

SCHEDULES

SCHEDULE 1

Section 1.

SCHEDULE 3A TO THE SEXUAL OFFENCES ACT 2003, AS INSERTED

“SCHEDULE 3A

REVIEW OF INDEFINITE NOTIFICATION REQUIREMENTS

Introductory

1.—(1) This Schedule applies to a person who, on or after the date on which section 1 of the Criminal Justice Act (Northern Ireland) 2013 comes into operation, is subject to the notification requirements for an indefinite period.

(2) A person to whom this Schedule applies is referred to in this Schedule as “an offender”.

(3) In this Schedule—

“risk of sexual harm” means a risk of physical or psychological harm to the public or any particular members of the public caused by an offender doing anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom;

“the notification requirements” means the notification requirements of Part 2 of this Act;

“relevant event”, in relation to an offender, is a conviction, finding or notification order which made the offender subject to the notification requirements for an indefinite period.

Initial review: applications

2.—(1) Except as provided by sub-paragraph (2), an offender may, at any time after the end of the initial review period, apply to the Chief Constable to discharge the offender from the notification requirements.

(2) Sub-paragraph (1) does not apply at any time when—

(a) the offender is also subject to a sexual offences prevention order or an interim sexual offences prevention order; or

(b) the offender is also subject to the notification requirements for a fixed period which has not expired.

- (3) Subject to sub-paragraph (4), the initial review period is—
 - (a) in the case of an offender under the age of 18 at the date of the relevant event, 8 years beginning with the date of initial notification;
 - (b) in the case of any other offender, 15 years beginning with the date of initial notification.
- (4) In calculating the initial review period—
 - (a) in a case where an offender is subject to the notification requirements for an indefinite period as a result of two or more relevant events, the calculation is to be made by reference to the later or latest of those events;
 - (b) in any case, there is to be disregarded any period during which the offender is, in connection with a relevant event—
 - (i) remanded in, or committed to, custody by an order of a court;
 - (ii) in custody serving a sentence of imprisonment or detention; or
 - (iii) detained in a hospital.
- (5) The date of initial notification is—
 - (a) in the case of an offender who is subject to the notification requirements for an indefinite period by virtue of section 81, the date by which the offender was required to give notification under section 2(1) of the Sex Offenders Act 1997;
 - (b) in the case of any other offender, the date by which the offender is required to give notification under section 83(1) (or would be so required but for the fact that the offender falls within an exception in section 83(2) or (4)).
- (6) An application under this paragraph must be in writing and must include—
 - (a) the name, address and date of birth of the offender;
 - (b) the name and address of the offender at the date of each relevant event (if different);
 - (c) the date of each relevant event, and (where a relevant event is a conviction or finding) the court by or before which the conviction or finding occurred;
 - (d) any information which the offender wishes to be taken into account by the Chief Constable in determining the application.
- (7) The Chief Constable must, within 14 days of the receipt of an application under this paragraph, give an acknowledgement of the receipt of the application to the offender.
- (8) The Chief Constable may, before determining any application, request information from any body or person which the Chief Constable considers appropriate.

Initial review: determination of application

3.—(1) On an application under paragraph 2 the Chief Constable shall discharge the notification requirements unless the Chief Constable is satisfied—

- (a) that the offender poses a risk of sexual harm; and
- (b) that the risk is such as to justify the notification requirements continuing in the interests of the prevention or investigation of crime or the protection of the public.

(2) In deciding whether that is the case, the Chief Constable must take into account—

- (a) the seriousness of the offence or offences—
 - (i) of which the offender was convicted,
 - (ii) of which the offender was found not guilty by reason of insanity,
 - (iii) in respect of which the offender was found to be under a disability and to have done the act charged, or
 - (iv) in respect of which (being relevant offences within the meaning of section 99) the notification order was made,and which made the offender subject to the notification requirements for an indefinite period;
- (b) the period of time which has elapsed since the offender committed the offence or offences;
- (c) whether the offender has committed any offence under section 3 of the Sex Offenders Act 1997 or under section 91 of this Act;
- (d) the age of the offender at the time of the decision;
- (e) the age of the offender at the time any offence referred to in subparagraph (a) was committed;
- (f) 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 offender at the time any such offence was committed;
- (g) any convictions or findings made by a court (including a court in England and Wales or Scotland or a country outside the United Kingdom) in respect of the offender for any other offence listed in Schedule 3;
- (h) any caution which the offender has received for an offence (including an offence in England and Wales or Scotland or a country outside the United Kingdom) which is listed in Schedule 3;
- (i) any convictions or findings made by a court (including a court in England and Wales, Scotland or a country outside the United Kingdom) in respect of the offender for any offence listed in Schedule 5 where the behaviour

of the offender since the date of the conviction or finding indicates a risk of sexual harm;

- (j) whether any criminal proceedings for any offences listed in Schedule 3 have been instituted against the offender but have not concluded;
- (k) any assessment of the risk of sexual harm posed by the offender which has been made by any of the agencies mentioned in Article 49(1) of the Criminal Justice (Northern Ireland) Order 2008 (risk assessment and management);
- (l) any information presented by or on behalf of the offender;
- (m) any other information relating to the risk of sexual harm posed by the offender; and
- (n) any other matter which the Chief Constable considers to be appropriate.

