

# **POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) ACT 2006 (ASP 10)**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2: Public Order Etc.**

##### ***Chapter 1: Football Banning Orders***

#### **Making and content of orders**

##### ***Section 51 – Making of order on conviction of a football-related offence***

84. This section sets out the arrangements under which a court may impose a football banning order on an individual convicted of an offence, instead of or in addition to any sentence the court could impose for the offence. The court must be satisfied that the offence involved engaging in violence or disorder as defined in section 56 and that it related to a football match. The court must also be satisfied that there are reasonable grounds to believe that making the order would help to prevent violence or disorder at or in connection with any football matches.
85. Subsection (5) provides that where a court does not impose a football banning order but is satisfied that the offence involved violence or disorder and related to a football match then the court may declare that to be the case. This declaration will then be recorded.
86. Under subsection (6) an offence will automatically be regarded as related to a football match if it is committed at the match or on the way to or from a football match. As an example, where football fans who are attending different matches engage in violence or disorder with each other on the way to their respective matches the offences would be regarded as being related to a football match. The definition of a football match includes matches on television. For example a person may be watching the match in a pub, wearing football colours, where a fight breaks out in the pub during or after the match.
87. In addition an offence will be regarded as relating to a match if it appears from all the circumstances that the offence was motivated wholly or partly by a football match. In other words, the court will need to find some link between the behaviour and a football match. This could include, for example, where groups of rival supporters do not go to a football match but instead meet at a different place for a pre-arranged fight.

##### ***Section 52 – Making of order on application to the sheriff***

88. This section empowers the police to make a summary application to a sheriff court for a football banning order to be imposed against an individual, and sets out the arrangements under which a court may impose a football banning order following such an application. Firstly, the court must be satisfied that the person against whom the order is sought has contributed to violence or disorder in the United Kingdom or elsewhere.

As with section 51, violence or disorder is defined in section 56. The second test that the court will apply is in line with the test for a banning order on conviction, namely whether there are reasonable grounds to believe that making the order would help to prevent violence or disorder at or in connection with any football matches. This section also sets out matters which the sheriff may take into account in deciding whether or not to impose a banning order.

### ***Section 53 – Content of order***

89. This section sets out the effect of a banning order. Certain requirements of the order are mandatory and other requirements are at the discretion of the court. The order prohibits the person from attending any regulated football match (defined in section 55) and requires the person to report at a police station in accordance with the reporting requirements in this Chapter of the Act (see, for example, section 61) in connection with certain regulated football matches. The order must also require the person subject to the order to report initially to a police station within 5 days of the order being made, and to notify certain prescribed information to the football banning orders authority within 7 days of the occurrence of any events that are relevant to the order. (Schedule 5 sets out the list of events that require such notice and the information that must be provided: for example within 7 days of a change of address the person would be required to notify their new address to the football banning orders authority.)
90. Unless there are exceptional circumstances the order must also require the surrender of the person's passport when relevant overseas matches are to be played. These exceptional circumstances might be that the person's employment means he/she needs to travel frequently (for example, an airline pilot). The banning order may, in addition to these mandatory conditions, require the individual to comply with any additional requirements which the court considers would help prevent violence or disorder at or in connection with football matches. This could include prohibiting the person from football matches that are not regulated matches, such as junior league matches if this was thought to be necessary.
91. Subsection (7) sets out the maximum lengths of time a banning order may last, depending on the circumstances in which the order was imposed.

### ***Section 54 – Section 53: supplementary***

92. This section gives effect to schedule 5 (relevant events and prescribed information), defines the meaning of the term imprisonment for the purpose of section 53(7)(a) and makes clear that banning orders start on the day which the order is imposed by a court.

### ***Section 55 – “Football matches” and “regulated football matches”***

93. This section defines football matches and regulated football matches for the purposes of this Chapter and empowers the Scottish Ministers to add matches to or remove matches from the list of regulated football matches by order made by statutory instrument subject to negative resolution procedure. It also makes clear that this Chapter applies to football matches both that are played and that are intended to be played.

### ***Section 56 – “Violence” and “disorder”***

94. This section defines “violence” and specifies certain things which are to be included within “disorder” for the purposes of this Chapter.

