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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 45**

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

**Amendment of the 2003 Act**

**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 sheriffdom 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).
- (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.”.