



# Sexual Offences Act 2003

## 2003 CHAPTER 42

### PART 3

#### GENERAL

#### 137 Service courts

- (1) In this Act [<sup>F1</sup>and in sections 343 to 354 of the Sentencing Code (sexual harm prevention orders on conviction)] —
- (a) a reference to a court order or a conviction or finding includes a reference to an order of or a conviction or finding by a service court,
  - (b) a reference to an offence includes a reference to an offence triable by a service court,
  - (c) “proceedings” includes proceedings before a service court, and
  - (d) a reference to proceedings for an offence under this Act includes a reference to proceedings for [<sup>F2</sup>an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is that offence.]
- (2) In sections 92 and [<sup>F3</sup>103A(1)] [<sup>F4</sup>of this Act, and section 345 of the Sentencing Code,] “court” includes a service court.
- [<sup>F5</sup>(3) Where the court making a sexual harm prevention order is a service court—
- (a) sections 103A(3) to (9), 103F and 103J [<sup>F6</sup>of this Act, and sections 355 to 357 of the Sentencing Code,] do not apply;
  - (b) sections 103A(1) and (2), 103B to 103E and 103G to 103I [<sup>F7</sup>of this Act, and sections 343 to 354 and 358 of the Sentencing Code,] apply—
    - (i) subject to paragraphs (c) and (d), and
    - (ii) as if they extended to the whole of the United Kingdom;
  - (c) in relation to an application under section 103E [<sup>F8</sup>of this Act, or an application under section 350 of the Sentencing Code,] in respect of a defendant who at the time of the application is a person subject to service law or a civilian subject to service discipline—

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- (i) the application may be made only by the defendant or a Provost Martial, and must be made to the Court Martial;
  - (ii) consent under section 103E(7) [<sup>F9</sup>of this Act, or section 350(7) of the Sentencing Code,] must be the consent of the defendant and a Provost Martial;
  - (iii) an appeal against the making of an order under section 103E [<sup>F10</sup>of this Act or section 350 of the Sentencing Code], or the refusal to make such an order, must be made to the Court Martial Appeal Court;
- (d) in relation to an application under section 103E [<sup>F11</sup>of this Act, or an application under section 350 of the Sentencing Code,] in respect of a defendant who at the time of the application is neither a person subject to service law nor a civilian subject to service discipline—
- (i) the application must be made to the Crown Court in England and Wales;
  - (ii) an appeal against the making of an order under section 103E [<sup>F12</sup>of this Act or section 350 of the Sentencing Code], or the refusal to make such an order, must be made to the Court of Appeal in England and Wales.]
- (4) In this [<sup>F13</sup>section—
- “civilian subject to service discipline” has the same meaning as in the Armed Forces Act 2006 (see section 370 of that Act);
  - “service court” means][<sup>F14</sup>the Court Martial or the Service Civilian Court];
  - [<sup>F15</sup>“subject to service law” has the same meaning as in the Armed Forces Act 2006 (see section 374 of that Act).]
- [<sup>F16</sup>(5) In subsection (1)(a) the reference to a service court includes a reference to the following—
- (a) the Court Martial Appeal Court;
  - (b) the Supreme Court on an appeal brought from the Court Martial Appeal Court;
  - (c) a court-martial;
  - (d) a Standing Civilian Court.]
- [<sup>F17</sup>(6) Paragraphs (c)(i) and (d)(i) of subsection (3) have effect, in relation to a sexual harm prevention order made by the Court Martial Appeal Court, as if the reference to a service court in that subsection included a reference to that court.]

#### Textual Amendments

- F1** Words in s. 137(1) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 24 para. 215(2)** (with [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F2** Words in s. 137(1)(d) substituted (28.3.2009 for certain purposes and otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378(1), 383(2), **Sch. 16 para. 211(2)**; S.I. 2009/812, **art. 3** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**
- F3** Word in s. 137(2) substituted (8.3.2015) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), **Sch. 5 para. 7(2)** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/373, art. 2(e)
- F4** Words in s. 137(2) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 24 para. 215(3)** (with [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F5** S. 137(3) substituted (8.3.2015) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), **Sch. 5 para. 7(3)** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/373, art. 2(e)