## **Variation, termination, information and appeals**

### ***Section 57 – Variation of certain requirements of order***

95. This section empowers courts to impose or omit a requirement of an order imposed by a court to surrender a passport if there are exceptional circumstances. It also empowers

the courts to impose, replace or omit any additional requirements imposed by the court under section 53(4). Both the criminal and civil courts can do this, on the application of either a chief constable as specified in subsection (5) or the person subject to the order who would need to show that there had been a relevant change in circumstances which meant that the requirements were no longer necessary. This section also empowers civil courts to omit the requirement to surrender a passport imposed by the civil court or to impose this requirement if it was not imposed when the order was first made. The civil court can also do this on the application of the chief constable who applied for the order.

96. For orders imposed on conviction it will be the court that made the order which has power to change the requirements. For orders imposed on application to a sheriff it will be a sheriff sitting in the original sheriff court district who can vary the order, although a sheriff court will also have power to transfer proceedings to another sheriff court district if appropriate.

### ***Section 58 – Termination of order***

97. This section empowers the courts to terminate a banning order which has had effect for at least two thirds of its length, under certain circumstances, on the application of the person subject to the order; and sets out the arrangements for this.

### ***Section 59 – Information about making, varying or terminating order etc.***

98. This section specifies those to whom the court must provide copies of the banning order or orders that vary or terminate an order. It sets out the arrangements for providing copies of banning orders where the individual subject to a banning order is in custody. It also provides for the Scottish Ministers to prescribe, by order made by statutory instrument subject to negative resolution procedure, additional persons who must be provided with a copy of the order.

### ***Section 60 – Appeals***

99. Subsection (1) provides that a football banning order made by a criminal court and any variation or termination of such an order is to be treated as a sentence for the purposes of any appeal, thereby attracting the appeals procedure in the Criminal Procedure (Scotland) Act 1995.
100. Subsections (2) and (3) provide that where a football banning order made by a criminal court is quashed on appeal, and unless it was specified by the court that the order was quashed on the grounds that the court erred in holding that the offence was one to which section 51(4) applied, the High Court of Justiciary may declare that the offence involved violence or disorder and was related to a football match.
101. Subsections (4)-(8) set out the appeals procedure in respect of football banning orders imposed by the civil courts and the time limits that apply. An appeal can be made on a point of fact or law.

## **Enforcement of order in relation to foreign matches**

### ***Section 61 – Foreign matches: reporting and other requirements***

102. This section sets out the role and functions of the football banning orders authority and, in following the football banning orders authority's direction, certain constables, in relation to matches played outwith the United Kingdom. Specifically, it requires the football banning orders authority to issue notices to those persons subject to banning orders. These notices require the person to report to a police station and surrender their passport if they have one, or declare that they do not have one, if they do not. The football banning orders authority must issue such a notice when it is of the opinion that requiring the person to report is likely to reduce the risk of violence or disorder at or in connection with the overseas match.

103. Subsection (6) enables the football banning orders authority to establish criteria for determining whether to impose a notice requiring a person to report and surrender their passport. The criteria may be used for determining whether notices should be imposed in individual cases or on particular groups of people. For example, it might be reasonable to establish criteria that all supporters of a particular team subject to banning orders should be required to report and surrender their passport when that team is playing abroad, especially if there has been recent trouble abroad involving supporters of that team.

**Section 62 – Notices under section 61(4): further provision**

104. This section provides that individuals subject to banning orders may not be required to surrender their passport under section 61(4) except in the control period in relation to a match or tournament played outwith the United Kingdom. It also defines what the control period is. For a regulated football match outside the United Kingdom it is the period beginning 5 days before the day of the match and ending when the match is finished or cancelled. For certain external tournaments it may also be appropriate for a block control period to apply so that the person is required to report and surrender their passport for the whole of the external tournament. The block period will apply 5 days before the day of the first match in the tournament (excluding qualifying games) and finish on the day on which the last football match is played. The Scottish Ministers will require to prescribe by order made by statutory instrument subject to negative resolution procedure the external tournaments that should be subject to a block control period. These could be tournaments such as the European Championships and the World Cup.
105. Subsection (2) requires the police to return the passport to the individual as soon as is reasonably practicable after the control period ends.

**Section 63 – Sections 61 and 62: guidance**

106. This section requires the football banning orders authority to have regard to any guidance issued by the Scottish Ministers that relates to their functions under sections 61 and 62, when carrying out those functions.

