

Protection from Sexual Offending

Criminal Laws (Amendment) Bill 2024

How are people protected from sexual offending?

The law protects people from sexual offenders and people who pose a risk of causing sexual harm by monitoring them and, where appropriate, subjecting them to certain restrictions.

Sexual offenders are automatically subject to notification requirements and the court can also impose notification requirements on people who are found to pose a risk of causing sexual harm. Being subject to notification requirements is sometimes known as being on the 'sex-offenders register'.

Notification requirements include having to keep the police informed of living arrangements and travel plans. This allows the police to monitor and supervise people subject to notification requirements and reduces the risk of them causing sexual harm to others. Failing to comply with notification requirements is a criminal offence.

Sexual offenders and people who pose a risk of causing sexual harm can also be made subject to a sexual harm prevention order, which prohibits a person from doing anything specified in the order. For example, a sexual harm prevention order may prohibit a person from having unsupervised contact with children under the age of 16 years old. Breaching a sexual harm prevention order is a criminal offence.

What does the Bill aim to do?

The Bill aims to improve the protections currently in place by adding to the notification requirements, making provision for sexual offences which are committed outside of the Falkland Islands, introducing a new criminal offence relating to driving for hire, payment or reward when subject to notification requirements and updating the law in relation to sexual harm prevention orders and sexual risk orders.

Additional notification requirement and overseas offences

The Bill imposes an additional requirement on those subject to notification. The additional requirement is for the person to inform the police if they intend to be absent from their home address for more than 3 days and to provide details about their travel and accommodation arrangements during their period of absence.

This additional requirement will allow the police to monitor the person's whereabouts and take appropriate steps to identify and safeguard any children or vulnerable adults who may come into contact with the person who is subject to notification requirements.

The Bill aims to improve protections in relation to people who have been convicted of a sexual offence overseas and who then come to the Falkland Islands. Where a person has been convicted of a sexual offence overseas, which is the equivalent of an offence in Falkland Islands law, then the person can be served a notice which makes them subject to notification requirements as if they have been convicted in the Falkland Islands.



Criminal offence relating to driving or supervising a driver for hire, payment or reward

A person who carries people in a motor vehicle for hire or reward, or who supervises for payment or reward another person driving, is in a position of trust. For example, a taxi driver who carries children and young people, or a driving instructor teaching a student. The majority of people who provide these services do so to a high standard and behave in an appropriate manner towards others. There have, however, been situations where people have used this position of trust to develop inappropriate relationships and cause sexual harm to others.

The Bill aims to protect people using taxi services, driving instruction services and other hire or reward services from the risk of sexual harm. The Bill does this by creating a new criminal offence which prohibits a person who is subject to notification requirements from driving for hire or reward for the duration of their notification period.

The new offence will apply from the date the Bill becomes law and applies to any person who is subject to a notification requirement on that date and to people who are made subject to notification requirements thereafter. A person who carries people in a motor vehicle for hire or reward, or who supervises for payment or reward another person driving, when subject to notification requirements, will commit an offence. The maximum sentence for this offence is imprisonment for 2 years.

This means that sexual offenders and other people subject to notification requirements are prohibited from being taxi drivers, tourist drivers, driving instructors and providing other driving for hire, payment or reward services for the duration of their notification period.

The Bill does not place any obligations on employers and employers are not under a duty to check whether a person who they employ is subject to a notification requirement. Employers do not commit a criminal offence if they unknowingly employ a person who is subject to a notification requirement to provide driving services for hire, payment or reward. The responsibility for complying with the law is on the person who is subject to the notification requirement.

Updating sexual harm prevention orders and sexual risk orders

Sexual harm prevention orders and sexual risk orders can be made by a court to manage specific risks posed by people for the purpose of protecting others from the risk of sexual harm. Orders can be made when a person is convicted of a criminal offence or where there is sufficient evidence to justify making the order.

The current law restricts sexual harm prevention orders and sexual risk orders to imposing prohibitions on the person subject to the order. For example, an order may prohibit a person from attending a specified location, such as a school or playground.

The Bill aims to update the law by allowing orders to impose positive obligations, such as an obligation to engage with the Probation Service or other rehabilitative programme.

The Bill also allows for different prohibitions and requirements to apply for different periods of time and for orders to appoint a person or organisation to have overall responsibility for managing the order, such as the Police or the Probation Service. The Bill requires, wherever possible, that prohibitions and requirements avoid conflicting with a person's education, work or religion. The aim of the Bill is to improve the flexibility of sexual harm prevention orders and sexual risk orders so that they can be tailored to the needs of individual cases.

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