

Order made by the Scottish Ministers, laid before the Scottish Parliament under section 14(5)(b) of the Convention Rights (Compliance) (Scotland) Act 2001 for approval by resolution of the Scottish Parliament within 120 days beginning with the 25th October 2010, being the date on which the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010 was made, not taking into account periods of dissolution or recess for more than 4 days.

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 45

CRIMINAL LAW

The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011

<i>Made</i>	- - - -	<i>27th January 2011</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>27th January 2011</i>
<i>Coming into force</i>	- -	<i>28th January 2011</i>

The Scottish Ministers make the following remedial Order in exercise of the powers conferred by sections 12(1), (3) and 14(5)(a) of the Convention Rights (Compliance) (Scotland) Act 2001(1) (“the 2001 Act”) and all other powers enabling them to do so.

The Scottish Ministers consider the provision made by this remedial Order to be necessary or expedient in consequence of Part 2 of the Sexual Offences Act 2003(2), so far as making a person subject to the notification requirements of that Part for an indefinite period has been declared to be incompatible with a Convention right(3).

In accordance with section 12(2) of the 2001 Act they are of the opinion that there are compelling reasons for making a remedial order as distinct from taking any other action.

In accordance with section 14(2)(a) they gave such public notice as they considered appropriate of the contents of the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010(4) being the relevant remedial Order made in exercise of the powers conferred by section 12(1) and (3) of the 2001 Act and all other powers enabling them to do so.

In accordance with section 14(4) of the 2001 Act as soon as practicable after the end of the period mentioned in section 14(2)(a) they laid before the Scottish Parliament a statement summarising all

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- (1) [2001 asp 7](#).
 - (2) [2003 c.42](#). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 142(6) of the Sexual Offences Act 2003 and section 53 of the Scotland Act 1998 ([c.46](#)).
 - (3) The “Convention rights” has the meaning given by section 1 of the Human Rights Act 1998 ([c.42](#)). In the case of *R (on the application of F (by his litigation friend F) and Thompson (FC) v Secretary of State for the Home Department* [2010] UKSC 17, judgment 21st April 2010, the Supreme Court made a declaration of incompatibility under section 4 of the Human Rights Act 1998 that the indefinite notification requirements in section 82(1) of the Sexual Offences Act 2003 were incompatible with Article 8 of the Convention because they did not contain any mechanism for the review of the justification for the continuing of the requirements in individual cases.
 - (4) [S.S.I. 2010/370](#).

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

the observations to which they have had regard under section 14(3) and specifying the modifications which they consider it appropriate to make to the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010.

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 and comes into force on 28th January 2011.

(2) This Order extends to Scotland only.

(3) In this Order “the 2003 Act” means the Sexual Offences Act 2003.

Commencement Information

II Art. 1 in force at 28.1.2011, see [art. 1\(1\)](#)

Amendment of the 2003 Act

2. The 2003 Act is amended in accordance with articles 3 and 4.

3. After section 88 insert—

“88A Review of indefinite notification requirements: applicable persons

(1) Sections 88B to 88H apply to—

(a) a person who, on or after 28th January 2011, becomes subject to the notification requirements of this Part for an indefinite period by virtue of section 80(1) or a notification order made under section 97(5); and

(b) a person who immediately before that date was subject to the notification requirements of this Part for an indefinite period by virtue of—

(i) section 80(1);

(ii) section 81(1); or

(iii) a notification order made under section 97(5).

(2) A person who falls within subsection (1)(a) or (b) is referred to in sections 88B to 88G as a “relevant sex offender”.

88B Review of indefinite notification requirements: date of discharge and further date of discharge

(1) For the purposes of this Part, the date of discharge is—

(a) where the relevant sex offender was aged 18 or over on the relevant date, the date falling 15 years after that date;

(b) where the relevant sex offender was aged under 18 on the relevant date, the date falling 8 years after that date.

(2) In determining the date of discharge under subsection (1), there is to be disregarded any time when the relevant sex offender was—

(a) remanded in or committed to custody by order of a court;

- (b) serving a sentence of imprisonment or a term of service detention;
- (c) detained in hospital; or
- (d) outside the United Kingdom,

before the relevant sex offender first notified information to the police under section 2(1) of the Sex Offenders Act 1997 or section 83(1) of this Part.