**Section 64 – Exemption from notice served under section 61(4)**

107. This section provides that persons who are subject to a football banning order may apply for an order disapplying any notice issued to them under section 61(4) that requires them to report to a police station and surrender their passport, or declare that they do not have a passport, in connection with a particular regulated football match outside the United Kingdom. The applicant will require to show to the football banning orders authority's or, as the case may be, the constable's satisfaction that there are circumstances which justify them being so exempted and that because of those circumstances the applicant would not attend the match or matches if so exempted; for example, if they need to attend a family funeral abroad during the control period.
108. Where the application is made during a control period, the constable responsible for a police station may make the order but must refer the issue to the football banning orders authority unless this is not reasonably practicable. Otherwise, the application will be made to the football banning orders authority. Where a constable makes an order disapplying any notice issued under section 61(4), the constable must give written notice of this fact to the authority as soon as is reasonably practicable.
109. The ability for a person to apply for an order disapplying the reporting and passport surrender provisions is included to take account of articles 1 and 2 of Council Directive [73/148/EEC](#) of 21 May 1973 in relation to freedom of movement, and also the comments of the court in the case of **Gough & Anor v Chief Constable of Derbyshire** [2002] WWCA CIV 351 – 20th March 2002 in the context of the equivalent legislation for England and Wales in the Football Spectators Act 1989. The court was satisfied that whilst restraints could be imposed on persons leaving the country on the grounds of

public policy, in order to ensure that the scheme was proportionate under the European Convention on Human Rights, exemptions should be permitted where the reason for going abroad was other than attendance at the regulated match.

### ***Section 65 – Section 64: supplementary***

110. This section requires the football banning orders authority and the constable to have regard to any guidance issued by the Scottish Ministers, which they shall publish from time to time, when taking decisions under section 64. It also provides for the appeals process against the decision of the football banning orders authority or the constable on their decisions to refuse to grant an exemption under section 64.

### ***Section 66 – Suspension of reporting requirements***

111. This section suspends the requirements for a person subject to a banning order to report to a police station and surrender their passport during any period where the person is not resident in Scotland. It also suspends certain requirements of banning orders from taking effect where the person subject to a banning order is in custody. It provides that, if the person was prevented from reporting initially to a police station because he or she was in custody, they must report to a police station within 5 days beginning with the date of their release if, when they are released, their banning order has more than 5 days to run.

## **Miscellaneous and general**

### ***Section 67 – Service of documents***

112. This section sets out the methods by which a document to be served under this Chapter can be served on a person who is subject to a banning order.

### ***Section 68 – Offences under this Chapter***

113. Subsection (1) makes it an offence to fail to comply with (a) any requirements of a banning order; (b) a requirement imposed by a constable under section 61(1) for giving effect to an order in relation to regulated football matches outside the United Kingdom and (c) a requirement imposed by the football banning orders authority under section 61(4) to report to a police station at particular times and, if required, to surrender their passport or make a declaration that they do not have a passport.
114. Subsection (2) provides that a person charged with an offence under subsection (1) will have a defence if they can prove that they had a reasonable excuse for breaching the requirements imposed by a banning order or a notice issued under a banning order.
115. Subsection (3) provides that the punishment on summary conviction for breaching any requirements of a banning order or failing to comply with a requirement imposed by a constable under section 61(4) is imprisonment for up to 6 months, a fine of up to level 5 (£5,000) or both.
116. Subsection (4) provides that the punishment on summary conviction for failing to comply with a requirement imposed by the football banning orders authority under section 61(1) is a fine not exceeding level 2 on the standard scale (£500).
117. Subsection (5) makes it an offence to provide false or misleading information in support of an application for exemption from the reporting and passport surrender requirements. That offence is punishable by summary conviction with a fine of up to level 3 on the standard scale (£1,000).

### ***Section 69 – Interpretation of Chapter 1***

118. This section sets out who is the football banning orders authority and defines passport for the purposes of this Chapter. The first football banning orders authority will be

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the chief constable of Strathclyde Police who will establish a team to administer the orders on behalf of all Scottish forces. This section also provides that Ministers may by order made by statutory instrument subject to negative resolution procedure appoint a different authority to take on the role and functions of the football banning orders authority.

