Cabinet Secretary for Justice
Michael Matheson MSP

Scottish Government
Riaghaltas na h-Alba
gov.scot

T: 0300 244 4000
E: scottish.ministers@gov.scot

Sarah Newton MP
Minister for Crime, Safeguarding and Vulnerability
Home Office
2 Marsham Street
LONDON
SW1P 4DF

11th July 2017

Dear Sarah,

I am writing seeking your support to the making of changes to the law of England and Wales and Northern Ireland in consequence of sections 10 to 40 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. These provisions create a new regime of preventative orders in Scotland to address harmful sexual behaviour, namely Sexual Harm Prevention Orders (SHPOs), and Sexual Risk Orders (SROs).

You will be aware that the UK Government legislated to create a similar set of orders in England and Wales through the Anti-social Behaviour, Crime and Policing Act 2014, and, by virtue of a Legislative Consent Motion, these are now fully enforceable in Scotland.

Scottish Government officials had originally been working with UK Government officials on the basis that the necessary cross border provisions required the UK Parliament to make a section 104 order under the Scotland Act 1998. These consequential measures would have changed the law of England and Wales and Northern Ireland to ensure that the new SHPOs and SROs were recognised and enforceable in the other UK jurisdictions.

We had also planned to allow the police in other parts of the UK to apply to the courts in other UK jurisdictions to vary Scottish orders, in circumstances where an individual subject to an order made in Scotland moves from Scotland to England or Wales or Northern Ireland. Thus delivering on our shared policy desire for these sexual harm prevention measures to operate as seamlessly and effectively as possible across the different UK jurisdictions.

However we are advised that it is not possible to do this by section 104 order because it would involve creating new offences with penalties higher than are permitted to be set in a Scotland Act order.

These matters have been the subject of on-going discussions between our officials for some time now. They have also been fully considered at the National Police Chiefs' Council's Management of Sexual Offenders and Violent Offenders Working Group meeting in London on 2 March, and the Home Office Sex Offender Violent Offender Board meeting when it last met on 24 May. The unanimous view of those involved in these considerations was to delay commencement of the Scottish orders until appropriate Westminster primary legislation was in place so that the orders would be enforceable UK wide.

It is recognised that any delay in implementing the new orders will delay the benefits of reduced thresholds and increased opportunities to protect, prevent and reduce sexual offending against children and vulnerable adults. For example, the delay in implementation will mean courts in Scotland will have to continue to apply the test of protecting a person from "serious sexual harm" in existing provision rather than a lower test of "sexual harm".

With that in mind you will appreciate that the identification of a suitable Bill to take these matters forward at the earliest opportunity would be mutually beneficial. I would be grateful therefore if you could ensure that your officials continue to work closely with my officials in seeking to take these matters forward as a matter of some urgency.

I am copying this letter to the Rt Hon David Mundell Secretary of State for Scotland for his interest.

Best wishes

MICHAEL MATHESON

[redacted]

From: [redacted]homeoffice.gsi.gov.uk>
Sent: 19 December 2017 10:23
To: [redacted]
Subject: RE: Update: Behaviour and Sexual Harm - [redacted]

[redacted]

Once again apologies for the delay, it's been extremely difficult to get this through Private Office (in part due to changing Minister, but I'm aware there was significant delay before then too). As soon as Parliament returns in January I will chase for a response.

Have a good Christmas, and sorry this has taken so long!

[redacted]

From: [redacted]gov.scot [mailto:[redacted]@gov.scot]
Sent: 19 December 2017 10:03
To: [redacted]
Subject: RE: Update: Behaviour and Sexual Harm - Letter to [redacted]

[redacted]

Any update on this would be most welcome.

[redacted]

From: [redacted]@homeoffice.gsi.gov.uk]
Sent: 28 November 2017 16:21
To: [redacted]
Subject: RE: Update: Behaviour and Sexual Harm - Letter to [redacted]

[redacted]

I spoke with the Minister's Private Office again earlier in the week. They have been completely swamped since gaining a new Minister but are aiming to discuss it with her this week. I'm confident it's firmly on their radar now, so I should be able to update you soon.

Apologies again for the severe delay.

[redacted]

From: [redacted]@gov.scot [mailto:[redacted]@gov.scot]
Sent: 28 November 2017 15:38
To: [redacted]
Subject: RE: Update: Behaviour and Sexual Harm - [redacted]

[redacted]

Grateful for an update on this.

[redacted]

From: [redacted] [mailto:[redacted]@homeoffice.gsi.gov.uk]
Sent: 10 November 2017 10:14
To: [redacted]
Subject: RE: Update: Behaviour and Sexual Harm - Letter to [redacted]

[redacted]

Just thought I'd follow up on [redacted] email and introduce myself – I've joined the team to lead on sex offender management policy. Very keen to resolve this issue quickly as clearly it's been going on a while!