(3) Subsection (4) applies where—

- (a) the relevant sex offender is subject to the notification requirements of this Part;
- (b) after the relevant sex offender first notified information to the police under section 2(1) of the Sex Offenders Act 1997 or section 83(1) of this Part, the relevant sex offender was sentenced to a period of imprisonment or a term of service detention in respect of the offence (or offences) to which the notification requirements relate; and
- (c) the date of discharge would, apart from subsection (4), fall on or after 28th January 2011.

(4) In determining the date of discharge under subsection (1), there is also to be disregarded any time when the relevant sex offender was serving a sentence of imprisonment or a term of service detention in respect of that offence (or those offences).

(5) Where a notification continuation order made under this Part has effect in respect of the relevant sex offender, for the purposes of this Part the further date of discharge is the date of expiry of the fixed period specified in that order.

(6) In this section and section 88D “relevant date”—

- (a) in relation to a relevant sex offender who is subject to the notification requirements of this Part for an indefinite period by virtue of section 80(1) or 81(1), has the meaning applicable to that offender specified in section 82(6)(a) to (c);
- (b) in relation to a relevant sex offender who is subject to the notification requirements of this Part for an indefinite period by virtue of a notification order made under section 97(5), has the meaning applicable to that offender specified in section 98(2).

88C Review of the indefinite notification requirements: procedure and grounds

(1) The relevant chief constable must no later than the date of discharge—

- (a) make a notification continuation order in respect of the relevant sex offender; or
- (b) notify the relevant sex offender that the offender ceases to be subject to the notification requirements of this Part on the date of discharge.

(2) A notification continuation order is an order making the relevant sex offender subject to the notification requirements of this Part for a fixed period of not more than 15 years from the date which would, but for the order, have been the date of discharge.

(3) The relevant chief constable may make a notification continuation order only if satisfied, on the balance of probabilities, that the relevant sex offender poses a risk of sexual harm to the public, or any particular members of the public, in the United Kingdom.

(4) In deciding whether to make a notification continuation order, the relevant chief constable must take into account—

- (a) the seriousness of the offence (or offences)—
 - (i) of which the relevant sex offender was convicted;

- (ii) of which the relevant sex offender was found not guilty by reason of insanity;
 - (iii) in respect of which the relevant sex offender was found to be under a disability and to have done the act charged; or
 - (iv) in respect of which the relevant sex offender was cautioned in England and Wales or Northern Ireland,
- which made the relevant sex offender subject to the notification requirements of this Part for an indefinite period;
- (b) the period of time which has elapsed since the relevant sex offender committed the offence (or offences);
 - (c) where the relevant sex offender falls within section 88A(1)(b)(ii), whether the relevant sex offender committed any offence under section 3 of the Sex Offenders Act 1997;
 - (d) whether the relevant sex offender has committed any offence under section 91 of this Act;
 - (e) the age of the relevant sex offender at the time of the decision;
 - (f) the age of the relevant sex offender at the time the offence (or offences) referred to in paragraph (a) was (or were) committed;
 - (g) the age of any person who was a victim of any such offence (where applicable) and the difference in age between the victim and the relevant sex offender at the time the offence was committed;
 - (h) any convictions or findings made by a court in respect of the relevant sex offender for any other offence listed in Schedule 3;
 - (i) any caution which the relevant sex offender has received for an offence in England and Wales or Northern Ireland which is listed in Schedule 3;
 - (j) whether any criminal proceedings for any offences listed in Schedule 3 have been instituted against the relevant sex offender but have not concluded;
 - (k) any assessment of the risk posed by the relevant sex offender which has been made by the responsible authorities under the joint arrangements for managing and assessing risk established under section 10 of the Management of Offenders etc. (Scotland) Act 2005;
 - (l) any other submission or evidence of the risk of sexual harm posed by the relevant sex offender to the public, or any particular members of the public, in the United Kingdom;
 - (m) any submission or evidence presented by or on behalf of the relevant sex offender which demonstrates that the relevant sex offender does not pose a risk of sexual harm to the public, or any particular members of the public, in the United Kingdom; and
 - (n) any other matter which the relevant chief constable considers to be appropriate.
- (5) A notification continuation order must state—
- (a) the reasons why the order was made; and
 - (b) the reasons for the determination of the fixed period in the order.
- (6) A notification continuation order must be notified to the relevant sex offender by—
- (a) the relevant chief constable sending a copy of the order to the relevant sex offender by registered post or by the recorded delivery service (an acknowledgement or

certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate); or

(b) a constable serving a copy of the order on the relevant sex offender.

