff, for example, those within neighbourhood policing teams have appropriate information. Other agencies should also be informed about civil orders and any contribution they can make in monitoring and enforcement.

Offender records and risk management plans should include details of how staff will monitor and enforce particular conditions in an order. This includes agreeing arrangements for monitoring orders with other agencies, for example, providers of approved premises.

## Breaches

Although these orders are civil, breaches are criminal offences and are prosecuted by the CPS in accordance with their code. See [\*\*Crown Prosecution Service \(2018\) The Code for Crown Prosecutors\*\*](#).

## Transition

Transitional arrangements for the repeal of SOPO, RSHO and FTO are set out in Section 114 of the Anti-social Behaviour, Crime and Policing Act 2014. MOSOVO officers should, however, note that Section 114 (4) provides that 'from the commencement day there may be no variation of an existing order or an old order that extends the period of the order or of any of its provisions'.

Please note: All SOPOs, RSHOs and FTOs converted to the new orders in March 2020. All provisions of the old orders apply as if they are provisions of a new order, therefore notification requirements are not affected.

## Alternative orders and disruption techniques

Depending on the circumstances of the case, MOSOVO officers may want to consider using alternative orders and notices. This subsection gives an overview of the main alternatives, although this list should not be considered exhaustive.

### Child abduction warning notices (CAWN)

Purpose	To disrupt the activities of an individual who repeatedly associates with a young person under the age of 16 if living at home, or under the age of 18 if living in the care of a local authority.
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Effect	<p>The notice identifies the child and confirms to the suspect that they do not have permission to associate with or to contact or communicate with the child, including online.</p> <p>The CAWN makes clear that if the suspect continues to communicate with the child, they may be arrested and prosecuted under existing legislation, including child abduction legislation.</p>
Test	<p>The CAWN is a non-statutory tool that can be served quickly to deter potential offenders, without any judicial oversight, as an early intervention.</p>
Duration	<p>Until the child reaches 16, or 18 if living under the care of a local authority.</p>
Failure to comply	<p>Breach of a CAWN is not a criminal offence in itself, but can be used as evidence in criminal proceedings.</p> <p>Where prosecution is not possible, the breach of a CAWN can provide evidence to support criminal proceedings such as an application for an SRO.</p>

## Domestic violence protection notice (DVPN) and Domestic violence protection order (DVPO) – Section 24 Crime and Security Act 2010

Purpose	To put in place protection in the immediate aftermath of a domestic violence incident.
Effect	To prevent the perpetrator from returning to the shared home and from having contact with the victim for up to 28 days, allowing the victim time to consider their options and get the support they need (only applies to DVPOs) .

Test	<p>The scheme is based on a two-step process. if, on being called to a domestic violence incident, the police have reasonable grounds to believe the victim remains at risk of domestic violence, they can choose to issue an emergency non-molestation and eviction notice to the perpetrator – the domestic violence protection notice (DVPN).</p> <p>Because the DVPN is a police-issued notice, it is effective from the time of issue, thereby giving the victim the immediate support they require. The issuing of a DVPN requires the authorisation of a police superintendent or above.</p> <p>Within 48 hours of the DVPN being served on the perpetrator, an application for a DVPO may then be made by the police to the magistrates' court. Sundays and public holidays are excluded from this 48-hour time limit. The DVPN continues in effect until the court has reached a decision. If the court rules that the victim requires continued protection, they may issue a DVPO which lasts for a minimum of 14 days to a maximum of 28 days.</p>
Duration	Up to 28 days.

Failure to comply	<p>A perpetrator who fails to comply with a DVPN can be arrested by the police and then brought before the magistrates' court within 24 hours. The court then hears the application for the DVPO, or adjourns the case to a later date. The perpetrator could be remanded on bail or in custody until the final hearing of the application. The court takes into account the circumstances of the alleged breach of the DVPN in deciding whether to remand in custody, and what conditions to place on a remand on bail.</p> <p>Breach of a DVPO is dealt with under the provisions of the Magistrates' Court Act 1980, which applies to breach of any order of the court. The perpetrator could be committed to prison for up to two months or fined up to £5,000.</p>
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[Detailed guidance on DVPNs and DVPOs on the gov.uk.](#)

## Violent offender order (VOO)

Relevant legislation	Sections 98 to 106 of Part 7 of the Criminal Justice and Immigration Act 2008.
Purpose	To protect the public from serious violent harm from offenders.

Effect	To prohibit the offender from doing anything specified in the order, Additionally, a VOO makes the offender subject to notification requirements (similar to RSOs).
Test	<p>There are two conditions which must be met.</p> <ol style="list-style-type: none"> <li>1. Application process conditions – the person is a qualifying offender, which means a person aged 18 or over who falls under subsection (2) or (4) of section 99 and meets the criteria under section 100 of that Act.</li> <li>2. Court process conditions – the person has, since the appropriate date, acted in such a way as to make it necessary to make a VOO for the purpose of protecting the public from the risk of serious violent crime caused by the person.</li> </ol>
Duration	Between two and five years.
Failure to comply	Maximum of five years' imprisonment (section 113(6) of the Criminal Justice and Immigration Act 2008).

Further details of other orders can be found in the [\*\*Public Protection Tactical Menu of Options \(PPTMO\)\*\*](#) (you will need to log in to College Learn).

## Tags

Sexual and violent offenders