

PROTECTION OF CHILDREN AND PREVENTION OF SEXUAL OFFENCES (SCOTLAND) ACT 2005

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

Sections 2 and 3 – Risk of sexual harm orders: applications, grounds and effects and Interpretation of section 2

13. **Section 2** introduces a new civil preventative order, the risk of sexual harm order (RSHO), for which the police can apply to a sheriff court in respect of a person who has, on at least two occasions, engaged in sexually explicit conduct or communication with a child or children, and as a result there is reasonable cause to believe that the order is necessary to protect a child or children from harm arising out of future acts by that person. The RSHO is not a substitute for a criminal offence, but applies in circumstances where the behaviour of the person gives reason to believe that a child or children are at risk from an individual's conduct or communication and intervention at this earlier stage is necessary to protect the child or children.
14. The application may be made by a chief constable to the sheriff in whose sheriffdom the person resides, is believed to be in or is intending to come to, or where the alleged acts are said to have taken place. In normal circumstances, the application must be made within three months of the second of the two incidents of sexually explicit behaviour coming to the attention of the chief constable. However, it is open to the sheriff to consider applications made outwith this timescale, if the sheriff considers this appropriate in all the circumstances. Subsection (3) provides that the application will be made by summary application.
15. The person against whom an order is sought may or may not have a conviction for a sexual (or other) offence. The child or children to be protected must be under 16.
16. Subsection (1) explains the circumstances in which an RSHO may be sought. The acts in subsection (5) which constitute the trigger behaviour for an order all involve explicitly sexual communication or conduct with or towards a child. The types of behaviour at subsections (5)(a), (b) and (d) may already amount to a criminal offence. However the trigger behaviour need not amount to criminal conduct. Subsection (5)(c) would, for example, cover a person giving condoms or a sex toy to a child. Subsection (5)(d) would cover a person sending pornographic images to a child over the internet or describing the sexual acts they would like to carry out on the child. An order would not be made unless the court is satisfied (under subsection (6)(b)) that further such acts would cause a child or children physical or psychological harm (see definition of protecting children from harm in section 3(a)).
17. The term "image" is defined in section 3(c). For the purpose of the Act, "image" includes photographs, cartoon strips, email attachments and drawings. "Sexual activity" is defined at section 19.

*These notes relate to the Protection of Children and Prevention of Sexual Offences
(Scotland) Act 2005 (asp 9) which received Royal Assent on 12 July 2005*

18. Under section 2(8), an order entitles the court to prohibit the person concerned from doing anything described in it. It cannot require the person concerned to comply with conditions requiring positive action.
19. The minimum duration of an order is 2 years.