(7) In this section—

“sexual harm” means physical or psychological harm caused by the relevant sex offender doing anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom; and

“responsible authorities” has the meaning given by section 10(7) of the Management of Offenders etc. (Scotland) Act 2005.

(8) In this section and sections 88D to 88G, “relevant chief constable” means the chief constable of the police force for the police area in which the relevant sex offender resides.

88D Review of indefinite notification requirement: transitional cases

(1) This section applies to a case where—

(a) the conditions in subsection (2) are satisfied in relation to a relevant sex offender falling within section 88A(1)(b)(ii); and

(b) the relevant chief constable was, under this section as it had effect before the coming into force of the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011, under the duty in subsection (4).

(2) The conditions referred to in subsection (1)(a) are that the person—

(a) was aged under 18 on the relevant date; and

(b) after disregarding any time referred to in subsection (3), had been subject to the notification requirements of Part 1 of the Sex Offenders Act 1997 and this Part for a total period of at least 8 years on 25th October 2010.

(3) That time is any time during which the relevant sex offender was—

(a) remanded in or committed to custody by order of the court;

(b) serving a sentence of imprisonment or a term of service detention;

(c) detained in hospital; or

(d) outside the United Kingdom,

before the relevant sex offender first notified information to the police under section 2(1) of the Sex Offenders Act 1997.

(4) The duty referred to in subsection (1)(b) is a duty, no later than the applicable date, to—

(a) make a notification continuation order in respect of the relevant sex offender; or

(b) notify the relevant sex offender that the offender ceases to be subject to the notification requirements of this Part on the applicable date.

(5) In this section the “applicable date” is 25th January 2011.

88E Review of indefinite notification requirements: further review

(1) Where a notification continuation order has been made, the relevant chief constable must no later than the further date of discharge—

(a) make another notification continuation order in respect of the relevant sex offender; or

(b) notify the relevant sex offender that the offender ceases to be subject to the notification requirements of this Part on the further date of discharge.

(2) Section 88C(2) to (8) applies in relation to this section, but a reference to the date of discharge is to be read as a reference to the further date of discharge.

88F Review of the indefinite notification requirements: application to a sheriff

(1) Where a relevant chief constable—

- (a) fails to comply with section 88C(1) or 88E(1); or
- (b) in a case to which section 88D applies, has failed to comply with the duty set out in subsection (4) of that section,

the relevant sex offender may make an application to the sheriff for an order that the offender is no longer subject to the notification requirements of this Part.

(2) An application under subsection (1) is to be made by summary application to the sheriff in whose sherriffdom the relevant sex offender resides.

(3) On an application under subsection (1), the sheriff may—

- (a) make the order sought in the application; or
- (b) make a notification continuation order in respect of the relevant sex offender.

(4) Section 88C(2) to (5) and (7) applies in relation to the making of a notification continuation order under this section, but—

- (a) a reference to the relevant chief constable is to be read as a reference to the sheriff;
- (b) if an application under subsection (1) is made in a case to which section 88D applies, the reference to the date of discharge in section 88C(2) is to be read as a reference to the applicable date; and
- (c) if an application under subsection (1) is made in relation to the failure of the relevant chief constable to comply with section 88E(1), the reference to the date of discharge in section 88C(2) is to be read as a reference to the further date of discharge.

(5) The relevant chief constable and the relevant sex offender may appear or be represented at any hearing in respect of the application.

(6) Where an application under subsection (1) is determined, the sheriff clerk must send a copy of the interlocutor, and where made a copy of the notification continuation order, to the relevant sex offender.

(7) The copy of the interlocutor, and where made the copy of the notification continuation order, is sent in accordance with subsection (6) if—

- (a) sent by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate); or
- (b) given to the relevant sex offender.

(8) The relevant sex offender remains subject to the notification requirements of this Part until the matter is finally determined as mentioned in section 88G(11).

