

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**

Made - - - - 27th January 2011
*Laid before the Scottish
Parliament* - - - - 27th January 2011
Coming into force - - 28th January 2011

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.

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.