## ***Chapter Two: Public Processions***

### ***Section 70 – Notification of public processions***

119. This section makes amendments to section 62 of the Civic Government (Scotland) Act 1982 (“the 1982 Act”). The section extends the notice period before which the procession organiser must notify the local authority of their intention to process from 7 days to 28 days, to give local authorities and the police more time to consider applications; removes the ability of local authorities to grant exemptions from the requirement to notify them of a procession; and provides that section 62 does not apply to funeral processions organised by funeral directors. It also provides that the Scottish Ministers can prescribe, by order made by statutory instrument subject to negative resolution procedure, other processions to be exempt from the notification requirements. This section also allows local authorities to waive the 28-day notification requirement in exceptional circumstances.

### ***Section 71 – Powers and duties of local authorities***

120. This section makes amendments to section 63 of the 1982 Act. It enables local authorities to consider a wider range of issues when deciding whether a procession should take place or if conditions should be placed on it, such as the risk of damage to property or disruption to the life of the community and whether the procession would place an excessive burden on the police. This section makes it clear that local authorities can impose conditions on funeral processions and any processions which are specified in an order made by the Scottish Ministers under section 62(11B)(b) of the 1982 Act. Processions which are specified in such an order can also be prohibited by local authority). This section also requires local authorities to maintain lists of processions held and prohibited in their areas and make them available to the public, and provide any information about processions to any member of the public who requests it.

### ***Section 72 – Minor amendments of 1982 Act***

121. This section makes some minor amendments to the 1982 Act including the addition of a new section 65A to require local authorities to have regard to guidance issued by the Scottish Ministers when carrying out their functions under Part V of the 1982 Act which contains the law on public processions in Scotland.
122. Annex A contains a copy of Part V of the 1982 Act as amended by this Act.

## ***Chapter Three: Other Provisions***

### ***Offensive Weapons***

#### ***Section 73 – Increase in maximum term of imprisonment for certain offences***

123. This section amends sections 49(1)(a) (penalty on summary conviction for offence of possessing an article with a blade or point in a public place) and 49A(5)(a)(i) (penalty on summary conviction for offence of possessing an article with a blade or point on school premises) of the Criminal Law (Consolidation) (Scotland) Act 1995 by increasing the maximum term of imprisonment on summary conviction from 6 to 12 months. It also amends section 49(1)(b) (penalty on indictment for offence of possessing an article with a blade or point in a public place) and section 49A(5)(a)(ii) (penalty on indictment for offence of possessing an article with a blade or point on school premises) of the

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Criminal Law (Consolidation) (Scotland) Act 1995 by increasing the maximum term of imprisonment for these offences from 2 to 4 years.

#### ***Section 74 – Amendment of requirements for exercise of certain powers of arrest***

124. This section amends the following sections of the Criminal Law (Consolidation) (Scotland) Act 1995:

- section 47(3) (power of constable to arrest without warrant person suspected of possessing an offensive weapon in a public place);
- section 48(3) (power of constable to arrest without warrant person suspected of obstructing search for offensive weapon); and
- section 50(3) (power of constable to arrest without warrant person suspected of contravening section 49(1) or 49A(1) or (2)).

These amendments widen constables' powers of arrest in relation to offences under:

- section 47(1) (offence of carrying offensive weapon in a public place);
- section 48(2) (offences of obstructing a constable or concealing an offensive weapon from a constable);
- section 49(1) (offence of having in public place article with blade or point); and
- section 49A(1) and (2) (offence of having article with blade or point (or offensive weapon) on school premises).

#### ***Section 75 – Sale of knives and articles with blade or point to young persons***

125. This section amends section 141A(1) of the Criminal Justice Act 1988 (offence of sale of knives and certain articles with blade or point to persons under sixteen) by increasing the minimum age of persons to whom such items (other than knives designed for domestic use) may be sold, from 16 to 18 years. The amendment also makes clear that swords are included in the list of items to which this provision applies.

### **Fireworks**

#### ***Section 76 – Possession of prohibited fireworks: powers of search and arrest***

126. This section amends the Fireworks Act 2003 to give police powers of search, seizure and arrest without warrant in relation to possession offences created by regulations under that Act. Sections 3 and 5 of the 2003 Act enable regulations to make provision prohibiting the possession of fireworks by persons of a specified age and provision prohibiting the possession of fireworks of a specified description including by persons of a specified description. At present, the [Fireworks Regulations 2004 \(2004/1836\)](#) provide that subject to regulation 6 of those regulations no person under the age of 18 years shall possess an adult firework in a public place and no person shall possess a firework classified as category 4 under Part 1 of BS 7114, which are generally the largest and most powerful fireworks.