As you may have seen we have a new Minister (as of yesterday), so I'd imagine the Private Office will be preoccupied with that for a short while. I'll chase them again on the letter next week.

Best wishes,

[redacted]

From: [redacted]@gov.scot [mailto:[redacted]@gov.scot]
Sent: 09 November 2017 11:44
To: [redacted]
Cc: [redacted]@gov.scot
Subject: RE: Update: Behaviour and Sexual Harm - Letter to [redacted]

[redacted]

Thanks for this, and a copy of this exchange goes to [redacted] here for his new found interest in this work.

[redacted]

[redacted]

[redacted]

From: [redacted] [mailto:[redacted]@homeoffice.gsi.gov.uk]
Sent: 09 November 2017 10:13
To: [redacted]
Cc: [redacted]
Subject: RE: Update: Behaviour and Sexual Harm - Letter to [redacted]

[redacted] – sorry, I absolutely lost track of your email a fortnight ago.

The letter is still stuck in Private Office despite valiant efforts on the part of first [redacted] and now [redacted] to get it and clarify whether the response we expect to send is one the Minister will be content with. I am at a loss to understand why it's so hard to get this through PO but we continue to push.

I've copied [redacted] into this email by way of introduction as he has now taken over the sex offender management policy post on a full-time basis – so a helpful contact for you, and the person who will be responsible for pushing this when you finally receives a response.

[redacted]

From: [redacted]@gov.scot [mailto:[redacted]@gov.scot]
Sent: 09 November 2017 09:32
To: [redacted]
Subject: RE: Update: Behaviour and Sexual Harm - Letter to [redacted]

Sorry to bother you about this, but an update would be most welcome.

[redacted]

From: [redacted]
Sent: 27 October 2017 15:10
To: '[redacted]homeoffice.gsi.gov.uk'
Subject: FW: Update: Behaviour and Sexual Harm - Letter to [redacted]

[redacted]

Grateful for an update on this.

Kind regards

[redacted]

Scottish Government

[redacted]

[redacted]scotland.gsi.gov.uk

From: [redacted] [mailto:[redacted]@homeoffice.gsi.gov.uk]
Sent: 12 September 2017 14:53
To: [redacted]
Subject: Update: Behaviour and Sexual Harm - Letter to [redacted]

[redacted]

I just wanted to provide you with an update regarding the letter from [redacted] to our minister in respect of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

I can confirm that I have discussed this issue with the minister's private office but, what with summer recess and another impending recess at the end of this week for party conference. There has been very little time for the minister's office to focus on anything apart from very urgent issues.

Timings, as you will agree, have been very much against us but, I am confident that a response will be ready shortly after conference recess; so somewhere in the middle of October.

Kind regards

[redacted]
[redacted]Fry Building|2 Marsham Street|London|SW1P 4DF
[redacted]
email: [redacted]@homeoffice.gsi.gov.uk

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

has been swept for the presence of computer viruses.

****

****

Home Office

Victoria Atkins MP
Minister for Crime, Safeguarding and Vulnerability

2 Marsham Street,
London SW1P 4DF
www.gov.uk/home-office

Michael Matheson MSP
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

27 FEB 2018

Dear Michael,

Thank you for your letter of 11 July regarding the changes to the law of England and Wales in consequence of sections 10 to 40 of the Abusive Behaviour and Sexual Harm Act (Scotland) 2016. I am responding as the new Minister for Crime, Safeguarding and Vulnerability. Please accept my apologies for the significant delay you have experienced in receiving a response on this important matter.

The UK has some of the toughest powers in the world to manage sex offenders, and the implementation of robust cross-boarder provisions forms an essential part of this process.

Sexual Harm Prevention Orders (SHPOs) and Sexual Risk Orders (SROs), which were introduced via the Anti-social Behaviour, Crime and Policing Act 2014, have given the police new powers and flexibility in England and Wales. In order to ensure that sexual harm prevention measures operate effectively across different UK jurisdictions, I share your aim that SHPOs and SROs are made available to Scottish authorities too.

While I recognise the clear benefits of identifying a suitable Bill at the earliest opportunity, as you will be aware, no appropriate legislative vehicle presently exists. Like you, I am of course concerned that delays in implementing the orders will in turn delay their associated benefits towards public protection. I will therefore ensure that Home Office and Ministry of Justice officials continue to work closely with your officials in the Scottish Government to identify suitable primary legislation at the earliest possible opportunity.

