

SCHEDULES

SCHEDULE 18

VARIATION ETC OF ORDER BY COURT IN ANOTHER PART OF THE UNITED KINGDOM

PART 2

VARIATION OF ORDER BY COURT IN SCOTLAND

Amendments of the Sentencing Code

5 After section 351 of the Sentencing Code insert—

“351A Variation, renewal or discharge of sexual harm prevention order by court in Scotland

- (1) This section applies where a sexual harm prevention order has been made in respect of an offender who—
 - (a) is residing in Scotland, or
 - (b) is in or intends to come to Scotland.
- (2) An application may be made to the appropriate sheriff in Scotland—
 - (a) by the offender, or
 - (b) by the chief constable,for an order varying, renewing or discharging the sexual harm prevention order.
- (3) Subsection (4) applies where an application under subsection (2) is made.
- (4) After hearing—
 - (a) the person making the application, and
 - (b) the other person mentioned in subsection (2) (if that person wishes to be heard),the sheriff may make any order varying, renewing or discharging the sexual harm prevention order that the sheriff considers appropriate.

This is subject to subsections (5) to (8).
- (5) In determining the application the court must have regard to—
 - (a) the time for which the defendant is likely to remain in Scotland, and
 - (b) whether the defendant is likely to return to, or to visit, England and Wales.
- (6) An order may be renewed, or varied so as to impose additional prohibitions or requirements on the offender, only if it is necessary to do so for the purpose of—

Status: This is the original version (as it was originally enacted).

- (a) protecting the public in Scotland, or any particular members of the public in Scotland, from sexual harm from the offender, or
 - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the offender outside the United Kingdom.
- (7) An order as renewed or varied under this section may contain only such prohibitions and requirements as are necessary for the purpose of—
- (a) protecting the public or any particular members of the public from sexual harm from the offender, or
 - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the offender outside the United Kingdom.
- (8) The court must not discharge an order before the end of the period of 5 years beginning with the day on which the order was made without the consent of the defendant and the chief constable.
- (9) The offender may appeal against the making of an order under this section, or the refusal to make such an order, as if it were a decision constituting final judgment in civil proceedings within the meaning of the Courts Reform (Scotland) Act 2014 ([asp 18](#)).
- (10) In this section—
- “the appropriate sheriff” means—
- (a) in any case, a sheriff in whose sheriffdom the offender resides, or
 - (b) in a case where the application is made by the chief constable—
 - (i) a sheriff in whose sheriffdom the offender is believed by the chief constable to be, or
 - (ii) a sheriff to whose sheriffdom the offender is believed by the chief constable to be intending to come;
- “the chief constable” means the chief constable of the Police Service of Scotland.”