

Abusive Behaviour and Sexual Harm (Scotland) Act 2016 2016 asp 22

PART 2

SEXUAL HARM

VALID FROM 31/03/2023

CHAPTER 3

SEXUAL HARM PREVENTION ORDERS

Meaning of sexual harm

10 Meaning of sexual harm

In this Chapter, "sexual harm", from a person, means physical or psychological harm caused—

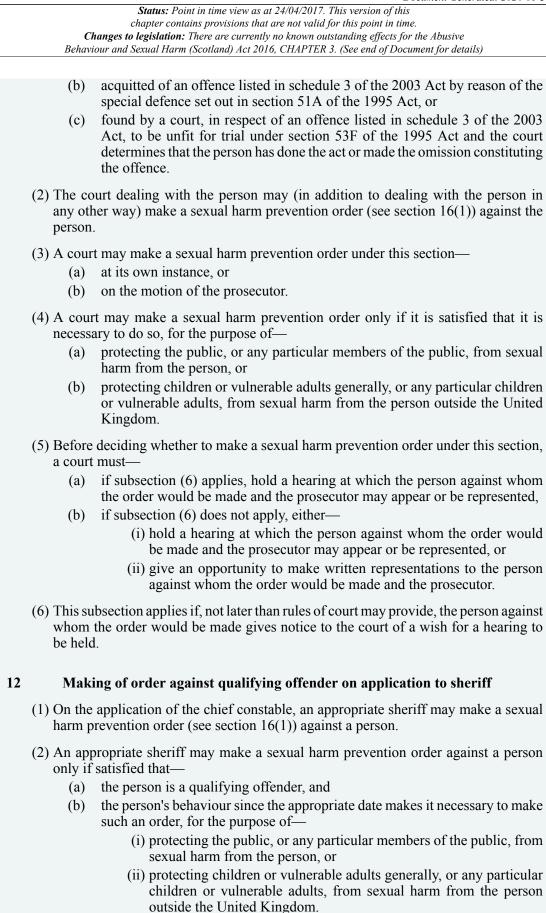
- (a) by the person committing one or more of the offences listed in schedule 3 of the 2003 Act, or
- (b) (in the context of harm outside the United Kingdom) by the person doing, outside the United Kingdom, anything which would constitute an offence listed in schedule 3 of the 2003 Act if done in the United Kingdom.

Circumstances where sexual harm prevention order may be made

11 Making of order on dealing with person for offence

(1) This section applies where a person is—

(a) convicted of an offence listed in schedule 3 of the 2003 Act,



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(3) Before determining an application under this section, a sheriff must—

- (a) if subsection (4) applies, hold a hearing at which the person against whom the order is sought and the chief constable may appear or be represented,
- (b) if subsection (4) does not apply, either—
 - (i) hold a hearing at which the person against whom the order is sought and the chief constable may appear or be represented, or
 - (ii) give an opportunity to make written representations to the person against whom the order is sought and the chief constable.
- (4) This subsection applies if, not later than rules of court may provide, the person against whom the order is sought gives notice to the sheriff of a wish for a hearing to be held.
- (5) In this section—

"appropriate date", in relation to a qualifying offender, means the date or, as the case may be, the first date on which the person was convicted, cautioned or the subject of a finding as mentioned in sections 13, 14 and 15,