Yours sincerely,

Victoria Atkins

Victoria Atkins MP

SCOTTISH PARLIAMENT

WRITTEN ANSWER

8 August 2018

Index Heading: Education, Communities and Justice

Liam McArthur (Orkney Islands) (Scottish Liberal Democrats): To ask the Scottish Government how many (a) non harassment, (b) sexual harm prevention and (c) sexual risk orders have been made under the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

S5W-17846

Humza Yousaf: The Abusive Behaviour and Sexual Harm (Scotland) Act 2016 does not create a new power to impose Non-Harassment Orders. It amends provisions at section 234A of the Criminal Procedure (Scotland) Act 1995 concerning the powers of the criminal courts to impose a non-harassment order on an offender following an application from the Crown Office and Procurator Fiscal Service. These powers now extend to circumstances where an accused person is acquitted because of not being criminally responsible due to a mental disorder or where a court finds a person unfit to stand trial due to mental or physical condition, but establishes after hearing evidence that they did something that would constitute an offence involving misconduct towards another person.

The provisions concerning sexual harm prevention orders and sexual risk orders will, in due course, replace sexual offence prevention orders, foreign travel orders and risk of sexual harm orders when commenced. The UK Ministry of Justice first requires to amend reserved legislation to ensure that these orders would have effect in the other jurisdictions of the UK before they come into effect.

BACKGROUND NOTE FOR S5W-17846

1. This is one of three questions lodged by Liam McArthur MSP regarding the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. The others are:

PQ S5W-17840: To ask the Scottish Government how many (a) complaints, (b) prosecutions and (c) convictions have been made under the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, broken down by offence.

PQ S5W-17841: To ask the Scottish Government whether it plans to review the implementation of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

2. The question asks how many Non-Harassment Orders (NHOs), Sexual Harm Prevention Orders (SHPOs) and Sexual Risk Orders (SROs) have been made by the courts under the Act.

3. The Act does not directly create a new power for the courts to make NHOs. Before the provisions concerning NHOs at section 5 of the Act came into effect, the courts had an existing power at section 234A of the Criminal Procedure (Scotland) Act 1995 to make an NHO against an offender who has been convicted of an offence involving misconduct towards another person.

4. The Act expands this power so that it also covers cases where a person has been acquitted because they were not criminally responsible for their actions at the time of the offence due to a mental disorder, or where a court finds a person unfit to stand trial due to mental or physical condition, but establishes after hearing evidence that they did something that would constitute an offence involving misconduct towards another person.

5. This followed a court case in 2015 which highlighted an issue in relation to the operation of NHOs imposed by the criminal courts. In that case, the court could not impose an NHO on the offender, who was found to have committed the acts amounting to the offence, but who was found not guilty because the court found he was not criminally responsible for his actions at the time of the offence, due to the effects of a mental disorder.

6. It is not possible to separately identify NHOs imposed by courts in cases where the accused was found not guilty because they lacked capacity due to a mental disorder, or where there was a finding of facts by the court because the accused was unfit to stand trial. However, the financial memorandum accompanying the Bill at introduction noted that it was anticipated the provisions would result in only a very small number of additional NHOs being made.

7. The Act will, when commenced, introduce two new preventative orders in Scotland, the Sexual Harm Prevention Order (SHPO) and Sexual Risk Order (SRO). These orders simplify and rationalise the existing system of civil orders available to protect the public from those who may commit sex offences:

- Sexual Harm Prevention Orders - a post-conviction order which replaces the Sexual Offences Prevention Order and Foreign Travel Order under the Sexual Offences Act 2003 and can apply to those convicted of a relevant sexual offence; and
- Sexual Risk Orders - a non-conviction order which replaces the Risk of Sexual Harm Order under the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, and can apply to any individual who poses a risk of sexual harm.

8. The UK Government introduced similar measures in the Anti-social Behaviour, Crime and Policing Act 2014. There has been a parallel regime for sex offenders north and south of the border for many years until the aforementioned UK Government reforms. One of the benefits of reforms being progressed in Scotland is to re-introduce this parallel regime. This will ensure that those individuals who may be subject to the orders cannot take advantage of a less robust regime operating in Scotland.

9. The Cabinet Secretary for Justice wrote to UK Ministers in July 2017 seeking their support to the making of changes to the law of England Wales and Northern Ireland in consequence of the 2016 Act provisions to ensure that these orders will apply across all the jurisdictions of the UK. The Minister for Crime, Safeguarding and Vulnerability replied on 27 February 2018 recognising the clear benefits of identifying suitable primary legislation at the earliest possible opportunity to ensure that the sexual harm prevention measures in the 2016 Act operate effectively across the different UK jurisdictions. However, the Minister noted that no appropriate legislative vehicle existed to take forward the changes at this time. She committed to ensuring that Home Office and Ministry of Justice officials continue to work closely with Scottish Government officials to identify suitable primary legislation at the earliest opportunity.