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- F6** Words in s. 137(3)(a) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 215(4)** (with Sch. 27); S.I. 2020/1236, reg. 2
- F7** Words in s. 137(3)(b) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 215(5)** (with Sch. 27); S.I. 2020/1236, reg. 2
- F8** Words in s. 137(3)(c) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 215(6)(a)** (with Sch. 27); S.I. 2020/1236, reg. 2
- F9** Words in s. 137(3)(c)(ii) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 215(6)(b)** (with Sch. 27); S.I. 2020/1236, reg. 2
- F10** Words in s. 137(3)(c)(iii) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 215(6)(c)** (with Sch. 27); S.I. 2020/1236, reg. 2
- F11** Words in s. 137(3)(d) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 215(7)(a)** (with Sch. 27); S.I. 2020/1236, reg. 2
- F12** Words in s. 137(3)(d)(ii) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 215(7)(b)** (with Sch. 27); S.I. 2020/1236, reg. 2
- F13** Words in s. 137(4) substituted (8.3.2015) by Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), s. 185(1), **Sch. 5 para. 7(4)(a)** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/373, art. 2(e)
- F14** Words in s. 137(4) substituted (28.3.2009 for certain purposes and otherwise 31.10.2009) by Armed Forces Act 2006 (c. 52), ss. 378(1), 383(2), **Sch. 16 para. 211(3)**; S.I. 2009/812, **art. 3** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**
- F15** Words in s. 137(4) inserted (8.3.2015) by Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), s. 185(1), **Sch. 5 para. 7(4)(b)** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/373, art. 2(e)
- F16** S. 137(5) added (28.3.2009 for certain purposes and otherwise 31.10.2009) by Armed Forces Act 2006 (c. 52), ss. 378(1), 383(2), **Sch. 16 para. 211(4)**; S.I. 2009/812, **art. 3** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**
- F17** S. 137(6) inserted (8.3.2015) by Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), s. 185(1), **Sch. 5 para. 7(5)** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/373, art. 2(e)

#### Modifications etc. (not altering text)

- C1** S. 137 modified (24.4.2009 for certain purposes and otherwise 31.10.2009) by The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059), arts. 1(3), 205, **Sch. 1 para. 52(2)**

## 138 Orders and regulations **E+W+N.I.**

- (1) Any power to make orders or regulations conferred by this Act on the Secretary of State is exercisable by statutory instrument.
- (2) A statutory instrument containing an order or regulations under section 21, [<sup>F18</sup>any of sections 83 to 86 [<sup>F19</sup>, section 130 or section 136Q(1)]] may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (3) Any other statutory instrument, except one containing an order under section 141, is to be subject to annulment in pursuance of a resolution of either House of Parliament.
- [<sup>F20</sup>(4) Orders or regulations made by the Secretary of State under this Act may—
  - (a) make different provision for different purposes;
  - (b) include supplementary, incidental, consequential, transitional, transitory or saving provisions.]
  - [<sup>F21</sup>(5) Any power of the Department of Justice in Northern Ireland to make orders or regulations under this Act is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

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- (6) An order or regulations under any of sections 83 to 86 or section 130 may not be made by the Department of Justice unless a draft of the order or regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (7) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (6) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.
- (8) Any other order or regulations made by the Department of Justice are subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954).
- (9) Orders or regulations made by the Department of Justice may—
  - (a) make different provision for different purposes;
  - (b) include supplementary, incidental, consequential, transitional, transitory or saving provisions.]

#### Extent Information

- E1** This version of this provision extends to England, Wales and Northern Ireland only; a separate version has been created for Scotland only

#### Textual Amendments

- F18** Words in s. 138(2) substituted (E.W.N.I.) (14.7.2008) by [Criminal Justice and Immigration Act 2008](#) (c. 4), [ss. 142\(10\)](#), 153(7); S.I. 2008/1586, [art. 2](#), [Sch. 1 para. 45](#) (subject to [Sch. 2](#))
- F19** Words in s. 138(2) substituted (E.W.N.I.) (1.4.2010 for E.W. and otherwise prosp.) by [Policing and Crime Act 2009](#) (c. 26), [ss. 21\(1\)](#), 116(1), [Sch. 2 para. 2](#); S.I. 2010/507, [art. 5\(f\)](#) (subject to [art. 6](#))
- F20** S. 138(4) inserted (E.W.N.I.) (14.7.2008) by [Criminal Justice and Immigration Act 2008](#) (c. 4), [ss. 148\(1\)](#), 153(7), [Sch. 26 para. 57\(1\)](#); S.I. 2008/1586, [art. 2](#), [Sch. 1 para. 48\(r\)](#) (subject to [Sch. 2](#))
- F21** S. 138(5)-(9) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010](#) (S.I. 2010/976), [art. 1\(2\)](#), [Sch. 14 para. 77\(3\)](#) (with [arts. 28-31](#))

## 138 Orders and regulations **S**

- (1) Any power to make orders or regulations conferred by this Act on the Secretary of State is exercisable by statutory instrument.
- (2) A statutory instrument containing an order or regulations under section 21, <sup>[F30]</sup>83, 84,<sup>[F31]</sup>85,<sup>[F32]</sup>86 <sup>[F32F33]</sup>88H or 130 may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (3) Any other statutory instrument, except one containing an order under section 141, is to be subject to annulment in pursuance of a resolution of either House of Parliament.
- <sup>[F34]</sup>(4) Orders or regulations made by the Scottish Ministers under this Act may—
  - (a) make different provision for different purposes,
  - (b) include supplementary, incidental, consequential, transitional, transitory or saving provisions.]

