



Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

2005 asp 9

Sexual offences prevention orders

17 Prevention of sexual offences: further provision

- (1) In section 105 of the 2003 Act (further provision as to sexual offences prevention orders)—
- (a) in subsection (2)—
 - (i) for the words from “within” to the end of paragraph (a) there is substituted—
 - “(aa) within whose sheriffdom the person in respect of whom the order is sought resides;
 - (ab) within whose sheriffdom the person is believed by the applicant to be;
 - (ac) to whose sheriffdom the person is believed by the applicant to be intending to come;”;and
 - (ii) at the beginning of paragraph (b) there is inserted “within whose sheriffdom lies”; and
 - (b) in subsection (4), for “(1)(g)” there is substituted “(1)(e)”.
- (2) In section 111 of that Act (appeals in relation to sexual offences prevention orders)—
- (a) in paragraph (a)—
 - (i) the words “refusing, varying, renewing or discharging” are repealed;
 - (ii) after “order” where first occurring there is inserted “on an application under section 104(5) or 105(1)”;
 - (iii) after “order” where secondly occurring there is inserted “or refusing, varying, renewing or discharging either such order”;
 - (b) the word “and” immediately following that paragraph is repealed; and
 - (c) there is added at the end—
 - “(c) a sexual offences prevention order made in any other case and any order granting or refusing a variation, renewal or discharge of such a sexual offences prevention order are, for the purposes of appeal, to be regarded—

- (i) in the case of solemn proceedings, as if they were orders of the kind referred to in section 106(1)(d) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (appeal against probation and community service orders);
 - (ii) in the case of summary proceedings, as if they were orders of the kind referred to in section 175(2)(c) of that Act (appeal against probation, community service and other orders); and
 - (d) where an appeal is taken by virtue of paragraph (c) above, the High Court of Justiciary may, in the appeal proceedings, suspend the order appealed against pending the disposal of the appeal.”.
- (3) Section 112 of that Act (which provides for the application, with modifications, to Scotland of certain provisions of the Act relating to sexual offences prevention orders) is amended in accordance with subsections (4) and (5) below.
- (4) In subsection (1)—
- (a) paragraph (a) is repealed;
 - (b) in its place there is inserted—
 - “(aa) the references in subsection (2) and (3)(a) of section 104 to an offence listed in Schedule 3 or 5 shall be read as references to an offence listed at paragraphs 36 to 60 of Schedule 3;”;
 - (c) in paragraph (e)—
 - (i) the words “or interim sexual offences prevention order” are omitted;
 - (ii) for the words from “within” to the end of sub-paragraph (i) there is substituted—
 - “(ia) within whose sheriffdom the person in respect of whom the order is sought resides;
 - (ib) within whose sheriffdom that person is believed by the applicant to be;
 - (ic) to whose sheriffdom that person is believed by the applicant to be intending to come;”;
 - (iii) at the beginning of sub-paragraph (ii) there is inserted “within whose sheriffdom lies”;
 - (iv) in that sub-paragraph, for “the person in respect of whom the order is sought or has effect” there is substituted “that person”; and
 - (v) for “references to “the court” being” there is substituted “and, in relation to such an order, references to a court or the court shall be”;
 - (d) after that paragraph there is inserted—
 - “(ea) an application for an interim sexual offences prevention order—
 - (i) is made by way of the main application; or
 - (ii) if the main application has been made, is made, by application to a sheriff for the sheriffdom of the sheriff to whom the main application was made, by the person who made that application,
 (and, in relation to such an order, references to a court or the court shall be construed accordingly),”;

- (e) in paragraph (f)—
 - (i) for “either such order” there is substituted “a sexual offences prevention order which was made on an application under section 104(5) or 105(1) or an interim sexual offences prevention order”;
 - (ii) the word “or” immediately following sub-paragraph (i) is repealed;
 - (iii) for sub-paragraph (ii) there is substituted—
 - “(iia) within whose sheriffdom that person is believed by the applicant to be; or
 - (iib) to whose sheriffdom that person is believed by the applicant to be intending to come.”;
 - (iv) for “references to “the court” being” there is substituted “and, in relation to an application made by virtue of this paragraph, references to a court or the court shall be”;
 - (f) after paragraph (f) there is inserted—
 - “(g) an application for the variation, renewal or discharge of a sexual offences prevention order which was made where subsection (2) or (3) of section 104 applies may be made only by the person in respect of whom the order has effect or the prosecutor;
 - (h) such an application is made—
 - (i) where the sexual offences prevention order sought to be varied, renewed or discharged was made by the High Court of Justiciary, to that court;
 - (ii) where that order was made by the sheriff, to the appropriate sheriff.”.
- (5) After that subsection there is inserted—
- “(1A) In subsection (1)(h)(ii), the “appropriate sheriff” is—
- (a) in a case where the person in respect of whom the order has effect is, at the time of the application for its variation, renewal or discharge, resident in a sheriffdom other than the sheriffdom of the sheriff who made the order, any sheriff exercising criminal jurisdiction in the sheriffdom in which the person is resident;
 - (b) in any other case, any sheriff exercising criminal jurisdiction in the sheriff court district of the sheriff who made the order.”.
- (6) In section 142(3) of that Act (its Scottish extent) after “93” there is inserted “, 110”.