Contact Name: [redacted]
Ext: [redacted]

[redacted]

From: [redacted]@homeoffice.gov.uk>
Sent: 18 December 2018 14:58
To: [redacted]
Subject: RE: Civil Orders

[redacted]

Thanks for your email.

I appreciate both the significant pressure that you're facing and the importance of introducing these orders as soon as possible. We recently provided advice to the Home Secretary on a whole host of issues that we would like to address through legislation, and this specific issue was included in that advice. Unfortunately, the reality is that there continues to be a dearth of legislative opportunities in the current climate, particularly as we approach Brexit. I can assure you that we'll continue to push this issue and that in the event of a suitable legislative opportunity we'll seek to make the necessary changes.

Happy to discuss.

[redacted]

From: [redacted]@gov.scot <[redacted]@gov.scot>
Sent: 17 December 2018 09:37
To: [redacted]@homeoffice.gov.uk>
Subject: Civil Orders
Importance: High

[redacted]

I'm being pressed to move on this, not least because of an article in yesterday's Mail on Sunday criticising the Scottish Government for not commencing the legislation and suggesting that the delay has created a clear detriment to Police Scotland in their efforts to effectively manage RSOs in the community.

Indeed [redacted] is minded to write to [redacted] (?) to formally ask for an update on progress. Grateful for any update you can provide so that I can brief senior colleagues and the Minister's office.

[redacted]

[redacted]

[redacted]@gov.scot

[redacted]

This would ultimately be a matter for you and [redacted] to take forward with the [redacted] and the [redacted] respectively. As I see it we want to [redacted]

In that way we will:

1. [redacted]
2. [redacted]
3. [redacted]

[redacted], St Andrew's House, Edinburgh
Scottish Government
[redacted]

From: [redacted] [mailto: [redacted] @homeoffice.gov.uk]
Sent: 09 October 2018 13:16
To: [redacted]
Subject: RE: HO Guidance Update

[redacted]

Unfortunately there's still no legislative opportunity on this from our side.

However, it would be good to have all the relevant detail ready for when we are in a position to legislate. Specifically, would you mind outlining exactly what needs to change in E&W primary legislation (I know it relates to making them enforceable across boarders) to introduce the orders in Scotland. Apologies if you've already set this out previously.

Thanks,

[redacted]

[redacted] | 2 Marsham Street | London | SW1P 4DF

e [redacted] @homeoffice.gsi.gov.uk
[redacted]

From [redacted] @gov.scot [mailto: [redacted] @gov.scot]
Sent: 03 September 2018 09:06
To: [redacted]
Subject: RE: HO Guidance Update (Pt 2 of the SOA 2003)

[redacted]

Happy with the added line. Also grateful for any update on possible legislation to commence Scottish SHPOs and SROs.

[redacted]
Community Justice Division
[redacted]**St Andrew's House, Edinburgh**
Scottish Government
[redacted]

[redacted]scotland.gsi.gov.uk

Cabinet Secretary for Justice
Humza Yousaf MSP

F/T: 0300 244 4000
E: scottish.ministers@gov.scot

Scottish Government
Riaghaltas na h-Alba
gov.scot

Victoria Atkins MP
Minister for Safeguarding
2 Marsham Street
LONDON
SW1P 4DF

21 December 2018

Dear Victoria,

I refer to your letter of 27 February to my predecessor Michael Matheson MSP relative to the introduction of Sexual Harm Prevention Orders (SHPOs) and Sexual Risk Orders (SROs) in Scotland.

As you know, the introduction of the new orders gives rise to cross-jurisdictional enforcement issues, which is imperative to the efficacy of the orders and the risk management of those subject to such orders, across all parts of the United Kingdom.

For your part you recognised the clear benefits of identifying a suitable legislative vehicle to address the issue, as well as expressing concern if there was any undue delay in bringing forward the necessary legislation.

I am sure you will agree with me that the effective management of the risk of sexual harm must be our shared priority. With that in mind I would be most grateful if you could provide a detailed timetable of the Home Office's plans to bring forward legislation to enable SHPOs and SROs to be made available in Scotland.

I would welcome a response to these issues at your earliest convenience.

HUMZA YOUSAF

[redacted]

From: [redacted]
Sent: 01 May 2019 17:16
To: [redacted]
Cc: [redacted]

Subject: RE: For clearance - Media query: SHPOs - [redacted]

Thanks [redacted]

I will send on to the journalist now.

[redacted]

[redacted] **Newsdesk**
Scottish Government, St Andrew's House
[redacted]@gov.scot
[redacted]
www.gov.scot | @ScotGov

From: [redacted]@gov.scot> [redacted]
Sent: 01 May 2019 17:16
To: [redacted]
Cc: [redacted]
Subject: RE: For clearance - Media query: SHPOs - The Sun

Hi [redacted]

Thanks – [redacted] has seen and is content to clear.

