



# Abusive Behaviour and Sexual Harm (Scotland) Act 2016

2016 asp 22

## PART 2

### SEXUAL HARM

## CHAPTER 3

### SEXUAL HARM PREVENTION ORDERS

*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,
  - (b) acquitted of an offence listed in schedule 3 of the 2003 Act by reason of the special defence set out in section 51A of the 1995 Act, or
  - (c) found by a court, in respect of an offence listed in schedule 3 of the 2003 Act, 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) The court dealing with the person may (in addition to dealing with the person in any other way) make a sexual harm prevention order (see section 16(1)) against the person.
- (3) A court may make a sexual harm prevention order under this section—
  - (a) at its own instance, or
  - (b) on the motion of the prosecutor.
- (4) A court may make a sexual harm prevention order only if it is satisfied that 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 person, or

---

*Status: This is the original version (as it was originally enacted).*

---

- (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the person outside the United Kingdom.
- (5) Before deciding whether to make a sexual harm prevention order under this section, a court must—
- (a) if subsection (6) applies, hold a hearing at which the person against whom the order would be made and the prosecutor may appear or be represented,
  - (b) if subsection (6) does not apply, either—
    - (i) hold a hearing at which the person against whom the order would be made and the prosecutor may appear or be represented, or
    - (ii) give an opportunity to make written representations to the person against whom the order would be made and the prosecutor.
- (6) This subsection applies if, not later than rules of court may provide, the person against whom the order would be made gives notice to the court of a wish for a hearing to be held.

## **12 Making of order against qualifying offender on application to sheriff**

- (1) On the application of the chief constable, an appropriate sheriff may make a sexual harm prevention order (see section 16(1)) against a person.
- (2) An appropriate sheriff may make a sexual harm prevention order against a person only if satisfied that—
- (a) the person is a qualifying offender, and
  - (b) the person’s behaviour since the appropriate date makes it necessary to make such an order, for the purpose of—
    - (i) protecting the public, or any particular members of the public, from sexual harm from the person, or
    - (ii) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the person outside the United Kingdom.
- (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
    - (iii) found by a court, in respect of such an offence, to be under a disability and to have done the act or made the omission charged, and
  - (b) the sheriff who is considering the application for the sexual harm prevention order is satisfied that there was a significant sexual aspect to the person’s behaviour in committing the offence.

### **14 Qualifying offender: conviction etc. elsewhere in United Kingdom**

This section applies to a person if the person has, whether before or after this Chapter comes into force, in England and Wales or Northern Ireland—

- (a) been convicted of an offence listed in schedule 3 or schedule 5 of the 2003 Act,
- (b) been found not guilty of such an offence by reason of insanity,
- (c) been found by a court, in respect of such an offence, to be under a disability and to have done the act or made the omission charged, or
- (d) been cautioned in respect of such an offence following an admission of it.

## 15 Qualifying offender: conviction etc. outside United Kingdom

- (1) This section applies to a person if, whether before or after this Chapter comes into force, under the law in force in a country outside the United Kingdom—
- (a) the person has been convicted of an equivalent offence (whether or not the person has been punished for it),
  - (b) a court exercising jurisdiction under that law has made in respect of an equivalent offence a finding equivalent to a finding that the person is not guilty by reason of insanity,
  - (c) such a court has made in respect of an equivalent offence a finding equivalent to a finding that, in respect of the offence, the person is under a disability and has done the act or made the omission charged, or
  - (d) the person has been cautioned, or received another type of warning equivalent to a caution in England and Wales or Northern Ireland, in respect of an equivalent offence following an admission of it.
- (2) In subsection (1), “equivalent offence” means an act or omission which, at the time it was done or made—
- (a) constituted an offence under the law in force in the country concerned, and
  - (b) would have constituted an offence listed in schedule 3 (other than at paragraph 60) or schedule 5 of the 2003 Act if it had been done or made in any part of the United Kingdom.
- (3) For the purposes of subsection (2), an act or omission punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law however it is described in that law.
- (4) In relation to an application under section 12 where subsection (1) is alleged to apply, subsection (2)(b) is to be taken to be satisfied unless—
- (a) not later than rules of court may provide, the person against whom the order is sought (“the respondent”) serves on the chief constable a notice—
    - (i) stating that, on the facts as alleged with respect to the act or omission concerned, it is not in the respondent’s opinion satisfied,
    - (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.