88G Review of indefinite notification requirements: appeals

(1) The decision of the relevant chief constable—

(a) to make a notification continuation order under section 88C(1)(a) or 88E(1)(a) or under section 88D(3)(a) as it had effect before the coming into force of the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011; and
(b) setting the fixed period of the notification continuation order,

may be appealed by the relevant sex offender within 21 days after the date specified in subsection (3).

(2) An appeal under subsection (1) is to be made by summary application to the sheriff in whose sheriffdom the relevant sex offender resides.

(3) The date is—

- (a) where the decision of the relevant chief constable was made on or after 28th January 2011, the date of the decision; or
(b) where the decision was made before 28th January 2011—
(i) the date of discharge, in the case of a decision under section 88C(1)(a);
(ii) the further date of discharge, in the case of a decision under section 88E(1)(a); and
(iii) the applicable date, in the case of a decision under section 88D(3).

(4) The decision of a sheriff—

- (a) on an application made under section 88F(1);
(b) on appeal made under subsection (1); and
(c) in relation to the fixed period of the notification continuation order,

may be appealed by the relevant sex offender or the relevant chief constable to the sheriff principal within 21 days of the date of that decision.

(5) On an appeal under this section, the sheriff or the sheriff principal may—

- (a) uphold or quash the decision of the relevant chief constable or, as the case may be, the sheriff;
(b) make a notification continuation order; or
(c) vary the fixed period in that order.

(6) Section 88C(3) to (5) apply in relation to the making of a notification continuation order under this section but a reference to the relevant chief constable is to be read as a reference to the sheriff or, as the case may be, sheriff principal.

(7) The relevant chief constable and the relevant sex offender may appear or be represented at any hearing in respect of an appeal under this section.

(8) Where an appeal under this section is finally determined, the sheriff clerk must send a copy of the interlocutor, and where made a copy of the notification continuation order, to the relevant sex offender.

(9) The copy of the interlocutor, and where made the copy of the notification continuation order, is sent in accordance with subsection (8) if—

- (a) sent by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate); or
(b) given to the relevant sex offender.

(10) The relevant sex offender remains subject to the existing notification requirements of this Part until the matter is finally determined as mentioned in subsection (11).

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- (11) The matter is finally determined—
- (a) where it is decided that a relevant sex offender should cease to be subject to the notification requirements of this Part, or the decision to make a notification continuation order is quashed, on the expiry of the period of 21 days referred to in subsection (4) without an appeal being taken;
 - (b) where a notification continuation order is made, or a decision to make such an order is upheld on appeal, on the expiry of the period of 21 days referred to in subsection (1) or (4) without an appeal being taken; or
 - (c) where an appeal is taken—
 - (i) on the disposal of the appeal; or
 - (ii) on its being abandoned.

88H Review of indefinite notification requirements: power to amend periods

- 88H.** The Secretary of State may by order amend—
- (a) the periods specified in sections 88B(1)(a) and (b); and
 - (b) the fixed period specified in section 88C(2).

88I Discharge from indefinite notification requirements: England, Wales and Northern Ireland

(1) A relevant offender who is, under the relevant legislation, discharged from the notification requirements of this Part by a court, person or body in England and Wales or Northern Ireland is, by virtue of the discharge, also discharged from the notification requirements of this Part as it applies to Scotland.

(2) In subsection (1) “relevant legislation” means legislation which makes provision equivalent to that made by sections 88A to 88H and this section for a relevant offender who is subject to the notification requirements of this Part as it applies to England and Wales or, as the case may be, Northern Ireland for an indefinite period to be discharged from those notification requirements.”.

Commencement Information

- I2** Art. 2 in force at 28.1.2011, see [art. 1\(1\)](#)
I3 Art. 3 in force at 28.1.2011, see [art. 1\(1\)](#)

Consequential amendments to the 2003 Act

- 4.—(1)** In section 107 (SOPOs: effect)—
- (a) in subsection (3)(b) after “apart from this subsection” insert “and sections 88F and 88G”; and
 - (b) after subsection (3) insert—
 - “(3A) Where—
 - (a) a sexual offences prevention order is in effect in relation to a relevant sex offender (within the meaning of section 88A); and
 - (b) by virtue of section 88F or 88G the relevant sex offender ceases to be subject to the notification requirements of this Part,
- the sexual offences prevention order ceases to have effect.