Thanks,
[redacted]

[redacted]

Scottish Government [redacted] St Andrew's House, Regent Road, Edinburgh, EH1 3DG | [redacted]
[redacted]@gov.scot | www.gov.scot |

From: [redacted]@gov.scot>
Sent: 01 May 2019 15:38
To: [redacted]@gov.scot>
Cc: [redacted]

[redacted]

Subject: For clearance - Media query: SHPOs - The Sun

[redacted]

Journalist [redacted] has been in touch with Comms over the past few weeks asking for further information about SHPOs and our engagement with the UKG to get these in place. He asked about whether we would introduce these new orders in Scotland without UK reciprocity, while we await action from the UKG.

We provided some initial background and factual information to address his enquiry, as agreed with policy colleagues and issued on SpAd clearance, but the journalist is pressing for further information. I'd appreciate clearance from [redacted] on the lines below as agreed with policy and SpAds. These reiterate the points already made to the journalist.

A Scottish Government spokesperson said:

"Legislation to enable enforcement across the rest of the UK is needed to ensure that monitoring any augmented regime remains as robust as possible.

"Without action to legislate by the UK Government, even an order with a residency condition would not be enforceable in other jurisdictions just across the border from Scotland, thereby creating a weakness when we are focused on a system that can strengthen arrangements across these islands.

"The current arrangement means that the preventative orders available in Scotland continue to be enforceable in other UK jurisdictions. We will commence these orders as soon as the UK Government passes the appropriate legislation. Until that time the current arrangements of MAPPAs and available court orders, provide the most robust, well-understood and enforceable regime for keeping people safe."

Background:
SOPOs are one of a range of measures to manage the risks posed by RSOs, and these existing Orders provide police with the ability to apply and monitor a range of conditions, such as electronic tagging, curfews and restrictions to manage behaviour.

The reoffending rate amongst this cohort compared to other categories of offender is low; In 2017/18, less than 0.9% of RSOs went on to reoffend.

Thanks
[redacted]

[redacted]

From: [redacted]
Sent: 05 March 2019 13:08
To: [redacted]
Subject: RE: Violent Offender Orders (VOOs)
Attachments: [redacted] letter to [redacted] Dec 2018.pdf

[redacted]

Letter herewith, as discussed.

[redacted]
[redacted] St Andrew's House, Edinburgh
Scottish Government

[redacted]

[redacted]@gov.scot

From: [redacted]@homeoffice.gov.uk>
Sent: 27 February 2019 15:13
To: [redacted]@gov.scot>
Subject: RE: Violent Offender Orders (VOOs)

[redacted]

Private Office didn't forward me the letter – could you provide a copy?

Thanks,

[redacted]

From: [redacted]@gov.scot [redacted]@gov.scot>
Sent: 25 February 2019 12:45
To: [redacted]homeoffice.gov.uk>
Subject: RE: Violent Offender Orders (VOOs)

Thanks [redacted]

All noted. You may have seen our [redacted] to hi [redacted] at the Home Office back in December 2018. Is [redacted] intending to reply?

[redacted]

[redacted], St Andrew's House, Edinburgh
Scottish Government

[redacted]

[redacted]@gov.scot

From: [redacted]
Sent: [redacted]
To: [redacted]
Subject: [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Home Office

Victoria Atkins MP
Minister for Crime, Safeguarding and Vulnerability
Minister for Women

2 Marsham Street
London SW1P 4DF
www.gov.uk/home-office

Humza Yousaf MSP
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

29th March 2019

Dear Mr Yousaf,

Thank you for your letter of 21 December, in which you request an update on the Home Office's plans to bring forward legislation to enable the introduction of Sexual Harm Prevention Orders (SHPOs) and Sexual Risk Orders (SROs) in Scotland. Please accept my apologies for the delay in issuing a response on this matter.

As outlined in my letter to your predecessor, Michael Matheson MSP, I wholeheartedly share the ambitions of the Scottish Government to introduce the SHPO and SRO in Scotland. I maintain that this continues to be a priority, given the clear benefits of these civil orders for public protection and the necessity for their effective operation across UK jurisdictions.

I previously advised that no appropriate legislative vehicle presently existed, and unfortunately this continues to be the case. As you will understand, a significant proportion of Parliamentary time has been prioritised towards issues concerning Brexit. Accordingly, I am unable to provide a detailed timetable of legislative plans at this stage. I will, however, ensure that my officials continue their efforts to identify a suitable legislative opportunity as soon as possible.