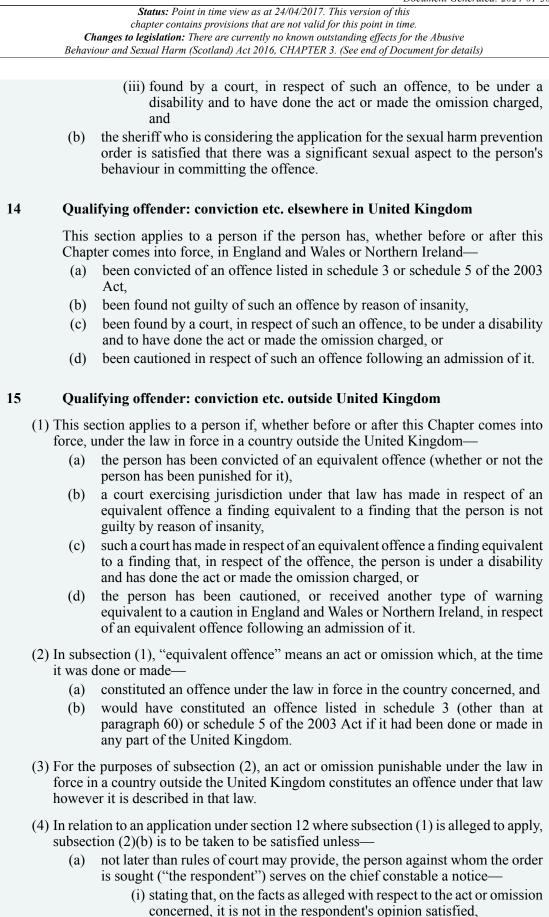
"appropriate sheriff" means-

- (a) a sheriff in whose sheriffdom the person resides,
- (b) a sheriff in whose sheriffdom the person is believed by the chief constable to be,
- (c) a sheriff to whose sheriffdom the person is believed by the chief constable to be intending to come, or
- (d) a sheriff whose sheriffdom includes any place where it is alleged that the person acted in a way giving reasonable cause to believe that it is necessary for a sexual harm prevention order to be made,

"qualifying offender" means a person to whom section 13, 14 or 15 applies.

13 Qualifying offender: conviction etc. in Scotland

- (1) This section applies to a person if the person has, whether before or after this Chapter comes into force—
 - (a) been convicted of an offence listed in paragraphs 36 to 60 of schedule 3 of the 2003 Act, or
 - (b) been the subject, in respect of such an offence, of any of the following-
 - (i) acquittal by reason of the special defence set out in section 51A of the 1995 Act,
 - (ii) acquittal by reason of insanity,
 - (iii) a finding by a court of being unfit for trial under section 53F of the 1995 Act and the court determining that the person has done the act or made the omission constituting the offence,
 - (iv) a finding by a court that the person is under a disability and did the act or made the omission charged.
- (2) This section also applies to a person if—
 - (a) before 1 May 2004, the person was in Scotland-
 - (i) convicted of an offence other than an offence listed in paragraphs 36 to 59 of schedule 3 of the 2003 Act,
 - (ii) found not guilty of such an offence by reason of insanity, or



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(ii) setting out the respondent's grounds for that opinion, and (iii) requiring the chief constable to prove that it is satisfied, or

(b) the court permits the respondent to require the chief constable to prove that subsection (2)(b) is satisfied without service of such a notice.

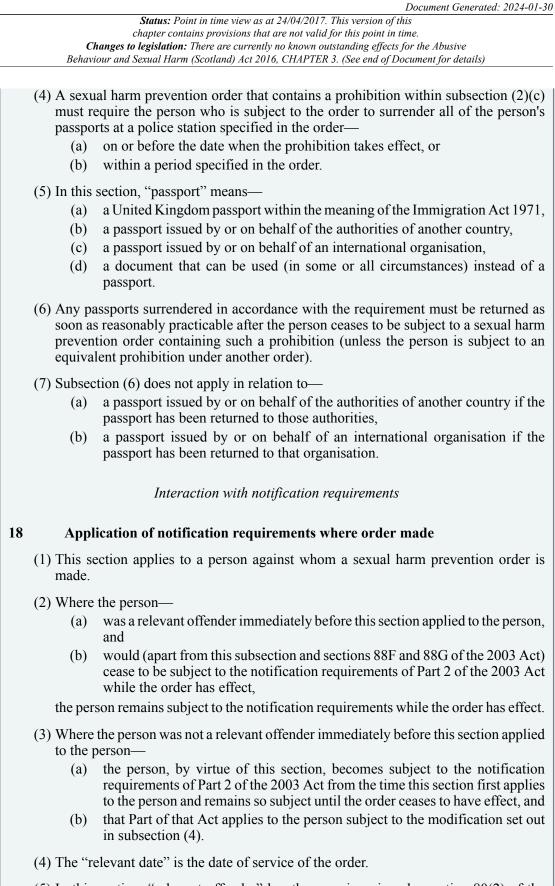
What order does

16 Content and duration of order

- (1) A sexual harm prevention order is an order prohibiting the person against whom it is made from doing, or requiring the person to do, a thing or things described in the order.
- (2) A prohibition or requirement contained in a sexual harm prevention order applies throughout the United Kingdom (unless expressly confined to particular localities).
- (3) A prohibition or requirement contained in a sexual harm prevention order has effect for a fixed period, specified in the order, of not less than 5 years.
- (4) Different periods may be provided for different prohibitions or requirements.
- (5) Subsection (3) is subject, in the case of a prohibition on foreign travel, to subsection (1) of section 17.
- (6) The prohibitions and requirements which may be imposed in a sexual harm prevention order are those necessary for the purpose of—
 - (a) protecting the public, or any particular members of the public, from sexual harm from the person against whom the order is made, or
 - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the person against whom the order is made outside the United Kingdom.
- (7) Where a court makes a sexual harm prevention order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.
- (8) A sexual harm prevention order ceases to have effect, if it has not already done so, when all of the prohibitions or requirements contained in it have ceased to have effect.

