

Appendix 5

Police Powers

Anti-Social Behaviour, Crime and Policing Act 2014

Protection and closure notices

Sections 43, 59 and 76

These give police powers to issue:

- community protection notices;
- public space protection orders; and
- closure notices, respectively.

The powers may be useful when adopting strategies to address CSE related offending, e.g. frequenting a locality in order to accost children for sexual purposes from vehicles.

Hotel notices

Section 116

This gives police powers to serve notices on hotels requiring them to provide them with the names and addresses of guests.

This requirement is not for retrospective information. It starts with the date the notice is served, i.e. it does not require them to provide details of guests who stayed prior to the service of the notice, only those who stayed afterwards.

Children Act 1989

Section 49

This states that it is an offence if someone knowingly and without lawful authority or reasonable excuse takes a child who is subject of a care order, emergency protection order (EPO) or police protection order;

- a) away from the responsible person; or
- b) keeps such a child away from the responsible person; or
- c) induces, assists or incites such a child to run away or stay away from the responsible person.

Police Protection

Section 46 – Police protection

This states:

Where a constable has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, he may -

- a) remove the child to suitable accommodation and keep them there; or
- b) take such steps as are reasonable to ensure that the child's removal from any hospital, or other place, in which they are then being accommodated is prevented.

This is a key power which should be used whenever potential victims are found in the company of potential perpetrators and they refuse to accompany the police voluntarily.

Police and Criminal Evidence Act 1984 (PACE)

There is no power of entry to exercise this power but section 17 (1) e of PACE may provide such grounds where there is concern that the victim may be at risk of serious harm. Clearly the commission of a sexual offence against a child would amount to such harm.

Key power

This is a key power which should be used whenever potential victims are found in the company of potential perpetrators and they refuse to accompany the police voluntarily. For example, you find a 14 years old girl in a car in the city centre at 2 am with a 28 years old man.

If you are not satisfied that there is a legitimate reason why the girl is with the man and you suspect she is there without the knowledge and consent of her carers or have any other grounds to believe that the girl is at risk of significant harm from the man, you must not simply take details and leave the girl with the man.

If she refuses to accompany you make use the above power to remove her to suitable accommodation. This is likely to be the child's home if this is safe to do.

Suitable accommodation

A police station is not suitable accommodation. A child under police protection should not be brought to a police station except in exceptional circumstances, e.g. lack of immediately available local authority accommodation.

If it is necessary to take the child to a police station every effort should be made to ensure their physical safety, comfort, access to food and drink and access to toilet and washroom facilities.

Child Abduction Act 1984

Section 2

This provides an offence in relation to the taking or detaining of a child under 16 years:

- a) where the offender is not connected with the child so as to remove him from the lawful control of any person having lawful control of the child; or
- b) so as to keep him out of the lawful control of any person entitled to lawful control of the child.

It is a defence to this offence for the defendant to show that he believed the child to have attained the age of 16. (Either way offence)

Harbourer's Warnings

Information

In order to obviate defences regarding knowledge of the child's age or the fact that they were subject to an appropriate order, it is practice to issue what are known in Force as a Harbourer's Warning so that any subsequent occurrence can be dealt with by way of arrest..

However, where it appears the offence is disclosed officers must consider arresting for the offence irrespective of whether a warning has been issued.

Sexual Offences Act 2003

Section 14

This makes it an offence for a person intentionally to arrange or facilitate any action which he intends to do, intends another person to do or believes that another person will do, in any part of the world, which will involve an offence being committed against a child under any of sections 9 to 13 (includes sexual activity with a child).

14(1) A person commits an offence if -

- a) he intentionally arranges or facilitates something that he intends to do, intends another person to do, or believes that another person will do, in any part of the world; and
- b) doing it will involve the commission of an offence under any of sections 9 to 13.

Section 15

This makes it an offence where a child under 16 travels to meet the adult or the adult arranges to meet the child, following an earlier communication, if the adult intends to commit a sexual offence against the child during or after the meeting.

The meeting may take place in any part of the world and a relevant offence is committed if A intends to do anything to or in respect of B during or after the meeting.

Section 59a

This makes it an offence for a defendant to intentionally arrange or facilitate the arrival, travel or departure of B into, within or from the UK or another country with a view to sexual exploitation.

A must intend to do anything to or in respect of B, or believe another person is likely to do something to or in respect of B.

In these cases, the relevant offence must take place during or after the journey but may take place anywhere in the world.

A	commits an offence under this section
UK national	regardless of where the arranging or facilitating takes place or which country is the place of arrival, travel or departure.
non UK national	if any part of the arranging or facilitating takes place in the UK regardless of whether the UK is the country of arrival, travel or departure.