Victoria Atkins

Victoria Atkins MP
Minister for Crime, Safeguarding and Vulnerability
Minister for Women

[redacted]

From: [redacted]
Sent: 12 April 2019 07:50
To: [redacted]
Subject: Fw: Sexual Harm Prevention Orders and Sexual Risk Orders.

For info - to see the request re the [redacted] letter has been dealt with for now. [redacted] will pick up with [redacted]

[redacted]

Sent from my BlackBerry 10 smartphone.

From: [redacted]@gov.scot>
Sent: Thursday, 11 April 2019 14:55
To: [redacted]
Subject: RE: Sexual Harm Prevention Orders and Sexual Risk Orders.

Thanks.

From: [redacted]@gov.scot>
Sent: 11 April 2019 14:52
To: [redacted]@gov.scot>
Subject: FW: Sexual Harm Prevention Orders and Sexual Risk Orders.

Is this the kind of thing you were thinking of? Do you want to pick this up with [redacted] in terms of whether this is the right tone, and how this might be used? Let me know if you want me to do anything.

[redacted]

The Scottish Government is committed to ensuring that our public protection arrangements are robust and responsive to the level of risk an individual may pose. The existing Sexual Harm Prevention Orders do that by providing the police with an active and practical response to managing risks posed by certain sex offenders.

To simplify and rationalise the current system of civil orders which protect the public from sexual harm, this Government legislated for the introduction of Sexual Harm Prevention Orders and Sexual Risk Orders in Scotland in 2016. Until there is legislation in place which allows these orders to be enforced across all parts of the United Kingdom, we are unable to commence their use. It would be completely irresponsible to do so.

We have repeatedly asked the UK Government to amend the necessary reserved primary legislation which would allow us to commence these orders. Despite requests, the UK Government have refused to provide a timetable as to when they will do this.

From: [redacted]@gov.scot>
Sent: 10 April 2019 11:29
To: [redacted]@gov.scot>

Cc: [redacted]@gov.scot>
Subject: RE: Sexual Harm Prevention Orders and Sexual Risk Orders.

Thanks. Can lines be prepared.

From: [redacted]@gov.scot>
Sent: 10 April 2019 10:36
To: [redacted]@gov.scot>
Cc: [redacted]@gov.scot>
Subject: FW: Sexual Harm Prevention Orders and Sexual Risk Orders.

Hi [redacted]

You will wish to note the attached [redacted]

Would you have a view, in terms of next steps?

[redacted]
Room [redacted] St Andrew's House, Edinburgh
Scottish Government

[redacted]

[redacted]@gov.scot

From: [redacted]@gov.scot> [redacted]
Sent: 03 April 2019 10:57
To: [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>
Cc: [redacted]@gov.scot>
Subject: FW: Sexual Harm Prevention Orders and Sexual Risk Orders.

Good morning all

I think this may be for your area. If not please let me know.

The [redacted] has received correspondence from [redacted] in relation to the Home Office's plans to bring forward legislation to enable the introduction of Sexual Harm Prevention Orders and Sexual Risk Orders in Scotland. The [redacted] had written to [redacted] in December asking for a timetable of the Home Office's plans and this is [redacted] response. I will pass to the [redacted] to note but I'd be grateful for any advice on how to proceed.

Kind regards

[redacted]

[redacted]

Scottish Government [redacted] St Andrew's House, Regent Road, Edinburgh, EH1 3DG [redacted]
[redacted]@gov.scot | www.gov.scot |

*** PLEASE READ DISCLAIMER ***
All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

[redacted]

[redacted]

[redacted]

From: [redacted]
Sent: 15 April 2019 13:47
To: [redacted]
Subject: RE: Lines on UKG and Sexual Harm Prevention Orders

[redacted]

I'm tracking down the full article:

The Sun (Scotland) 2 EU split holds up perv law TORY ministers have admitted laws to protect people from sex offenders are being delayed because of Brexit. The sexual harm prevention orders were part of legislation introduced in Scotland in 2016. But they can't be enforced until the UK Government amends reserved laws. The brake on tighter controls was revealed in a reply to Scottish Justice Secretary Humza Yousaf. UK Crime Minister Victoria Atkins said: "A significant proportion of parliamentary...

[redacted]

From: [redacted]@gov.scot>
Sent: 15 April 2019 12:21
To: [redacted]gov.scot>
Subject: Re: Lines on UKG and Sexual Harm Prevention Orders

Thanks [redacted] I'm not sure if this was picked up by the papers at the weekend. I didn't get any calls or emails certainly.

[redacted]

Sent from my BlackBerry 10 smartphone.

From: [redacted]
Sent: Monday, 15 April 2019 12:00
To: [redacted]
Subject: RE: Lines on UKG and Sexual Harm Prevention Orders

Thanks for this. For the sake of completeness, my earlier exchange with [redacted] also refers.

