



Abusive Behaviour and Sexual Harm (Scotland) Act 2016

2016 asp 22

PART 2

SEXUAL HARM

CHAPTER 4

SEXUAL RISK ORDERS

Enforcement

34 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 risk order or an interim sexual risk 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.

Changes to legislation: There are currently no known outstanding effects for the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Cross Heading: Enforcement. (See end of Document for details)

- (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,
- 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).

Commencement Information

II S. 34 in force at 31.3.2023 by [S.S.I. 2023/51](#), [reg. 2](#) (with [reg. 3](#))

35 Application of notification requirements on breach of order

- (1) This section applies to a person who—
- (a) is convicted of an offence under section 34,
 - (b) is acquitted of such an offence by reason of the special defence set out in section 51A of the 1995 Act, or
 - (c) is found, in respect of such an offence, to be unfit for trial under section 53F of the 1995 Act and the court determines that the person has done the act or made the omission constituting the offence.
- (2) Where the person—
- (a) was a relevant offender immediately before this section applied to the person, and
 - (b) would (apart from this subsection) cease to be subject to the notification requirements of Part 2 of the 2003 Act while the relevant order has effect,
- the person remains subject to those notification requirements while the relevant order has effect.
- (3) Where the person was not a relevant offender immediately before this section applied to the person—
- (a) the person, by virtue of this section, becomes subject to the notification requirements of Part 2 of the 2003 Act from the time this section first applies to the person and remains so subject until the relevant order ceases to have effect, and
 - (b) that Part of that Act applies to the person subject to the modification set out in subsection (4).
- (4) The “relevant date” is the date on which this section first applies to the person.
- (5) In this section—
- “relevant offender” has the meaning given by section 80(2) of the 2003 Act,
- “relevant order” means—
- (a) where the conviction, finding or acquittal by virtue of which this section applies to the person is in respect of a breach of a sexual risk order, that order,
 - (b) where the conviction, finding or acquittal by virtue of which this section applies to the person is in respect of an interim sexual risk order—

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- (i) any sexual risk order made on the hearing of the application to which the interim order relates, or
- (ii) if no such order is made, the interim order.

Commencement Information

I2 S. 35 in force at 31.3.2023 by S.S.I. 2023/51, reg. 2 (with reg. 3)

Changes to legislation:

There are currently no known outstanding effects for the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Cross Heading: Enforcement.