Section 136

This allows an officer of at least superintendent rank to issue a closure notice to the owner/occupier of premises where the officer:

- reasonably believes that in the past three months the premises were used for activities related to a specified child sex offence, or the premises are likely to be used for such activities;
- reasonably believes that the making of a closure order is necessary to prevent the premises being used for such activities; and
- is satisfied that reasonable efforts have been made to consult the local authority for the area in which the premises are situated, and to establish the identity of any residents or persons who have control of or responsibility for or an interest in the premises.

Chapter 3 Court orders and injunctions

Anti-Social Behaviour, Crime and Policing Act 2014

Section 1

This gives courts powers to grant injunctions for anti-social behaviour against a person aged 10 or above if they are engaged, or threaten to engage in, anti-social behaviour or to prevent them from engaging in anti-social behaviour.

Prohibiting the respondent from doing anything, or requiring the respondent to do something described in the injunction has an obvious application for banning individuals who may approach children in public places such as parks or particular localities.

An injunction under this section must:

- a) specify the period for which it has effect; or
- b) state that it has effect until a further order is injunction.

Protection from Harassment Act 1997

Restraining orders

Restraining orders are made by a court under Section 5 of the Protection from Harassment Act 1997 and allow a court to make an order either on the conviction or acquittal of a defendant for any offence where the court believes a restraining order is necessary to protect a person from harassment.

The terms may be set by the court.

They should be applied for in any CSE related prosecution even where the victim has not requested the order to be made.

Sexual Offences Act 2003

Sexual risk orders

(SROs)

Section 122A relates to a civil, preventative order which the police can apply to a magistrates' court for in respect of a person over the age of 18, if that person has on at least one occasion done an act of a sexual nature and the police have reasonable cause to believe that an order is necessary to protect the public in general or specific members of the public.

The person concerned may or may not have a conviction for a sexual or any other offence.

Serious crime prevention orders

The following offences, contrary to the Sexual Offences Act 2003, are qualifying offences for these orders under the Serious Crime Prevention Act 2007:

Section	Offence
14	arranging or facilitating commission of a child sex offence;
48	causing or inciting sexual exploitation of a child;
49	controlling a child in relation to sexual exploitation;
50	arranging or facilitating sexual exploitation of a child;
52	causing or inciting prostitution for gain;
53	controlling prostitution for gain; or
57 and 59	trafficking for sexual exploitation.

An application for a civil order can be made to the high court without a conviction and using the civil burden of proof. The crown court may also issue orders on conviction. The orders may impose such conditions as the court thinks necessary to protect the public.

Sexual harm prevention orders

Section 103A allows a court to make a civil order where a person has been convicted of a relevant or sexual offence and since that date his conduct gives rise to concern that the order is necessary for the purpose of protecting the public or particular members of the public from serious sexual harm, e.g. someone convicted of sexual offences against children loitering around schools or inviting children back to his house.

The above orders may be used as the basis for obtaining civil injunctive orders under the inherent jurisdiction of the high court. You should refer to Birmingham City Council v Riaz and others 2014 for full details.

Travel restrictions

Section 103 - Sexual Harm Prevention Orders (SHPO) provides powers to prohibit foreign travel.

Vehicle, ship or aircraft seizure

Section 60B(1) allows a constable to detain a relevant vehicle, ship or aircraft where a person is arrested for an offence of human trafficking under s59A pending a decision to charge or:

- if charged, pending their acquittal, dismissal or discontinuance;
- if charged and convicted, pending a court decision about forfeiture of the transport used.

Further information

The Home Office has published guidance on part 2 of the act which you can access.

Closure orders

Once a notice has been issued the police must apply to the Court for a Closure Order within 48 hours. This may last up to six months, there are provisions to extend an order within that period.

Notices and orders are seen as 'tools of last resort' and the force needs to evidence to the court that other solutions to prevent the premises being used for these purposes have been tried first.

Chapter 4 Child safeguarding and human trafficking

Palermo protocol

The Palermo protocol defines human trafficking as requiring three general components:

Component	Action
The act	recruitment, transportation, transfer, harbouring or receipt of persons;
The means	using threats, use of force, coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits; and
The purpose (exploitation)	prostitution, sexual exploitation, forced labour or services, slavery, or practices similar to slavery (domestic servitude) or the removal of organs etc.

In terms of children

For a child (a person under 18) only the 'act' and 'purpose' are required. This means that people involved, e.g. in moving children for the purposes of exploiting them, are 'trafficking.'

Where child safeguarding matters are being dealt with by staff then they must consider if a case of human trafficking also exists.

As well as investigating this matter, staff must refer the case to the UK Human Trafficking Centre within the National Crime Agency via their email address. (The National Referral Mechanism (NRM) form is available on the Force Human Trafficking intranet site.

This will ensure that:

- the concern is properly identified and considered; and
- a true picture regarding the human trafficking issue can be established.