



# Abusive Behaviour and Sexual Harm (Scotland) Act 2016

2016 asp 22

## PART 2

### SEXUAL HARM

## CHAPTER 3

### SEXUAL HARM PREVENTION ORDERS

#### *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.

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*Status: This is the original version (as it was originally enacted).*

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- (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
  - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the subject outside the United Kingdom,
- and any renewed or varied order may contain only such prohibitions and requirements as are necessary for one or other of these purposes.
- (6) A sexual harm prevention order may be discharged, or varied so as to remove a prohibition or requirement, only if the order or, as the case may be, prohibition or requirement, is no longer necessary for the purpose of—
- (a) protecting the public, or any particular members of the public, from sexual harm from the subject, or
  - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the subject outside the United Kingdom.
- (7) Before determining an application under this section, a court must—
- (a) if subsection (8) applies, hold a hearing at which the subject and the chief constable, and in the case of an order made under section 11, the prosecutor, may appear or be represented,
  - (b) if subsection (8) does not apply, either—
    - (i) hold a hearing at which the subject and the chief constable, and in the case of an order made under section 11, the prosecutor, may appear or be represented, or
    - (ii) give an opportunity to make written representations to the subject and the chief constable and, in the case of an order made under section 11, the prosecutor.
- (8) This subsection applies if, not later than rules of court may provide, the subject or the chief constable, or, in the case of an order made under section 11, the prosecutor, gives notice to the court of a wish for a hearing to be held.
- (9) In subsections (7) and (8), “court” includes “sheriff” (except in “rules of court”).