[redacted]

From: [redacted]@gov.scot>
Sent: 12 April 2019 15:31
To: [redacted]
Cc: [redacted]gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>
Subject: FW: Lines on UKG and Sexual Harm Prevention Orders

Letters to and from UKG on this now attached. We've written twice.

[redacted]

From: [redacted]
Sent: 12 April 2019 15:11
To: Smith[redacted]@gov.scot>
Cc: [redacted]gov.scot>; [redacted]@gov.scot>; [redacted]
[redacted]ov.scot>
Subject: Lines on UKG and Sexual Harm Prevention Orders

Hi[redacted]

I really appreciate the heads up on this. As discussed, below are the suggested lines provided to [redacted]yesterday on this:

The Scottish Government is committed to ensuring that our public protection arrangements are robust and responsive to the level of risk an individual may pose. The existing Sexual Harm Prevention Orders do that by providing the police with an active and practical response to managing risks posed by certain sex offenders.

To simplify and rationalise the current system of civil orders which protect the public from sexual harm, this Government legislated for the introduction of Sexual Harm Prevention Orders and Sexual Risk Orders in Scotland in 2016. Until there is legislation in place which allows these orders to be enforced across all parts of the United Kingdom, we are unable to commence their use. It would be completely irresponsible to do so.

We have repeatedly asked the UK Government to amend the necessary reserved primary legislation which would allow us to commence these orders. Despite requests, the UK Government have refused to provide a timetable as to when they will do this.

I've also attached an FMQ-style one on this which gives a bit of background. Will dig out the letters but realise you need this asap so just wanted to send on.

[redacted]

DELAY INTRODUCING SEX OFFENDER ORDERS

Issue: 16 Dec - Mail on Sunday article claiming SG is responsible for 2 year delay in introducing Sexual Harm Prevention Orders and Sexual Risk Orders. These orders were introduced by the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. - when commenced they will replace sexual offence prevention orders (SOPOs), foreign travel orders and risk of sexual harm orders. Until the UKG amends reserved legislation, these new orders will not be enforceable across the UK and therefore SG has not commenced the new orders. The existing orders will continue to operate until this legislation is amended. The then-Cabinet Secretary for Justice wrote to UK Ministers in July 2017
seeking their support to change UK law in consequence of the 2016 Act provisions. The Minister for Crime, Safeguarding and Vulnerability, replied on 27 February 2018 recognising of the need to identify suitable legislation at the earliest possible opportunity but noting that no appropriate legislative vehicle existed to take forward the changes at that time. She committed to ensuring that Home Office officials would identify suitable primary legislation at the earliest opportunity. To date no such opportunity has presented itself.
The Cabinet Secretary for Justice has written to the UKG again this week asking them to take action.

Top Lines

- Every effort is being made to minimise the risks posed by Registered Sex Offenders.
- Scotland has robust measures in place to deal with those who commit sexual offences.
- This includes clear police powers for monitoring these individuals, and a range of measures such as electronic tagging, curfews and restrictions to manage behaviour.
- Until the UK Government amends reserved legislation, the Sexual Harm Prevention Orders and Sexual Risk Orders are not enforceable across the UK.
- It would be completely irresponsible to introduce these orders until they can be enforced right across the UK.
- Despite requests, the UK Government has yet to amend the necessary reserved legislation which would allow these orders to be enforced elsewhere.
- The Cabinet Secretary has written to the UK Government again this week, asking them to take action.
- Until the UK Government amends its legislation, the existing orders to manage sexual offenders will continue to operate.
- This includes Sexual Offence Prevention Orders which the police view as an active and practical response to managing risks posed by certain sex offenders.
- SOPOs enable the courts to impose positive obligations on offenders, as well as restrictions on behaviour – with 5 year jail terms available for breach.

[redacted]

DELAY INTRODUCING SEX OFFENDER ORDERS

This Government is committed to doing all we can to minimise the risks posed by Registered Sex Offenders.

- This includes our support for multi-agency public protection arrangements (MAPPA) for RSOs and other categories of dangerous offenders.
- These arrangements also support sharing of information to relevant agencies, for example employers and providers of children's services,
- The overall effect is more comprehensive risk assessment and more robust risk management planning.
- In 2017/18, 94.2% of offenders complied with their notification requirements.
- The authorities take a zero tolerance approach and any failure to comply is reported to the Procurator Fiscal.
- In 2017/18, less than 0.9% of RSOs went on to reoffend. This is a slight decrease from 2016/17 and demonstrates that the approach is working.