127. The new provision sets out the powers of a constable in relation to searching, detaining or arresting a person when the constable has reasonable grounds to believe that the person is committing an offence in relation to the possession of fireworks, as well as powers of seizure.

## **Control of Sex Offenders**

### ***Section 77 – Powers to take data and samples from persons subject to notification requirements***

128. **Section 77** amends the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) by inserting new sections 19AA and 19AB into that Act. The new sections allow the police to take relevant physical data (primarily fingerprints and palm prints), or any DNA samples from persons subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (“the 2003 Act”), a risk of sexual harm order (RSHO) under section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act (“the 2005 Act”) or section 123 of the 2003 Act, if a DNA sample or data from these individuals is not already held on the database, or if such material has been lost or destroyed. This section also amends section 87 of the 2003 Act so that the police can also take a DNA sample as well as any relevant physical data from a registered sex offender who attends a police station to notify their details to the police.
129. Subsection (1) of section 19AA provides that these arrangements only apply to persons subject to the notification requirements or RSHOs.
130. Subsection (2) of section 19AA provides that the police will be able to take samples or data from any person who was subject to the notification requirements or a RSHO at the time the provisions commence, as well as from an individual who becomes subject to notification requirements or RSHO after commencement. The police will not be able to take samples or data from any person who may have been subject to the notification requirements or RSHO before the date of commencement, if that person was no longer subject to the notification requirements or a RSHO at that date.
131. Subsection (3) of section 19AA provides that a constable, or police custody and security officer (at a constable’s direction) can take any samples or data by certain means specified in section 18(6) and (6A) of the 1995 Act. Any samples which are retained from a registered sex offender can be retained indefinitely.
132. Subsection (4) of section 19AA enables the police to take samples or data from a person who is subject to a RSHO made under section 123 of the 2003 Act, if they reasonably believe that that person is resident in Scotland. The police will therefore be able to take and retain fingerprints and DNA samples from individuals who are subject to RSHOs (or who become subject to RSHOs) made in England, Wales or Northern Ireland, if these people move to Scotland.
133. Subsection (5) of section 19AA provides that the police must not exercise their powers under this section, if samples or data have already been taken from a sex offender who is subject to the notification requirements, or a person who is subject to a RSHO, under sections 19(2) or 19A(2) of the 1995 Act. However, if any samples or data which have previously been taken under sections 19(2) or 19A(2) of the 1995 Act have been lost or destroyed, the police will be able to use their powers under this section to take further samples or data.
134. Subsection (6) of section 19AA provides that the police can take further samples or data under this section, if the data and samples that were initially taken in exercise of the power in this section have been lost or destroyed, or were not suitable or sufficient for analysis.
135. Subsection (7) of section 19AA provides that the police may only take samples or data under this section at a police station, prison, hospital or any other place where a person is held in legal custody.
136. Subsection (8) of section 19AA provides that the police can only exercise their power to take samples or data in a police station when a person has been required to come to the station so their samples and data can be taken, or if a person to whom this section applies, is held in custody in a police station after being arrested or detained for any

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offence. This means that in appropriate circumstances, the police can exercise their powers under section 19AA to take samples and data from any relevant person who is brought into custody, without having to ask that person to return to the station on another occasion for that specific purpose.