(3) In sub-paragraph (2) a reference to a conviction, finding or caution for an offence listed in Schedule 3 or 5 committed in a country outside the United Kingdom is a reference to a conviction, finding or caution in respect of an act which—

- (a) constituted an offence under the law in force in the country concerned; and
- (b) would have constituted an offence listed in Schedule 3 or (as the case may be) Schedule 5 if it had been done in any part of the United Kingdom.

(4) The functions of the Chief Constable under this paragraph may not be delegated by the Chief Constable except to a police officer not below the rank of superintendent.

Initial review: notice of decision

4.—(1) The Chief Constable must, within 12 weeks of the date on which an application under paragraph 2 is received, comply with this paragraph.

(2) If the Chief Constable discharges the notification requirements—

- (a) the Chief Constable must serve notice of that fact on the offender, and
- (b) the offender ceases to be subject to the notification requirements on the date of service of the notice.

(3) If the Chief Constable decides not to discharge the notification requirements—

- (a) the Chief Constable must serve notice of that decision on the offender; and
- (b) the notice must—
 - (i) state the reasons for the decision; and
 - (ii) state the effect of paragraphs 5 and 6.

Status: This is the original version (as it was originally enacted).

Initial review: application to Crown Court

5.—(1) Where—

- (a) the Chief Constable fails to comply with paragraph 4 within the period specified in paragraph 4(1), or
- (b) the Chief Constable serves a notice under paragraph 4(3),

the offender may apply to the Crown Court for an order discharging the offender from the notification requirements.

(2) An application under this paragraph must be made within the period of 21 days beginning—

- (a) in the case of an application under sub-paragraph (1)(a), on the expiry of the period mentioned in paragraph 4(1);
- (b) in the case of an application under sub-paragraph (1)(b), with the date of service of the notice under paragraph 4(3).

(3) Paragraph 3 applies in relation to an application under this paragraph as it applies to an application under paragraph 2, but as if references to the Chief Constable were references to the Crown Court.

(4) The Chief Constable and the offender may appear or be represented at any hearing in respect of an application under this paragraph.

(5) If on an application under this paragraph the Crown Court makes an order discharging the offender from the notification requirements, the appropriate officer of the Crown Court must send a copy of the order to the offender and the Chief Constable.

(6) If on an application under this paragraph the Crown Court refuses to make an order discharging the offender, the appropriate officer of the Crown Court must send notice of that refusal to the offender and the Chief Constable.

Further reviews

6.—(1) Except as provided by sub-paragraph (2), where a notice is served on an offender under paragraph 4(3) or 5(6), the offender may, at any time after the end of the further review period, apply to the Chief Constable to discharge the offender from the notification requirements.

(2) Sub-paragraph (1) does not apply at any time when—

- (a) the offender is also subject to a sexual offences prevention order or an interim sexual offences prevention order; or
- (b) the offender is also subject to the notification requirements for a fixed period which has not expired.

(3) The further review period is—

- (a) in the case of an offender under the age of 18 at the date of the relevant event, the period of 4 years beginning with the date of service of the notice (or the last notice) served on the offender under paragraph 4(3) or 5(6);
- (b) in the case of any other offender, the period of 8 years beginning with that date.

(4) Paragraphs 2(6) to (8), 3, 4 and 5 apply with appropriate modifications in relation to an application under this paragraph as they apply in relation to an application under paragraph 2; and a reference in this Schedule to a provision of paragraph 4 or 5 includes a reference to that provision as applied by this sub-paragraph.

Guidance

7.—(1) The Department of Justice must issue guidance as to—

- (a) the making of applications under paragraph 2 or 6; and
- (b) the determination by the Chief Constable of such applications.

(2) The Department of Justice may, from time to time, revise the guidance issued under sub-paragraph (1).

(3) The Department of Justice must arrange for any guidance issued or revised under this paragraph to be published in such manner as it considers appropriate.

Discharge in Great Britain

8.—(1) An offender who is, under corresponding legislation, discharged from the notification requirements by a court, person or body in England and Wales or Scotland is, by virtue of the discharge, also discharged from the notification requirements as they apply in Northern Ireland.

(2) In sub-paragraph (1) “corresponding legislation” means legislation which makes provision corresponding to that made by this Schedule for an offender who is subject to the notification requirements (as they apply in England and Wales or, as the case may be, Scotland) for an indefinite period to be discharged from those notification requirements.”.