[redacted]

[redacted]

From: [redacted]
Sent: 16 April 2019 16:09
To: [redacted]
Cc:

Subject: RE: SHPOs - Sun coverage

[redacted]

For my part the lines are fine and . by way of background, support the following options we presented to Ministers.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

From: [redacted]@gov.scot>
Sent: 16 April 2019 16:00
To: [redacted]
Cc: [redacted]
Subject: RE: SHPOs - Sun coverage

Thanks [redacted]

Might we gild the lily as highlighted below?

> Legislation to cover the rest of the UK is needed, as is common when new orders of this sort are introduced, **to ensure any new regime is as robust as possible**.
>
> Introducing orders in Scotland **only** before the issue is resolved would be irresponsible as there would be no **ability to** enforce **them** in England and Wales**, thereby creating a weakness when we are focused on a system that can strengthen arrangements across these islands.**

[redacted] – subject to [redacted] advice on my suggested additions, is the above sufficient? Do you want me to go back to [redacted] or are you happy to?

[redacted]

[redacted] Scottish Government | [redacted]

---------- Updates from SG Justice & Safer Communities @ScotGovJustice ----------
---
[redacted]

From: [redacted]@gov.scot>
Sent: 16 April 2019 15:53
To: [redacted]
Subject: Re: SHPOs - Sun coverage

Hi [redacted]

As discussed, i've had to leave as lots of trains are being cancelled but have found the lines we provided to a similar query [redacted] in December. Pasted at end of this email.

There's nothing stopping us commencing these orders but it would be very questionable to do so when they couldn't be enforced south of the border. I'm not sure how the residency requirement he suggests would work in practice and we would need to get SGLD advice on the legitimacy of such

requirements. The existing arrangements is probably better for now as it allows SOPOs to be enforced north and south of the border without question.

Happy to chat about this if needed, i'm on [redacted] On train til around 4:15 though.

Thanks

[redacted]

As is common when new orders of this sort are introduced, legislation to cover the rest of the UK is needed. Introducing orders in Scotland before the issue is resolved would be irresponsible as there would be no enforcement in England and Wales.
Sent from my BlackBerry 10 smartphone.

From: [redacted]
Sent: Tuesday, 16 April 2019 15:31
To: [redacted]
Cc: [redacted]
Subject: RE: SHPOs - Sun coverage

Criminal Law, Community justice colleagues,

Pls see below a question from freelancer [redacted], asking whether / why the SG can't introduce SHPOs in Scotland, albeit without reciprocity w rUK until UKG acts.

[redacted] asks whether it would be possible for ministers to table a tweak at Holyrood to ensure that all SHPOs include a condition of residency in Scotland, at least until the Home Office deliver the necessary regs at Westminster to secure reciprocal arrangements.

Grateful if you can pls advise how we might respond; is there a legal/technical, or indeed enforcement difficulty to us taking such an 'interim' step, or is it a matter of good governance and best practice, etc to have the full regime in place at the same time?

Thx,

[redacted]

[redacted]

Sent by BlackBerry

From: [redacted]@gov.scot>
Sent: 16 Apr 2019 15:19
To: [redacted]
Cc: [redacted]
Subject: FW: SHPOs - Sun coverage

[redacted] justice colleagues,

See email below from [redacted] – this follows up from the [redacted] letter to [redacted] which I gave to Sunday Times and Sun on Sunday.

I've now sent [redacted] a copy of the letter along with the same SPAD comment I gave the Sundays – but what's the answer to his question at end of his email?

The background briefing note I had explained it as below – in short, is there anything stopping us proceeding with the implementation of the orders without Westminster legislating (which would make them effective but only in Scotland, presumably?) or is it the case we are waiting for them to act on the basis the orders wouldn't be properly meaningful on a UK-wide basis until they do?

These orders were introduced by the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. When commenced they will replace sexual offence prevention orders (SOPOs), foreign travel orders and risk of sexual harm orders. Until the UKG amends reserved legislation, these new orders will not be enforceable across the UK and therefore SG has not commenced the new orders.

Thanks,

[redacted]

From: [redacted]
Sent: 15 April 2019 16:20
To: >
Subject: SHPOs - Sun coverage

Hello [redacted]

I read with the interest the piece in yesterday's Sun regarding the implementation of SHPOs in Scotland. It's something I've written about previously and am still waiting for an answer on from the Home Office myself despite several promptings.
Agreed, it is totally unacceptable that Police Scotland are having to prove a higher threshold of risk to the public than forces down south.
Are the correspondence with [redacted] and the lines from SG available please?
At this end, one question I've not had an answer to is why can't SHPOs still be introduced in Scotland without UK reciprocity?
Would it not be possible for ministers to table a tweak at Holyrood to ensure that all SHPOs include a condition of residency in Scotland until the Home Office gets the job done?

Kind regards,
[redacted]