



Abusive Behaviour and Sexual Harm (Scotland) Act 2016

2016 asp 22

PART 2

SEXUAL HARM

CHAPTER 5

EQUIVALENT ORDERS ELSEWHERE IN UNITED KINGDOM

37 Breach of orders equivalent to orders in Chapters 3 and 4: offence

(1) A person commits an offence if, without reasonable excuse, the person does something which the person is prohibited from doing by an equivalent order from elsewhere in the United Kingdom.

[^{F1}(1A) A person commits an offence if, without reasonable excuse, the person fails to do something which the person is required to do by an equivalent order from elsewhere in the United Kingdom.]

(2) A person who commits an offence under subsection (1) [^{F2}or (1A)] 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) [^{F3}or (1A)], 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, CHAPTER 5. (See end of Document for details)

- (4) For the purposes of this section, prohibitions [^{F4}or requirements] imposed by an equivalent order from elsewhere in the United Kingdom apply, unless expressly confined to particular localities, to every part of the United Kingdom.
- (5) In this section, “equivalent order from elsewhere in the United Kingdom” means—
- (a) a sexual harm prevention order made under section 103A of the 2003 Act [^{F5}or Chapter 2 of Part 11 of the Sentencing Code],
 - (b) an interim sexual harm prevention order made under section 103F of the 2003 Act,
 - (c) a sexual risk order made under section 122A of the 2003 Act,
 - (d) an interim sexual risk order made under section 122E of the 2003 Act,
 - (e) a sexual offences prevention order made under section 104 of the 2003 Act (but excluding such an order made in Scotland),
 - (f) an interim sexual offences prevention order made under section 109 of the 2003 Act (but excluding such an order made in Scotland),
 - (g) a foreign travel order made under section 114 of the 2003 Act (but excluding such an order made in Scotland),
 - (h) a risk of sexual harm order made under section 123 of the 2003 Act,
 - (i) an interim risk of sexual harm order made under section 126 of the 2003 Act,
 - (j) a restraining order made under section 5A of the Sex Offenders Act 1997,
 - (k) a sex offender order made under section 2 of the Crime and Disorder Act 1998.

Textual Amendments

- F1** S. 37(1A) inserted (31.3.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 177\(7\)\(a\)](#), 208(1); [S.I. 2023/387](#), [reg. 3\(b\)](#)
- F2** Words in s. 37(2) inserted (31.3.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 177\(7\)\(b\)](#), 208(1); [S.I. 2023/387](#), [reg. 3\(b\)](#)
- F3** Words in s. 37(3) inserted (31.3.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 177\(7\)\(b\)](#), 208(1); [S.I. 2023/387](#), [reg. 3\(b\)](#)
- F4** Words in s. 37(4) inserted (31.3.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 177\(7\)\(c\)](#), 208(1); [S.I. 2023/387](#), [reg. 3\(b\)](#)
- F5** Words in s. 37(5)(a) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), [s. 416\(1\)](#), [Sch. 24 para. 311](#) (with [Sch. 27](#)); [S.I. 2020/1236](#), [reg. 2](#)

Commencement Information

- I1** S. 37 in force at 31.3.2023 by [S.S.I. 2023/51](#), [reg. 2](#) (with [reg. 3](#))

38 Breach of certain equivalent orders: application of notification requirements

- (1) This section applies to a person who—
- (a) is convicted of an offence under section 37 in respect of a breach of an order under section 122A, 122E, 123 or 126 of the 2003 Act,
 - (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 constituting the offence.

Changes to legislation: There are currently no known outstanding effects for the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, CHAPTER 5. (See end of Document for details)

- (2) This section also applies to a person who—
- (a) is convicted of an offence under section 122H or 128 of the 2003 Act,
 - (b) is found not guilty of such an offence by reason of insanity,
 - (c) is found, in respect of such an offence, to be under a disability and to have done the act charged in respect of the offence, or
 - (d) is cautioned in respect of such an offence following an admission of it.
- (3) 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.
- (4) 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 (5).
- (5) The “relevant date” is the date on which this section first applies to the person.
- (6) In this section, “relevant order” means—
- (a) where the conviction, finding, acquittal or caution by virtue of which this section applies to the person is in respect of a breach of an order under section 122A or 123 of the 2003 Act, that order,
 - (b) where the conviction, finding, acquittal or caution by virtue of which this section applies to the person is in respect of an order under section 122E or 126 of the 2003 Act—
 - (i) any order under section 122A or 123 of the 2003 Act made on the hearing of the application to which the order under section 122E or 126 of the 2003 Act relates, or
 - (ii) if no such order is made, the order under section 122E or 126 of the 2003 Act.

Commencement Information

I2 S. 38 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, CHAPTER 5.