



# Abusive Behaviour and Sexual Harm (Scotland) Act 2016

2016 asp 22

## PART 2

### SEXUAL HARM

## CHAPTER 4

### SEXUAL RISK ORDERS

#### *Meaning of harm*

#### **26 Meaning of harm**

In this Chapter, “harm”, from a person, means physical or psychological harm caused by the person doing an act of a sexual nature.

#### *Making of order*

#### **27 Making of order**

- (1) On the application of the chief constable, an appropriate sheriff may make a sexual risk order (see section 28(1)) against a person (“the respondent”).
- (2) An appropriate sheriff may make a sexual risk order only if satisfied that the respondent has (whether before or after this Chapter comes into force) done an act of a sexual nature as a result of which it is necessary to make such an order for the purpose of—
  - (a) protecting the public, or any particular members of the public, from harm from the respondent, or
  - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the respondent outside the United Kingdom.

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- (3) In this section, an “appropriate sheriff” means—
- (a) a sheriff in whose sheriffdom the respondent resides,
  - (b) a sheriff in whose sheriffdom the respondent is believed by the chief constable to be,
  - (c) a sheriff to whose sheriffdom the respondent 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 respondent did an act of a sexual nature giving rise to reasonable cause to believe that it is necessary for a sexual risk order to be made.
- (4) Before determining an application under this section, a sheriff must—
- (a) if subsection (5) applies, hold a hearing at which the respondent and the chief constable may appear or be represented,
  - (b) if subsection (5) does not apply, either—
    - (i) hold a hearing at which the respondent and the chief constable may appear or be represented, or
    - (ii) give an opportunity to make written representations to the respondent and the chief constable.
- (5) This subsection applies if, not later than rules of court may provide, the respondent gives notice to the sheriff of a wish for a hearing to be held.

*What order does*

## **28 Content and duration of order**

- (1) A sexual risk order is an order prohibiting the person against whom it is made from doing, or requiring the person to do, a thing or things described in the order.
- (2) A prohibition or requirement contained in a sexual risk order applies throughout the United Kingdom (unless expressly confined to particular localities).
- (3) A prohibition or requirement in a sexual risk order has effect for a fixed period, specified in the order, of not less than 2 years.
- (4) Different periods may be provided for different prohibitions or requirements.
- (5) The prohibitions and requirements which may be imposed in a sexual risk order are those necessary for the purpose of—
  - (a) protecting the public, or any particular members of the public, from harm from the respondent, or
  - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the respondent outside the United Kingdom.
- (6) Where a sheriff makes a sexual risk order in relation to a person already subject to such an order (whether made by that sheriff or another), the earlier order ceases to have effect.
- (7) A sexual risk order ceases to have effect, if it has not already done so, when all of the prohibitions or requirements in it have ceased to have effect.

## **29 Prohibitions on foreign travel**

- (1) A prohibition on foreign travel contained in a sexual risk order must not be for a period of more than 5 years.
- (2) A “prohibition on foreign travel” means—
  - (a) a prohibition on travelling to any country outside the United Kingdom named or described in the order,
  - (b) a prohibition on travelling to any country outside the United Kingdom other than a country named or described in the order, or
  - (c) a prohibition on travelling to any country outside the United Kingdom.
- (3) Subsection (1) does not prevent a prohibition on foreign travel from being extended for a further period (of no more than 5 years each time) under section 30.
- (4) A sexual risk order that contains a prohibition within subsection (2)(c) must require the person who is subject to the order to surrender all of the person’s passports at a police station specified in the order—
  - (a) on or before the date when the prohibition takes effect, or
  - (b) within a period specified in the order.
- (5) In this section, “passport” means—
  - (a) a United Kingdom passport within the meaning of the Immigration Act 1971,
  - (b) a passport issued by or on behalf of the authorities of another country,
  - (c) a passport issued by or on behalf of an international organisation,
  - (d) a document that can be used (in some or all circumstances) instead of a passport.
- (6) Any passports surrendered in accordance with the requirement must be returned as soon as reasonably practicable after the person ceases to be subject to a sexual risk order containing such a prohibition (unless the person is subject to an equivalent prohibition under another order).
- (7) Subsection (6) does not apply in relation to—
  - (a) a passport issued by or on behalf of the authorities of another country if the passport has been returned to those authorities,
  - (b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