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#### Extent Information

- E2** This version of this provision extends to Scotland only; a separate version has been created for England, Wales and Northern Ireland only

#### Textual Amendments

- F30** Words in s. 138(2) inserted (S.) (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), **ss. 78(9)**, 104; S.S.I. 2006/432, **art. 2(d)**
- F31** Words in s. 138(2) inserted (S.) (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 102(6)**, 206(1); S.I. 2011/178, **art. 2** {Sch.}
- F32** Word in s. 138(2) inserted (S.) (at 17.00 hours on 25.10.2010) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2010 \(S.S.I. 2010/370\)](#), **arts. 1(1)**, **4(2)** (which Order is revoked and re-enacted with modifications (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#))
- F33** Word in s. 138(2) inserted (S.) (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#), **arts. 1(1)**, **4(2)** (which Order revokes and re-enacts with modifications the [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2010 \(S.S.I. 2010/370\)](#), see **art. 5**)
- F34** [S. 138\(4\)](#) inserted (S.) (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 102(6)**, 206(1); S.I. 2011/178, **art. 2** {Sch.}

### 139 Minor and consequential amendments

Schedule 6 contains minor and consequential amendments.

### 140 Repeals and revocations

The provisions listed in Schedule 7 are repealed or revoked to the extent specified.

### 141 Commencement

- (1) This Act, except this section and sections 138, 142 and 143, comes into force in accordance with provision made by the Secretary of State by order.
- (2) An order under subsection (1) may—
  - (a) make different provision for different purposes;
  - (b) include supplementary, incidental, saving or transitional provisions.

#### Subordinate Legislation Made

- P1** [S. 141](#) power fully exercised: 1.5.2004 appointed by {[S.I. 2004/874](#)}, **art. 2**; {[S.S.I. 2004/138](#)}, **art. 2**

### 142 Extent, saving etc.

- (1) Subject to section 137 and to subsections (2) to (4), this Act extends to England and Wales only.
- (2) The following provisions also extend to Northern Ireland—
  - [<sup>F22</sup>(a) sections 46 and <sup>F23</sup>...,]
  - (b) [<sup>F24</sup>Schedule 2,]

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- [<sup>F25</sup>(c) sections 80 to 85, 86 to 88, 89 to 91, 92 to 96, 96B to 103, 122F and 130 to 136ZD;  
(ca) Part 2A;]  
(d) sections 138, 141, 143 and this section.
- [<sup>F26</sup>(2A) Sections 85A, 96A, 96AA, 110, 117A, 119 and 123 to 129 and Schedule 3A extend only to Northern Ireland.]
- (3) The following provisions also extend to Scotland—  
[<sup>F27</sup>(a) sections 80 to 85, 86 to 88, 89 to 91, 92, 94 to 96, 97 to 103, 122F, 130 to 132 and 133 to 136ZB;]  
(b) sections 138, 141, 143 and this section.
- [<sup>F28</sup>(3A) Sections 88A to 88I, 96A, 111A, 117B, 120 and 121 extend only to Scotland.
- (3B) Sections 104 to 109, 111, 112 to 117, 118 and 122 extend to Northern Ireland and Scotland but not to England and Wales.
- (3C) The references to section 96A in subsections (2A) and (3A) are references respectively to—  
(a) the section 96A inserted by the Criminal Justice Act (Northern Ireland) 2013, and  
(b) the section 96A inserted by the Police, Public Order and Criminal Justice (Scotland) Act 2006.]
- (4) Unless otherwise provided, any amendment, repeal or revocation made by this Act has the same extent as the provision to which it relates.
- (5) [<sup>F29</sup>Section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) continues to have effect despite the repeal by this Act of section 8 of the Sex Offenders Act 1997 (c. 51).]
- (6) For the purposes of the Scotland Act 1998 (c. 46), this Act is to be taken to be a pre-commencement enactment.

#### Textual Amendments

- F22** S. 142(2)(a) substituted (E.W.N.I.) (2.2.2009) by [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), **11(a)**; S.R. 2008/510, **art. 2**
- F23** Words in s. 142(2) repealed (N.I.) (14.1.2015) by [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c. 2\)](#), s. 28(2), **Sch. 5**
- F24** S. 142(2)(b) omitted (E.W.N.I.) (2.2.2009) by virtue of [The Sexual Offences \(Northern Ireland Consequential Amendments\) Order 2008 \(S.I. 2008/1779\)](#), arts. 2(3), **11(b)**; S.R. 2008/510, **art. 2**
- F25** S. 142(2)(c)(ca) substituted for s. 142(2)(c) (8.3.2015) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), **ss. 113(2)(a)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/373, art. 2(a)
- F26** S. 142(2A) inserted (8.3.2015) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), **ss. 113(2)(b)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/373, art. 2(a)
- F27** S. 142(3)(a) substituted (8.3.2015) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), **ss. 113(2)(c)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/373, art. 2(a)
- F28** S. 142(3A)-(3C) inserted (8.3.2015) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), **ss. 113(2)(d)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/373, art. 2(a)
- F29** S. 142(5) repealed (S.) (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#), ss. 61(2), 62(2), **Sch. 6; S.S.I. 2010/357, art. 2(a)**

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## **143 Short title**

This Act may be cited as the Sexual Offences Act 2003.

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