



# Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

2005 asp 9

VALID FROM 07/10/2005

## *Risk of sexual harm orders*

### **2 Risk of sexual harm orders: applications, grounds and effect**

- (1) The chief constable of a police force may apply for an order under this section (a “risk of sexual harm order”) in respect of a person who resides in the area of the police force or who the chief constable believes is in, or is intending to come to, that area if it appears to the chief constable that—
  - (a) the person has on at least two occasions, whether before or after the commencement of this section, done an act within subsection (5) below; and
  - (b) as a result of those acts, there is reasonable cause to believe that it is necessary for such an order to be made.
- (2) An application under subsection (1) above may be made to any sheriff—
  - (a) in whose sheriffdom the person against whom the order is sought resides;
  - (b) in whose sheriffdom that person is believed by the applicant to be;
  - (c) to whose sheriffdom that person is believed by the applicant to be intending to come; or
  - (d) whose sheriffdom includes any place where it is alleged that that person did an act within subsection (5) below.
- (3) An application under subsection (1) above shall be made by summary application.
- (4) Such an application shall be made within—
  - (a) the period of 3 months beginning with the date on which the matter mentioned in subsection (1)(a) above appears to the applicant to be the case; or
  - (b) such longer period as the sheriff considers equitable having regard to all the circumstances.
- (5) The acts referred to in subsections (1) and (2) above are—

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- (a) engaging in sexual activity involving a child or in the presence of a child;
  - (b) causing or inciting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual;
  - (c) giving a child anything that relates to sexual activity or contains a reference to such activity;
  - (d) communicating with a child, where any part of the communication is sexual.
- (6) On the application, the sheriff may make a risk of sexual harm order if satisfied that—
- (a) the person against whom the order is sought has on at least two occasions, whether before or after the commencement of this section, done an act within subsection (5) above; and
  - (b) it is necessary to make such an order for the purpose of protecting children generally or any child from harm from that person.
- (7) Such an order—
- (a) prohibits the person against whom the order has effect from doing anything described in the order;
  - (b) subject to subsection below, has effect for a fixed period (not less than 2 years) specified in the order.
- (8) The only prohibitions that may be imposed by virtue of subsection (7) above are those necessary for the purpose of protecting children generally or any child from harm from the person against whom the order has effect.
- (9) Where a sheriff makes a risk of sexual harm order in relation to a person already subject to such an order (whether made by that sheriff or another), the earlier order ceases to have effect.

### **3 Interpretation of section 2**

For the purposes of section 2 above—

- (a) the references in that section to protecting children generally or any child from harm from a person are references to protecting them or it from physical or psychological harm caused by that person doing any of the acts within subsection (5) of that section;
- (b) “child” means a person aged under 16;
- (c) “image” means an image produced by any means and whether of a real or imaginary subject;
- (d) a communication is sexual if—
  - (i) any part of it relates to sexual activity; or
  - (ii) a reasonable person would, in all the circumstances, consider any part of the communication to be sexual;
- (e) an image is sexual if—
  - (i) any part of it relates to sexual activity; or
  - (ii) a reasonable person would, in all the circumstances, consider any part of the image to be sexual.

### **4 RSHOs: variations, renewals and discharges**

- (1) Any of the persons within subsection (2) below may apply to the appropriate sheriff for an order varying, renewing or discharging a risk of sexual harm order.

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- (2) Those persons are—
  - (a) the person against whom the order has effect;
  - (b) the chief constable on whose application the order was made;
  - (c) the chief constable of the police force in the area of which the person against whom the order has effect resides;
  - (d) a chief constable who believes that that person is in, or is intending to come to, the area of the chief constable's police force.
- (3) Subject to subsection (4) below, the sheriff—
  - (a) if satisfied, except where the application is made by the chief constable mentioned in subsection (2)(c) above, that the application has been intimated to that chief constable; and
  - (b) after hearing the person making the application and (if wishing to be heard) any of the other persons mentioned in subsection (2) above,may make any order varying, renewing or discharging the risk of sexual harm order that the sheriff considers appropriate.
- (4) A risk of sexual harm order may be renewed or varied so as to impose additional prohibitions only if it is necessary to do so for the purpose of protecting children generally or any child from harm from the person against whom the order has effect (and any renewed or varied order may contain only such prohibitions as are necessary for that purpose).
- (5) Section 3 above applies for the purposes of this section.
- (6) In this section, “the appropriate sheriff” means a sheriff—
  - (a) for the sheriffdom of the sheriff who made the risk of sexual harm order;
  - (b) in whose sheriffdom the person against whom the order has effect resides;
  - (c) in whose sheriffdom that person is believed by the applicant to be; or
  - (d) to whose sheriffdom that person is believed by the applicant to be intending to come.