- (3B) Subsection (3A) applies to the orders mentioned in section 108(8)(b) and (c) as it applies to sexual offences prevention orders.”
- (2) In section 133 (Part 2: general interpretation), in subsection (1)—
- (a) in the appropriate place alphabetically insert the following:—
- ““applicable date” has the meaning given by section 88D(5)”;
 - ““date of discharge” has the meaning given by section 88B(1)”;
 - ““further date of discharge” has the meaning given by section 88B(5)”;
 - ““notification continuation order” has the meaning given by section 88C(2)”;
- (b) in the definition of “relevant date”, after “sections” insert “88B,”.
- (3) In section 138 (orders and regulations), in subsection (2), after “86” insert “, 88H”.
- (4) Until the coming into force of section 102(6) of the Criminal Justice and Licensing (Scotland) Act 2010, section 138 has effect as if, after subsection (3), there were inserted—
- “(4) An order under section 88H may—
- (a) make different provision for different purposes,
 - (b) include supplementary, incidental, consequential, transitional, transitory or saving provisions.”.

Commencement Information

I4 Art. 4 in force at 28.1.2011, see [art. 1\(1\)](#)

Revocation

5. The Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010(5) is revoked.

Commencement Information

I5 Art. 5 in force at 28.1.2011, see [art. 1\(1\)](#)

St Andrew’s House,
Edinburgh
27th January 2011

KENNY MACASKILL
A member of the Scottish Executive

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order revokes and re-enacts the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010 (“the original Order”) with modifications.

This Order makes amendments to the Sexual Offences Act 2003 (“the 2003 Act”) to remove the incompatibility of the indefinite notification period in section 82(1) of that Act with a Convention right. This Order extends to Scotland only.

In the case of *R (on the application of F (by his litigation friend F)) and Thompson (FC) v Secretary of State for the Home Department* [2010] UKSC 17 (21st April 2010) the Supreme Court of the United Kingdom made a declaration under section 4 of the Human Rights Act 1998 that—

“the indefinite notification requirements in section 82(1) of the Sexual Offences Act 2003 are incompatible with article 8 of the European Convention on Human Rights because they do not contain any mechanism for the review of the justification for continuing the requirements in individual cases.”

In order to remove the incompatibility, article 3 of this Order inserts sections 88A to 88I into Part 2 of the 2003 Act. Those sections provide a mechanism for the periodic review of the justification for continuing the notification requirements in individual cases.

Section 88A of the 2003 Act makes it clear that provision made for a review of the indefinite notification requirements in sections 88B to 88H will apply to any person who is notifying indefinitely on the date on which this Order comes into force (28th January 2011) or to any person who is made subject to the notification requirements for an indefinite period on or after that date (a “relevant sex offender”).

Section 88B of the 2003 Act sets out what the date of discharge and further date of discharge are for the purpose of sections 88A to 88H. For a relevant sex offender who was aged 18 or over at the time of conviction or other finding, the date of discharge will be 15 years from the date of conviction or other finding, after disregarding any time referred to in subsection (2) or, where applicable, (4). For a relevant sex offender who was aged under 18 on the date of conviction or other finding (“a young sex offender”) the date of discharge will be 8 years from the date of conviction or other finding, after disregarding any time specified in subsection (2) or, where applicable, (4). Subsections (3) and (4) ensure that time spent serving a sentence of imprisonment or term of service detention is disregarded where the relevant sex offender was released pending sentence. This does not apply to those offenders whose date of discharge would otherwise have fallen before the coming into force of this Order. This means that in the majority of cases the 15 or 8 year review period will commence after the relevant sex offender has been released from prison, detention in hospital, etc.

Section 88C of the 2003 Act sets out how the first review carried out by the relevant chief constable will operate. The relevant chief constable will have to decide, before the expiry of the applicable 15 or 8 year review period, whether a relevant sex offender should remain subject to the notification requirements. If the decision is that the relevant sex offender should cease to be subject to the notification requirements, the relevant sex offender will cease to be subject to those requirements on the date of discharge. If the relevant chief constable is satisfied that the relevant sex offender poses a risk of sexual harm, a notification continuation order will be made for a fixed period. Subsection (7) provides a definition of sexual harm. A notification continuation order will

set out how long a relevant sex offender has to notify for before getting a further right of review. This can be imposed for a fixed period of up to 15 years.