17 **Prohibitions on foreign travel**

- (1) A prohibition on foreign travel contained in a sexual harm prevention order must be for a fixed period of not more than 5 years.
- (2) A "prohibition on foreign travel" means—
 - (a) a prohibition on travelling to any country outside the United Kingdom named or described in the order,
 - (b) a prohibition on travelling to any country outside the United Kingdom other than a country named or described in the order, or
 - (c) a prohibition on travelling to any country outside the United Kingdom.
- (3) Subsection (1) does not prevent a prohibition on foreign travel from being extended for a further period (of no more than 5 years each time) under section 20.



(5) In this section, "relevant offender" has the meaning given by section 80(2) of the 2003 Act.

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19 Cessation of order: relevant sexual offenders

- (1) This section applies where—
 - (a) a sexual harm prevention order is in effect in relation to a relevant sexual offender, and
 - (b) by virtue of section 88F or 88G of the 2003 Act, the relevant sexual offender ceases to be subject to the notification requirements of Part 2 of the 2003 Act.
- (2) The sexual harm prevention order ceases to have effect.
- (3) For the purposes of this section, a person is a "relevant sexual offender" if the person falls within section 88A(1)(a) or (b) of the 2003 Act.

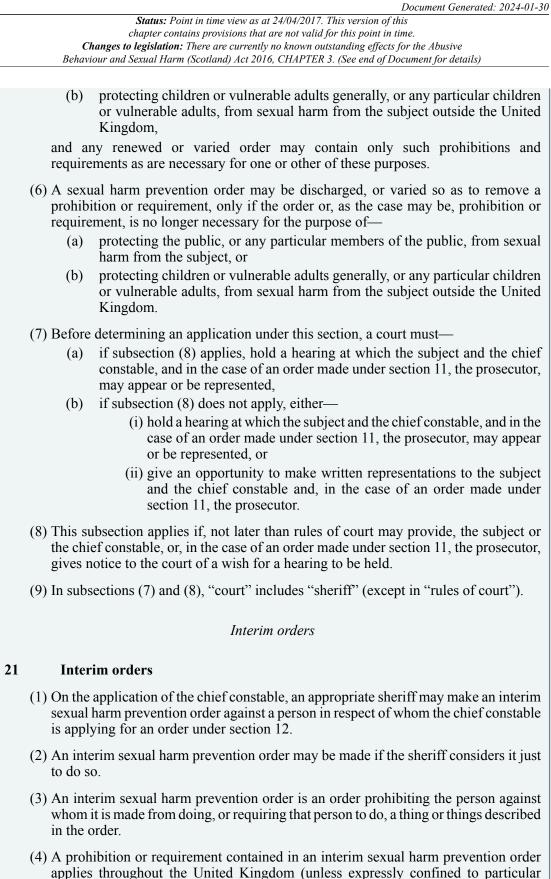
Variation, renewal and discharge

20 Variation, renewal and discharge

- (1) On the application of a person mentioned in subsection (2), the appropriate court may make an order varying, renewing or discharging a sexual harm prevention order.
- (2) The persons are—
 - (a) the person against whom the order has effect ("the subject"),
 - (b) the chief constable,
 - (c) in the case only of an order made under section 11, the prosecutor.
- (3) In subsection (1), the "appropriate court" means—
 - (a) where the order was made under section 11 by the High Court of Justiciary, that court,
 - (b) where the order was made under section 11 in the sheriff court—
 - (i) a sheriff exercising criminal jurisdiction in the sheriffdom in which the subject resides, or
 - (ii) if the subject does not reside in a sheriffdom, any sheriff exercising criminal jurisdiction in the sheriffdom of the sheriff who made the order,
 - (c) where the order was made under section 12, an appropriate sheriff.

(4) In subsection (3)(c), an "appropriate sheriff" means—

- (a) the sheriff who made the order,
- (b) another sheriff of the same sheriffdom,
- (c) a sheriff in whose sheriffdom the subject resides, or
- (d) where the application is made by the chief constable—
 - (i) a sheriff in whose sheriffdom the subject is believed by the chief constable to be, or
 - (ii) a sheriff to whose sheriffdom the subject is believed by the chief constable to be intending to come.
- (5) A sexual harm prevention order may be renewed, or varied so as to impose an additional prohibition or requirement on the subject, only if it is necessary to do so for the purpose of—
 - (a) protecting the public, or any particular members of the public, from sexual harm from the subject, or



localities).