137. Subsection (9) of section 19AA provides that the police must give a relevant person at least seven days notice of the requirement to attend a police station to provide samples or data. Any such notice which the police issue to a person who is subject to a RSHO must warn that person that they will commit an offence if they fail, without reasonable excuse, to comply with the requirements under this section.
138. Subsection (10) of section 19AA provides that if a relevant person is required to attend a police station to give samples or data under subsection (8) because a previous sample has either been lost or destroyed or is deemed unsuitable for the purposes of analysis, then these circumstances shall be explained to the person.
139. Subsection (11) of section 19AA provides that if a relevant person is in a police station due to having been arrested or detained for an offence, and a sample is to be taken from that person under this section, then this shall be explained to the person.
140. Subsection (12) of section 19AA confers a power of arrest on the police if a relevant person fails to comply with the obligations to attend a police station within the requested timeframe.
141. Subsection (13) of section 19AA ensures that any of the powers which are exercised in this section are without prejudice to the exercise of any powers in section 18 of the 1995 Act. If the police have taken any samples or data from an individual under section 19AA of the 1995 Act, they will still be able to take samples or data under section 18 of the 1995 Act and use these for investigating an offence, if an individual is arrested or detained under suspicion of having committed an imprisonable offence.
142. Subsection (1) of section 19AB provides that the arrangements under this section only apply to persons who are subject to risk of sexual harm orders (RSHO) under section 2 of the 2005 Act or section 123 of the 2003 Act.
143. Subsection (2) of section 19AB provides that a person subject to a RSHO will commit an offence if they do not comply with a notice issued by the police under section 19AA(8) (a) of the 1995 Act, or if they attend the police station but refuse to provide (or allow to be taken) a required sample or data. However, an offence will not be committed where the person has a "reasonable excuse."
144. Subsections (4), and (6) of section 19AB provide that any samples or data taken from a person subject to a RSHO under section 19AA(3) shall be destroyed as soon as possible following the expiry of the RSHO, unless prior to the duty to destroy such samples or data the individual in question is convicted of an offence or becomes subject to the notification requirements of the 2003 Act. In such circumstances, the samples and data will be retained indefinitely.
145. Subsection (5) provides that an RSHO shall not be deemed to have expired for the purpose of sections 19AA and 19AB of the 1995 Act, if it is suspended pending the outcome of an appeal under section 6(2) of the 2005 Act or any corresponding power exercised in the other UK jurisdictions.
146. Subsections (3) and (4) of section 77 make consequential amendments to sections 19 and 19A of the 1995 Act. These changes mean that the police will not be able to exercise their powers to take data and samples from a relevant person under those sections, if the police have already taken this material under section 19AA of the 1995 Act. However, the police will be able to exercise their powers under sections 19 or 19A of the 1995 Act, if any samples or data which have been taken under section 19AA, have been lost or destroyed.

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147. Subsection (5) of section 77 amends section 19B of the 1995 Act to enable the police to use reasonable force in exercising the powers in section 19AA, but only when taking samples or data from a person who is subject to the notification requirements of the 2003 Act. The police cannot use reasonable force to take samples and data from a person who is subject to a RSHO.
148. Subsection (7) of section 77 amends section 87 of the 2003 Act by replacing subsections (4) and (5) with a new subsection (5A) which operates alongside the notification requirements provided for in sections 83(1), 84(1) or 85(1) of the 2003 Act. The police will be able to take samples or data from a relevant sex offender when he or she attends a police station to notify their details to the police. This will enable the police to obtain samples or data from these offenders without having to give them notice to return to a police station so this information can be obtained. Any samples and prints taken under section 87(5A) can be retained indefinitely.
149. Subsection (8) of section 77 inserts a definition of “relevant physical data” into section 88 of the 2003 Act. This definition has the same meaning as that in section 18(7A) of the 1995 Act.
150. Subsection (9) of section 77 amends section 91(1)(a) of the 2003 Act to make it an offence for a relevant sex offender to fail to provide or to allow to be taken from them any sample or data.

**Section 78 – Sex offender notification requirements**

151. **Section 78** amends the 2003 Act to require relevant sex offenders in Scotland to provide the police with details of their passports in order to comply with the notification requirements of Part 2 of the 2003 Act. This is achieved by amending sections 83, 84, 87, 91, and 138 of the 2003 Act, which contain the statutory powers governing the notification requirements. The amendment to section 83 also confers power on the Scottish Ministers to make regulations subject to affirmative resolution procedure which prescribe further information that sex offenders are required to provide to the police.
152. Subsection (2) amends section 83 of the 2003 Act to:
- insert subsection (5)(h) which provides that relevant sex offenders are required to provide details of their passports to the police in order to comply with the notification requirements;
  - insert subsection (5)(i) which allows the Scottish Ministers to make regulations, subject to affirmative resolution procedure, requiring those who are subject to the notification requirements to notify other relevant information about themselves or their personal details as are prescribed in the regulations;
  - insert subsection (5A) which provides the details of the passport that are required to be provided. This includes the passport number, and dates of issue and expiry.
153. Subsection (3) amends section 83 of the 2003 Act to insert a subsection (8) to provide a definition of a passport. The definition includes passports issued by countries and authorities outside the UK. This means that a relevant sex offender may have to provide the police with details of all passports which he or she holds.
154. Subsection (5) amends section 84 of the 2003 Act to insert subsections (e), and (f), which provide that a relevant sex offender has 3 days to notify the police if he or she has lost or ceases to have a passport, or if a new passport is obtained. A new subsection (g) is also inserted in consequence of the new power in section 83(5)(i) to prescribe further notification requirements. The power allows Ministers to prescribe by regulations, subject to affirmative resolution procedure, the events in relation to any information prescribed under section 83(5)(i) that will require to be notified under this section.