### *Variation, renewal and discharge*

## **30 Variation, renewal and discharge**

- (1) On the application of a person mentioned in subsection (2), an appropriate sheriff may make an order varying, renewing or discharging a sexual risk order.
- (2) The persons are—
  - (a) the person against whom the order has effect (“the subject”),
  - (b) the chief constable.
- (3) In subsection (1), an “appropriate sheriff” means—
  - (a) the sheriff who made the sexual risk order,
  - (b) another sheriff of the same sheriffdom,

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- (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.
- (4) A sexual risk 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 harm from the subject, or
  - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from 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.
- (5) A sexual risk 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 harm from the subject, or
  - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the subject outside the United Kingdom.
- (6) Before determining an application under this section, a sheriff must—
- (a) if subsection (7) applies, hold a hearing at which the subject and the chief constable may appear or be represented,
  - (b) if subsection (7) does not apply, either—
    - (i) hold a hearing at which the subject and the chief constable may appear or be represented, or
    - (ii) give an opportunity to make written representations to the subject and the chief constable.
- (7) This subsection applies if, not later than rules of court may provide, the subject or the chief constable gives notice to the sheriff of a wish for a hearing to be held.

### *Interim orders*

## **31 Interim orders**

- (1) On the application of the chief constable, an appropriate sheriff may make an interim sexual risk order against a person in respect of whom the chief constable is applying for an order under section 27.
- (2) An interim sexual risk order may be made if the sheriff—
  - (a) considers that there is a prima facie case that the person has done an (or, as the case may be, the) act of a sexual nature which is being relied on for the purposes of subsection (2) of section 27 in relation to the application for an order under that section, and
  - (b) considers it just to make an interim sexual risk order.

- (3) An interim sexual risk order is an order prohibiting the person against whom it is made from doing, or requiring that person to do, a thing or things described in the order.
- (4) A prohibition or requirement contained in an interim sexual risk order applies throughout the United Kingdom (unless expressly confined to particular localities).
- (5) A prohibition or requirement contained in an interim sexual risk order has effect for a fixed period, specified in the order.
- (6) Different periods may be provided for different prohibitions or requirements.
- (7) An application for an interim sexual risk order—
  - (a) may be made in the application for an order under section 27 to which it relates, or
  - (b) if the application for that order has been made, may be made in such way as rules of court may provide.
- (8) An interim sexual risk order ceases to have effect, if it has not already done so, when either of the following events occurs—
  - (a) the related application for an order under section 27 is determined, or
  - (b) all of the prohibitions or requirements contained in it have ceased to have effect.
- (9) On the application of a person mentioned in subsection (10), an appropriate sheriff may vary, renew or discharge an interim sexual risk order.
- (10) Those persons are—
  - (a) the person against whom the interim sexual risk order has effect,
  - (b) the chief constable.
- (11) In this section, an “appropriate sheriff” means—
  - (a) the sheriff to whom the related application for an order under section 27 is made, or
  - (b) another sheriff of the same sheriffdom.

### *Appeals*

## **32 Appeals**

- (1) A decision of a sheriff mentioned in subsection (2) may be appealed against as if it were a decision constituting final judgment in civil proceedings within the meaning of the 2014 Act.
- (2) A decision to—
  - (a) make, or refuse to make, an order under section 27 or 31,
  - (b) vary, renew or discharge, or refuse to vary, renew or discharge, an order made under either of those sections.
- (3) An order under section 27 made on appeal is to be regarded for the purposes of section 30(1) as having been made by the sheriff who determined the application for the order at first instance.

*Requirement to serve order***33 Requirement for clerk of court to serve order**

- (1) Where a court makes, varies or renews a sexual risk order or an interim sexual risk order, the clerk of the court must serve a copy of the order as made, varied or renewed (as the case may be) on the person against whom the order has effect.
- (2) Where a court discharges a sexual risk order or an interim sexual risk order, the clerk of the court must serve a copy of the order effecting the discharge on the person against whom the order had effect.
- (3) In this section, “court” includes “sheriff”.

*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.
- (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).

**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—
    - (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.

### *Interpretation*

## **36 Interpretation of Chapter**

In this Chapter—

“vulnerable adult” means a person who is 18 or over whose ability to protect himself or herself from physical or psychological harm is significantly impaired through mental or physical disability or illness, through old age, or otherwise,

“the chief constable” means the chief constable of the Police Service of Scotland,

“child” means a person under 18,

“interim sexual risk order” means (except in section 31(1) to (3)) an order made under section 31,

“prohibition on foreign travel” has the meaning given by section 29(2),

“the public” means the public in the United Kingdom,

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“sexual risk order” means (except in sections 27 and 28(1)) an order made under section 27.