

ABUSIVE BEHAVIOUR AND SEXUAL HARM (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 2 – Sexual Harm

Chapter 3 – Sexual harm prevention orders

Variation, renewal and discharge

Section 20 – Variation, renewal and discharge

106. **Section 20** provides that a court can vary, renew or discharge a SHPO upon application from the person in respect of whom the order was made, the chief constable or, in appropriate cases, the prosecutor.
107. Subsections (1) and (2) provide that the person in respect of whom the SHPO is made, the chief constable or, in appropriate cases, the prosecutor may apply for variation, renewal or discharge of such a SHPO. Subsection (3) provides that the application is to be made to the High Court where that court made the order and to the sheriff otherwise (but see section 22(3) and (6)). Subsection (3)(b) and (c) and subsection (4) makes provision about sheriff jurisdiction in this connection. Where the relevant court receives such an application, it may vary, renew or discharge individual prohibitions or requirements or add new prohibitions or requirements, it may renew the whole order or it may discharge the whole order.
108. Subsection (5) sets out the tests the court must consider when deciding whether to vary, renew or discharge SHPOs (including by adding new prohibitions or requirements) or any prohibitions or requirements within them. Subsections (5) and (6) apply the tests for the making of a SHPO to any variation (including an increase or a relaxation of a requirement or prohibition), renewal, addition or discharge.
109. Subsection (7) provides that before deciding whether to vary, renew or discharge a SHPO the court must, if the person against whom the order has effect or the chief constable (or in the case of an order made under section 11 only, the prosecutor) requests it by virtue of subsection (8), hold a hearing at which both the person, the chief constable (and, if the order is made under section 11, the prosecutor) are entitled to make representations to the court. In the absence of a request for a hearing the court is nevertheless obliged either to hold a hearing or provide an opportunity for the person, the chief constable (and, if the order is made under section 11, the prosecutor) to make written representations.