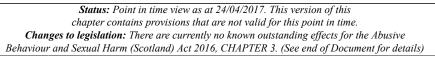
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- (5) A prohibition or requirement contained in an interim sexual harm prevention order has effect for a fixed period, specified in the order.
- (6) Different periods may be provided for different prohibitions or requirements.
- (7) An application for an interim sexual harm prevention order—
 - (a) may be made in the application for an order under section 12 to which it relates, or
 - (b) if the application for that order has been made, may be made in such way as rules of court may provide.
- (8) Section 18 applies to a person against whom an interim sexual harm prevention order is made as it applies to a person against whom a sexual harm prevention order is made.
- (9) An interim sexual harm prevention order ceases to have effect, if it has not already done so, when either of the following events occurs—
 - (a) the related application for an order under section 12 is determined, or
 - (b) all of the prohibitions or requirements contained in it have ceased to have effect.
- (10) On the application of a person mentioned in subsection (11), an appropriate sheriff may vary, renew or discharge an interim sexual harm prevention order.
- (11) Those persons are—
 - (a) the person against whom the interim sexual harm prevention order has effect,
 - (b) the chief constable.
- (12) In this section, an "appropriate sheriff" means-
 - (a) the sheriff to whom the related application for an order under section 12 is made, or
 - (b) another sheriff of the same sheriffdom.

Appeals

22 Appeals

- (1) An order made under section 11, and any order granting or refusing a variation, renewal or discharge of such an order may be appealed against as if the order were a sentence.
- (2) On such an appeal, the court hearing the appeal may suspend the order appealed against pending the disposal of the appeal.
- (3) An order under section 11 made on appeal is to be regarded for the purposes of section 20(3) as having been made by the court which dealt with the question of whether an order under that section should be made at first instance.
- (4) A decision of a sheriff mentioned in subsection (5) may be appealed against as if it were a decision constituting final judgment in civil proceedings within the meaning of the 2014 Act.
- (5) A decision to-
 - (a) make, or refuse to make, an order under section 12 or 21,



- (b) vary, renew or discharge, or refuse to vary, renew or discharge, an order made under either of those sections.
- (6) An order under section 12 made on appeal is to be regarded for the purposes of section 20(3) as having been made by the sheriff who determined the application for the order at first instance.

Requirement to serve order

23 Requirement for clerk of court to serve order

- (1) Where a court makes, varies or renews a sexual harm prevention order or an interim sexual harm prevention order, the clerk of the court must serve a copy of the order as made, varied or renewed (as the case may be) on the person against whom the order has effect.
- (2) Where a court discharges a sexual harm prevention order or an interim sexual harm prevention order, the clerk of the court must serve a copy of the order effecting the discharge on the person against whom the order had effect.
- (3) In this section, "court" includes "sheriff".

Enforcement

24 Offence of breaching order

- (1) A person commits an offence if, without reasonable excuse, the person-
 - (a) does something which the person is prohibited from doing, or
 - (b) fails to do something which the person is required to do,
 - by a sexual harm prevention order or an interim sexual harm prevention order.
- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).

(3) Where a person is convicted of an offence under subsection (1), it is not open to the court by or before which the person is convicted—

- (a) to make a community payback order in respect of the offence, or
- (b) to dispose of the matter by—
 - (i) dismissing the person with an admonition, or
 - (ii) discharging the person absolutely.
- (4) A person may be prosecuted, tried and punished for an offence under subsection (1) of failing to comply with a prohibition on foreign travel—
 - (a) in any sheriff court district in which the person is apprehended or in custody, or
 - (b) in such sheriff court district as the Lord Advocate may determine,

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as if the offence had been committed in that district (and the offence is, for all purposes incidental to or consequential on the trial or punishment, to be deemed to have been committed in that district).

Interpretation

25 Interpretation of Chapter

(1) In this Chapter—

"vulnerable adult" means a person who is 18 or over whose ability to protect himself or herself from physical or psychological harm is significantly impaired through physical or mental disability or illness, through old age, or otherwise, "the chief constable" means the chief constable of the Police Service of Scotland,

"child" means a person under 18,

"interim sexual harm prevention order" means (except in section 21(1) to (3)) an order made under section 21,

"prohibition on foreign travel" has the meaning given by section 17(2),

"the public" means the public in the United Kingdom,

"sexual harm prevention order" means (except in sections 11, 12 and 16(1)) an order made under section 11 or 12.

(2) Subsection (3) applies for the purposes of sections 11 to 15.

- (3) In construing any reference to an offence listed in schedule 3 of the 2003 Act, any condition subject to which an offence is so listed that relates—
 - (a) to the way in which a person is dealt with in respect of the offence or a relevant finding (within the meaning of section 132(9) of the 2003 Act) in relation to the offence, or
 - (b) to the age of any person,
 - is to be disregarded.

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