## **5 Interim RSHOs**

- (1) This section applies where an application for a risk of sexual harm order (“the main application”) has been intimated to the person against whom the application is made but has not been determined.
- (2) An application for an order under this section (“an interim risk of sexual harm order”)—
  - (a) may be made by way of the main application; or
  - (b) if the main application has been made, may be made, by application to a sheriff for the sheriffdom of the sheriff to whom the main application was made, by the person who made that application.
- (3) The sheriff may, if subsection (4) below applies, make an interim risk of sexual harm order prohibiting the person against whom the main application was made from doing anything described in the order.
- (4) This subsection applies if the sheriff is satisfied—
  - (a) except where the application is made by way of the main application, that it has been intimated to the person against whom it is made;

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- (b) that *prima facie* the person against whom the order is sought has on at least two occasions, whether before or after the commencement of section 2 above, done an act within subsection (5) of that section; and
- (c) that it is just to make the order.

(5) Such an order—

- (a) has effect only for a fixed period specified in the order;
- (b) ceases to have effect, if it has not already done so, on the determination of the main application.

(6) The applicant or the person against whom an interim risk of sexual harm order has effect may apply to a sheriff for the sheriffdom of the sheriff who made the interim risk of sexual harm order for the order to be varied, renewed or discharged.

## **6 Appeals**

- (1) An interlocutor granting, refusing, varying, renewing or discharging a risk of sexual harm order or an interim risk of sexual harm order is an appealable interlocutor.
- (2) Where an appeal is taken against an interlocutor granting, varying or renewing such an order, the court may, in the appeal proceedings, suspend the interlocutor appealed against pending the disposal of the appeal.

## **7 Offence: breach of RSHO or interim RSHO**

- (1) A person, who without reasonable excuse, does anything which the person is prohibited from doing by—
  - (a) a risk of sexual harm order; or
  - (b) an interim risk of sexual harm order,
 commits an offence.
- (2) Where an order made under section 123 or 126 of the 2003 Act (which make provision for England and Wales and Northern Ireland corresponding to that made by sections 2 and 5 above) prohibits a person from doing a thing throughout the relevant place, the person commits an offence if the person, without reasonable excuse, does the thing in Scotland.
- (3) For the purpose of subsection (2) above, the “relevant place” is—
  - (a) where the order was made in England and Wales, England and Wales;
  - (b) where the order was made in Northern Ireland, Northern Ireland.
- (4) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both.

## **8 Effect of conviction etc. under section 7 above or section 128 of Sexual Offences Act 2003**

- (1) This section applies to a person who—

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- (a) is convicted of an offence under section 7 above or section 128 of the 2003 Act (breach of RSHO or interim RSHO in England and Wales or Northern Ireland);
  - (b) is, in England and Wales or Northern Ireland, cautioned in respect of an offence under section 128 of that Act;
  - (c) is found not guilty of one of those offences on the grounds or by reason of insanity; or
  - (d) is found to be under a disability and to have done the act charged against the person in respect of one of those offences.
- (2) Where the person—
- (a) was a relevant offender immediately before this section applied to the person; and
  - (b) would (apart from this subsection) cease to be subject to the notification requirements of Part 2 of the 2003 Act while the relevant order (as renewed from time to time) has effect,
- the person remains subject to those notification requirements.
- (3) Where the person was not a relevant offender immediately before this section applied to the person—
- (a) the person, by virtue of this section, becomes subject to the notification requirements of Part 2 of the 2003 Act from the time this section first applies to the person and remains so subject until the relevant order (as renewed from time to time) ceases to have effect; and
  - (b) that Part of that Act applies to the person subject to the modification set out in subsection (4) below.
- (4) In that application, “relevant date” means the date on which this section first applies to the person referred to in it.
- (5) In this section—
- “relevant offender” has the meaning given by section 80(2) of the 2003 Act;
- “relevant order” means—
- (a) where the conviction or finding referred to in subsection (1)(a), (c) or (d) above is in respect of a breach of a risk of sexual harm order under section 2 above or section 123 of the 2003 Act, that order;
  - (b) where the caution referred to in subsection (1)(b) above is in respect of a breach of a risk of sexual harm order under section 123 of the 2003 Act, that order;
  - (c) where the conviction or finding referred to in subsection (1)(a), (c) or (d) above is in respect of a breach of an interim risk of harm order under section 5 above or section 126 of the 2003 Act—
    - (i) any risk of sexual harm order made upon the application to which the interim risk of sexual harm order relates; or
    - (ii) if no such risk of sexual harm order has been made, the interim risk of sexual harm order;
  - (d) where the caution referred to in subsection (1)(b) above is in respect of a breach of an interim risk of sexual harm order under section 126 of the 2003 Act—

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- (i) any risk of sexual harm order under section 123 of that Act made on the hearing of the application to which the interim risk of sexual harm order relates; or
- (ii) if no such risk of sexual harm order has been made, the interim risk of sexual harm order.

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