

Draft Regulations laid before the Scottish Parliament under section 138(2) of the Sexual Offences Act 2003 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2013 No.

CRIMINAL LAW

The Sexual Offences Act 2003 (Notification Requirements) (Scotland) Regulations 2013

*Made - - - - 2013
Coming into force in accordance with regulation 1(2)
and (3)*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 85(5)(a), 86 and 138(4)(b) of the Sexual Offences Act 2003⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 138(2) of that Act⁽²⁾, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Sexual Offences Act 2003 (Notification Requirements) (Scotland) Regulations 2013.

(2) These Regulations, except regulation 2, come into force on the day after the day on which they are made.

(3) Regulation 2 comes into force on the day on which section 102(1) and (2) (sex offender notification requirements) of the Criminal Justice and Licensing (Scotland) Act 2010⁽³⁾ comes fully into force.

(4) These Regulations extend to Scotland only.

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- (1) [2003 c.42](#) (“the 2003 Act”). Section 85(5) was inserted by section 102(2)(c) of the Criminal Justice and Licensing (Scotland) Act 2010 ([asp 13](#)) (“the 2010 Act”). Section 86 was amended by section 102(3) of the 2010 Act. Section 138(4) was inserted by section 102(6)(b) of the 2010 Act. The functions of the Secretary of State, in or as regards Scotland, were transferred to the Scottish Ministers by virtue of section 142(6) of the 2003 Act and section 53 of the Scotland Act 1998 ([c.46](#)).
- (2) Section 138(2) has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#)) and was relevantly amended by section 102(6)(a) of the Criminal Justice and Licensing (Scotland) Act 2010.
- (3) [2010 asp 13](#). Section 102(1) and (2) came partially into force, for specific purposes only, on 28th March 2011 by virtue of article 2 of the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 8, Transitional and Savings Provisions) Order 2011 ([S.S.I. 2011/178](#)).

Periodic notification requirement for relevant offenders who have no sole or main residence in the United Kingdom

2. For the purpose of section 85(5)(a) of the Sexual Offences Act 2003, the applicable period is seven days.

Amendment of the Sexual Offences Act 2003 (Travel Notification Requirements) (Scotland) Regulations 2004

3.—(1) The Sexual Offences Act 2003 (Travel Notification Requirements) (Scotland) Regulations 2004(4) are amended as follows.

(2) In regulation 5 (notification to be given before leaving the United Kingdom)—

- (a) in paragraph (1), omit “for a period of three days or longer”; and
- (b) in paragraph (3), for “24” substitute “12”.

(3) In regulation 6 (other information to be disclosed in a notification under section 86(2))—

- (a) after paragraph (b), insert—
 - “(ba) the dates on which that offender intends to be in each country to which that offender intends to travel;”;
- (b) in paragraph (c), for “for that offender’s first night outside the United Kingdom” substitute “in each country to which that offender intends to travel”.

(4) For paragraph (2) of regulation 7 (change to information disclosed in a notification under section 86(2)), substitute—

- “(2) A further notification under paragraph (1)—
 - (a) must be given not less than 12 hours before the relevant offender’s intended departure from the United Kingdom; and
 - (b) may be given less than 24 hours (but not less than 12 hours) before the relevant offender’s intended departure from the United Kingdom, only if that offender has a reasonable excuse for being unable to give such notification before that time.”.

Transitional provision: travel notification requirements

4.—(1) Paragraph (2) applies where a relevant offender intends to leave the United Kingdom for a period of less than three days and that offender’s intended date of departure is on or before the eighth day after the day on which regulation 3 comes into force.

(2) Where this paragraph applies, the relevant offender is not required to give notification in accordance with regulation 5(1) of the Sexual Offences Act 2003 (Travel Notification Requirements) (Scotland) Regulations 2004, as amended by these Regulations.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the applicable period for the purpose of section 85(5)(a) of the Sexual Offences Act 2003 (“the Act”) and amend the Sexual Offences Act 2003 (Travel Notification Requirements) (Scotland) Regulations 2004 (“the principal Regulations”). They extend to Scotland only.

Part 2 of the Act requires certain sex offenders (“relevant offenders”) to notify specific personal information to the police. Section 85 of the Act requires relevant offenders to notify that information periodically, within the applicable period after their last notification under section 83 (initial notification), 84 (notification of changes) or 85 (periodic notification). Section 85(5) defines the “applicable period”. For relevant offenders who have no sole or main residence in the United Kingdom, and whose last notified home address was the address or location of a place mentioned in section 83(7)(b), it is such period (not exceeding one year) as the Scottish Ministers may prescribe in regulations. For all other relevant offenders, the applicable period is one year.

The Regulations prescribe the applicable period as seven days for relevant offenders who have no sole or main residence in the United Kingdom (regulation 2).

Section 86 of the Act provides for relevant offenders, who travel outside the United Kingdom, to be made subject to specific notification requirements. The principal Regulations set out those requirements, specifying the information to be notified and the notification process.

The Regulations amend regulations 5, 6 and 7 of the principal Regulations, to require relevant offenders—

- (a) to notify all foreign travel (instead of only foreign travel for 3 or more days) in accordance with section 86 of the Act and the principal Regulations (regulation 3(2)(a));
- (b) where they do not know certain travel information more than 7 days before the date of departure, to give a notification under section 86(2) of the Act not less than 12 (instead of 24) hours before that date (regulation 3(2)(b));
- (c) to disclose certain additional information (so far as they hold that information) in a notification under section 86(2), namely the dates on which they intend to be in each country to which they intend to travel and their accommodation arrangements in each such country (regulation 3(3));
- (d) to give any further notification under section 86(2) (notifying any additional travel information or changes to the information previously notified) not less than 12 (instead of 24) hours before the intended departure, and provide that such notification may be given less than 24 (but not less than 12) hours before the intended departure only if there is a reasonable excuse for not notifying earlier (regulation 3(4)).

The Regulations make transitional provision so that the amended travel notification requirements do not apply to relevant offenders intending to travel abroad, for fewer than 3 days, during the 8 day period after regulation 3 comes into force (regulation 4).

Section 91 of the Act makes it a criminal offence to fail, without reasonable excuse, to comply with a notification requirement under section 85(1) of the Act, or the principal Regulations, or to knowingly notify false information to the police in purported compliance with any such requirement. A person guilty of such an offence is liable, on summary conviction, to imprisonment for a term not exceeding 12 months (by virtue of section 45 of the Criminal Proceedings etc. (Scotland) Act 2007) or a fine

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Sexual Offences Act 2003 (Notification Requirements) (Scotland) Regulations 2013 No. 216

not exceeding the statutory maximum or both, or, on conviction on indictment, to imprisonment for a term not exceeding 5 years.