Section 88D of the 2003 Act applies to young sex offenders who have already been subject to the notification requirements for a total period of at least 8 years at the date on which the original Order came into force. The notification requirements were originally contained in Part 1 of the Sex Offenders Act 1997 (“the 1997 Act”) before being repealed and re-enacted with amendments in Part 2 of the 2003 Act. Part 1 of the 1997 Act was commenced on 1st September 1997. Therefore, it is possible that a young sex offender may have been notifying for a total of 8 years just before or on the date on which the original Order came into force. As with section 88C, the relevant chief constable was required to make a decision as to whether a young sex offender should cease to be subject to the notification requirements and intimate that decision to the relevant sex offender within 3 months after the date the original Order came into force (25th January 2011).

Section 88E of the 2003 Act applies in circumstances in which a notification continuation order has been made in relation to a relevant sex offender. In such circumstances, the relevant chief constable will be required to carry out a further review as to whether the relevant sex offender should remain subject to the notification requirements, and notify that offender of the decision before the end of the fixed period specified in the notification continuation order.

Section 88F of the 2003 Act provides that if the relevant chief constable has not completed a review under section 88C or 88E by the required date or had not done so by 25th January 2011 under section 88D, the relevant sex offender can make an application to a sheriff to no longer be subject to the notification requirements. A sheriff will consider the application and decide whether the relevant sex offender should cease to be subject to the notification requirements. The test for reaching a decision will be exactly the same as the test which a chief constable has to apply, which is whether the relevant sex offender poses a risk of sexual harm. A sheriff can impose a notification continuation order for a fixed period of not more than 15 years.

Section 88G of the 2003 Act provides that the decision of the relevant chief constable to make a notification continuation order, and the duration of that order, can be appealed to a sheriff. It sets out how the review mechanism will operate. The decision of a sheriff to grant or refuse an appeal can be appealed to the sheriff principal whose decision is final.

An appeal of any decision must be brought within 21 days of the date of decision. The exception to this rule is where the chief constable’s decision was taken before this Order came into force. In that situation the date set out in subsection (3) of the original Order applies. An appeal can be brought against the decision to make a notification continuation order, as well as or separately, against the fixed period which that order imposes. Parties may appear or be represented at any appeal hearing. Subsections (10) and (11) make it clear that a relevant sex offender will remain subject to the existing notification requirements of this Part until the decision as to whether he or she should cease to be subject to this regime is finally determined. This includes the determination of any appeals against the decision of the relevant chief constable or, as the case may be, the sheriff.

Section 88H provides that the Scottish Ministers (by operation of section 142(6) of the 2003 Act and section 53 of the Scotland Act 1998 (c.46)) may by order, subject to affirmative procedure, amend the 15 or 8 year periods in section 88B(1) or the maximum period which a notification continuation order can be made specified in section 88C(2).

Article 4 of this Order makes consequential amendments to sections 107, 133 and 138 of the 2003 Act. The amendment to section 107 provides that where a review is successful and final and the relevant sex offender was subject to a Sexual Offences Prevention Order (or its predecessor, a Sex Offender Order) then that order also ceases to have effect. Article 5 revokes the original Order.

As compared with the original Order, this Order makes the following modifications: time spent serving a sentence of imprisonment or service detention in relation to the offence is disregarded where the relevant sex offender first notified before being sentenced (section 88B(3) and (4)); the sheriff clerk is only required to send a copy of the interlocutor and, where made, the notification

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continuation order to the relevant sex offender and may give it to him or her (section 88F(6) and (7) and 88G(8) and (9)); parties may appear or be heard in any appeal (section 88G(7)); and Sexual Offences Prevention Orders and Sex Offender Orders cease on successful review (article 4(1)).

This Order will come into force on 28th January 2011 pursuant to the procedure prescribed in section 14 of the Convention Rights (Compliance) (Scotland) Act 2001. This Order will cease to have effect if, at the end of the period of 120 days beginning with the day on which the original Order was made (25th October 2010), a resolution has not been passed by the Scottish Parliament approving this Order. In reckoning the period of 120 days no account is to be taken of any time during which the Scottish Parliament is dissolved or is in recess for more than four days.

Changes to legislation:

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Changes and effects yet to be applied to :

- art. 4(1) repealed by [2016 asp 22 Sch. 2 para. 9](#)