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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 51 (C. 5)**

**JUSTICE  
POLICE**

**The Abusive Behaviour and Sexual Harm (Scotland)  
Act 2016 (Commencement No. 3, Transitional  
and Saving Provisions) Regulations 2023**

*Made* - - - - *21st February 2023*  
*Laid before the Scottish*  
*Parliament* - - - - *23rd February 2023*  
*Coming into force* - - *31st March 2023*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 45(2) and (3) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016(1) and all other powers enabling them to do so.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (Commencement No. 3, Transitional and Saving Provisions) Regulations 2023 and come into force on 31 March 2023.

(2) In these Regulations—

- “foreign travel order” means an order under section 114 of the 2003 Act,
- “interim risk of sexual harm order” means an order under section 5 of the 2005 Act,
- “risk of sexual harm order” means an order under section 2 of the 2005 Act,
- “sexual harm prevention order” means an order under section 11 or 12 of the Act,
- “sexual offences prevention order” means an order under section 104 or 105 of the 2003 Act,
- “sexual risk order” means an order under section 27 of the Act,
- “the 2003 Act” means the Sexual Offences Act 2003(2),

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(1) 2016 asp 22.

(2) 2003 c. 42. Sections 104, 105 and 114 are repealed by section 39 of the Act, subject to saving and transitional provision in section 40.

“the 2005 Act” means the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005(3),

“the Act” means the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

### **Appointed day**

2. 31 March 2023 is the day appointed for the coming into force of all the provisions of the Act, so far as not already in force.

### **Transitional provisions**

3.—(1) Where a court makes a sexual harm prevention order in relation to a person already subject to a sexual offences prevention order or a foreign travel order, the earlier order ceases to have effect.

(2) Where a court makes a sexual risk order in relation to a person already subject to a risk of sexual harm order or a foreign travel order, the earlier order ceases to have effect.

### **Saving provisions**

4.—(1) In schedule 2 paragraph 1 of the Act, sub-paragraphs (2)(a) and (3) do not apply in relation to a risk of sexual harm order which continues to have effect under section 40 of the Act.

(2) In schedule 2 paragraph 2 of the Act, the repeals made by sub-paragraphs (2)(c) and (3)(c) do not apply in relation to a risk of sexual harm order or interim risk of sexual harm order to the extent that such an order or interim order continues to have effect under section 40 of the Act.

(3) The repeals made by schedule 2 paragraph 4 of the Act do not apply in relation to an application for a sexual offences prevention order or interim sexual offences prevention order made before 31 March 2023, or to a sexual offences prevention order or interim sexual offences prevention order which continues to have effect under section 40 of the Act.

(4) The repeal made by schedule 2 paragraph 5(a) does not apply in relation to an offence of breaching a risk of sexual harm order or interim risk of sexual harm order where that offence was committed—

(a) before 31 March 2023, or

(b) in respect of an order or interim order which continues to have effect under section 40 of the Act.

(5) The repeals made by schedule 2 paragraph 7 of the Act do not apply in relation to an application for a risk of sexual harm order or interim risk of sexual harm order which is made before 31 March 2023, or to a risk of sexual harm order or interim risk of sexual harm order which continues to have effect under section 40 of the Act.

(6) The repeal made by schedule 2 paragraph 8 of the Act does not apply in relation to an application for a risk of sexual harm order which is made before 31 March 2023, or to a risk of sexual harm order which continues to have effect under section 40 of the Act.

(7) The repeal made by schedule 2 paragraph 9 of the Act does not apply in relation to a sexual offences prevention order which continues to have effect under section 40 of the Act.

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(3) 2005 asp 9. Sections 2 and 5 are repealed by section 39 of the Act, subject to saving and transitional provision in section 40.

St Andrew's House,  
Edinburgh  
21st February 2023

*KEITH BROWN*  
A member of the Scottish Government

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations bring into force the following provisions of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (“the Act”) on 31 March 2023.

Sections 10 to 25, creating new sexual harm prevention orders, to be made either as part of the process of dealing with an individual for a relevant offence (see section 11) or following an application to the sheriff in respect of a qualifying offender (see sections 12 to 15). Breach of such an order will be an offence (section 24).

Sections 26 to 36, creating new sexual risk orders, which may be made following an application to the sheriff in respect of individuals who are not being dealt with for a relevant offence and are not qualifying offenders, but who are considered by the court to pose a risk of sexual harm from which the public or particular persons require protection (see section 27). Breach of such an order will be an offence (section 34).

Sections 37 and 38, making provision for the enforcement in Scotland of corresponding orders from other UK jurisdictions.

Sections 39 and 40, repealing legislation relating to previous types of order which are replaced by these new orders, and making saving and transitional provision.

Section 43 and schedule 2 (except in relation to paragraph 6 of that schedule which is already in force), making minor and consequential modifications to other legislation.

Regulation 3 of these Regulations provides that where one of the new orders is made in respect of a person who is already subject to a corresponding order under repealed legislation (which may otherwise be preserved under section 40 of the Act), the previous order ceases to have effect.

Regulation 4 contains saving provision in respect of amendments and repeals made by schedule 2 of the Act, to preserve the previous law in relation to applications for previous types of order made before 31 March 2023 and individual orders of previous types which continue to have effect under the main saving provision in section 40 of the Act.

The Bill for the Act received Royal Assent on 28 April 2016. Sections 42, 44, 45 and 46 came into force the following day.

## NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

*(This note is not part of the Regulations)*

<i>Provision</i>	<i>Date of commencement</i>	<i>Instrument no.</i>
Section 1	24 April 2017	<a href="#">S.S.I. 2017/93</a>
Sections 2 to 4	3 July 2017	<a href="#">S.S.I. 2017/183</a>
Sections 5 to 9	24 April 2017	<a href="#">S.S.I. 2017/93</a>
Section 41	24 April 2017	<a href="#">S.S.I. 2017/93</a>
Section 43 for the purpose of commencing paragraph 6 of schedule 2	24 April 2017	<a href="#">S.S.I. 2017/93</a>

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<i>Provision</i>	<i>Date of commencement</i>	<i>Instrument no.</i>
Schedule 1	3 July 2017	<a href="#">S.S.I. 2017/183</a>
Paragraph 6 of schedule 2	24 April 2017	<a href="#">S.S.I. 2017/93</a>