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155. Subsection (7) amends section 87 of the 2003 Act to insert subsection (5B) which states that when notifying details under the 2003 Act, if requested to do so, a relevant sex offender must produce his or her passport to the police so that it may be examined.
156. Subsection (8) amends section 91 of the 2003 Act to provide that a person commits an offence if he or she fails to comply with section 87(5B).
157. Subsection (9) amends section 138 of the 2003 Act to provide that regulations made under sections 83(5)(i) and 84(1)(g) will be subject to the Scottish Parliament's affirmative resolution procedure.

### ***Section 79 – Information about release: power to require giving of specified information***

158. **Section 79** amends section 96 of the 2003 Act. The Scottish Ministers may make regulations under section 96 which require any person who is responsible for a relevant sex offender to inform any person who is specified in the regulations of any occasion when that offender is transferred or released from an institution. New subsection (2A) provides that any regulations made by the Scottish Ministers under section 96 may set out what information about a relevant sex offender a responsible person is required to provide to any specified person. The regulations may also set out when a responsible person is required to give to a specified person a photograph of any part of the relevant sex offender (so that, for example, photographs may be taken of distinguishing features such as a tattoo, as well as of an offender's face).
159. New subsection (2B) provides that the meaning of "photograph" in the section is the same as the meaning in section 88(2) of the 2003 Act.
160. Subsection (3) allows the regulations made under section 96 of the 2003 Act to prescribe different and specific types of information for different purposes.

### ***Section 80 – Police powers of entry to and examination of relevant offender's home address***

161. **Section 80** amends the 2003 Act by inserting a new section 96A that provides that the police can apply to a sheriff to obtain a warrant to enter, examine and search the premises of sex offenders who are subject to the notification requirements under Part 2 of the 2003 Act.
162. Subsection (1) of section 96A of the 2003 Act gives a sheriff power to issue such a warrant, on application of a senior police officer, to enter and search the premises of a relevant sex offender and if necessary to use reasonable force, if he or she is satisfied that the necessary conditions are met.
163. Under subsection (2) of section 96A the application for a warrant to enter, examine, and search will only be granted if the sheriff is satisfied that:
  - the address has been notified as the relevant sex offender's home address or an address at which the relevant sex offender resides or is regularly found;
  - the relevant sex offender is living in the community and is not in legal custody, prison, detained in hospital or outside the UK (subsection (4));
  - a warrant would assist the police in carrying out a risk assessment as to the likelihood of a relevant sex offender committing another sexual offence (subsection (3)); and
  - the police have previously tried to gain access to the said premises on more than one occasion but have failed to do so.

*These notes relate to the Police, Public Order and Criminal Justice (Scotland)  
Act 2006 (asp 10) (asp 10) which received Royal Assent on 4 July 2006*

164. Subsection (5) provides that the sheriff will not need to determine the application for a warrant, without the need to hear from the relevant sex offender or anyone with an interest in the premises.
165. Subsection (6) provides that the warrant to enter, examine, and search premises does not allow the police to seize and retain anything which they find in the premises.
166. Subsection (7) states that the police must execute the warrant at a reasonable hour.
167. Subsection (8) provides that the warrant will expire after one month from the date when the warrant is granted. The police will not be able to execute the warrant after this date.
168. Subsection (9) provides that the warrant can only be executed on one occasion.
169. Subsection (10) provides that the powers described above will not prejudice any other police powers to enter, examine, search, and seize (which are contained in other legislation or in common law) in the normal way if they believe there is evidence to support the fact that an offence may have been committed.
170. Subsection (11) provides definitions for various terms.