

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 - Criminal Justice

Section 101 - Foreign travel orders

500. This section amends the provisions on foreign travel orders (“FTO”) in Part 2 of the Sexual Offences Act 2003 (“the 2003 Act”).
501. Subsections (2) and (3) amend sections 115 and 116 of the 2003 Act by increasing the age of a child from under 16 to under 18. The effect of subsection (2) is that a court can impose a FTO on a qualifying offender if that offender is considered to pose a risk to a child who is outside the United Kingdom who is aged under 18.
502. The effect of subsection (3) is that it alters the criteria determining which sex offenders are to be regarded as “qualifying offenders”. A qualifying offender is a sex offender against whom a court may impose a FTO, provided all the other criteria set out in sections 114 to 116 of the 2003 Act are met. The amendment means that those who have committed certain sexual offences against children under 18, rather than offences against children under 16 will be regarded as “qualifying offenders”.
503. Subsection (4) amends section 117 of the 2003 Act to increase the maximum duration of any FTO specified in section 117(2), from six months to five years. Therefore, a court has the discretion to impose a FTO on a qualifying offender for any period of time up to a maximum of five years.
504. Subsection (5) inserts a new section 117B into the 2003 Act to require offenders who are subject to a FTO imposed under section 117(2)(c), that prohibits them from travelling anywhere in the world, to surrender their passports at a police station in Scotland specified in the order. Such offenders must also surrender any new passports which they acquire throughout the duration of a FTO.
505. This new section also requires the police to return any passport as soon as reasonably practicable after the relevant FTO has ceased, unless that passport is a foreign passport or a passport issued by an international organisation and it has been returned by the police to the authorities outside the United Kingdom which issued the passport.
506. Subsection (6) amends section 122 of the 2003 Act to create new offences in Scots law of failing to comply with a requirement to surrender a passport in Scotland, by virtue of section 117B(2), and in England, Wales, and Northern Ireland by virtue of section 117A(2) of the 2003 Act. Section 117A of the 2003 Act was inserted by section 25 of the Policing and Crime Act 2009. Subsection (6) also makes clear that the sheriff court has jurisdiction to deal with those offences. This means a person who fails to surrender a passport in England, Wales and Northern Ireland can be prosecuted for this offence if that person comes to Scotland.