
Changes to legislation: There are currently no known outstanding effects for the Police,
Crime, Sentencing and Courts Act 2022, PART 2. (See end of Document for details)

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 Sexual Offences Act 2003 (c. 42)

4 After section 136ZD of the Sexual Offences Act 2003 insert—

**“136ZE Variation, renewal or discharge of sexual harm prevention order etc
by court in Scotland**

- (1) This section applies where a relevant order has been made in respect of a person who now—
 - (a) is residing in Scotland, or
 - (b) is in or is intending to come to Scotland.
- (2) In this section “relevant order” means—
 - (a) a sexual harm prevention order,
 - (b) a sexual offences prevention order, or
 - (c) a foreign travel order.
- (3) An application may be made to the appropriate sheriff in Scotland—
 - (a) by the defendant, or
 - (b) by the chief constable,for an order varying, renewing or discharging the relevant order.
- (4) Subject to subsections (5) to (12), on the application the court, after hearing the person making the application and the other person mentioned in subsection (3) (if that person wishes to be heard), may make any order varying, renewing or discharging the relevant order that the appropriate sheriff considers appropriate.
- (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—
 - (i) in the case of a sexual harm prevention order, the defendant is likely to return to, or to visit, England and Wales, or
 - (ii) in the case of a sexual offences prevention order or foreign travel order, the defendant is likely to return to, or to visit, Northern Ireland.

Changes to legislation: *There are currently no known outstanding effects for the Police, Crime, Sentencing and Courts Act 2022, PART 2. (See end of Document for details)*

- (6) A sexual harm prevention order may be renewed, or varied under this section so as to impose additional prohibitions or requirements on the defendant, only if it is necessary to do so for the purpose of—
 - (a) protecting the public in Scotland, or any particular members of the public in Scotland, from sexual harm from the defendant, or
 - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom.
- (7) A sexual harm prevention 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 defendant, or
 - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom.
- (8) A sexual offences prevention order may be renewed, or varied under this section so as to impose additional prohibitions or requirements on the defendant, only if it is necessary to do so for the purpose of protecting the public in Scotland, or any particular members of the public in Scotland, from serious sexual harm from the defendant.
- (9) A sexual offences prevention order as renewed or varied under this section may contain only such prohibitions and requirements as are necessary for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.
- (10) A foreign travel order may be renewed, or varied under this section so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom.
- (11) A foreign travel order as renewed or varied under this section may contain only such prohibitions as are necessary for the purpose mentioned in subsection (10).
- (12) The court must not discharge a sexual harm prevention order or a sexual offences prevention order before the end of 5 years beginning with the day on which the order was made without the consent of the defendant and the chief constable.
- (13) The defendant 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](#)).
- (14) In this section—
 - “the appropriate sheriff” means—
 - (a) in any case, a sheriff in whose sheriffdom the defendant resides, or
 - (b) in a case where the application is made by the chief constable—

Changes to legislation: There are currently no known outstanding effects for the Police, Crime, Sentencing and Courts Act 2022, PART 2. (See end of Document for details)

(i) a sheriff in whose sheriffdom the defendant is believed by the chief constable to be, or

(ii) a sheriff to whose sheriffdom the defendant is believed by the chief constable to be intending to come;

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

“child” means a person under 18;

“serious sexual harm”, in relation to the renewal or variation of a sexual offences prevention order, means serious physical or psychological harm caused by the defendant committing one or more of the offences listed in Schedule 3;

“serious sexual harm”, in relation to the renewal or variation of a foreign travel order, means serious physical or psychological harm caused by the defendant doing, outside the United Kingdom, anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom;

“sexual harm” and “vulnerable adult”, in relation to the renewal or variation of a sexual harm prevention order, have the meanings given by section 103B(1).

136ZF Variation, renewal or discharge of sexual risk order etc by court in Scotland

(1) This section applies where a relevant order has been made in respect of a person who now—

- (a) is residing in Scotland, or
- (b) is in or is intending to come to Scotland.

(2) In this section “relevant order” means—

- (a) a sexual risk order, or
- (b) a risk of sexual harm order.

(3) An application may be made to the appropriate sheriff in Scotland—

- (a) by the defendant, or
- (b) by the chief constable,

for an order varying, renewing or discharging the relevant order.

(4) Subject to subsections (5) to (10), on the application the court, after hearing the person making the application and the other person mentioned in subsection (3) (if that person wishes to be heard), may make any order varying, renewing or discharging the relevant order that the appropriate sheriff considers appropriate.

(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—

(i) in the case of a sexual risk order, the defendant is likely to return to, or to visit, England and Wales, or

(ii) in the case of a risk of sexual harm order, the defendant is likely to return to, or to visit, Northern Ireland.

Changes to legislation: *There are currently no known outstanding effects for the Police, Crime, Sentencing and Courts Act 2022, PART 2. (See end of Document for details)*

- (6) A sexual risk order may be renewed, or varied under this section so as to impose additional prohibitions or requirements on the defendant, only if it is necessary to do so for the purpose of—
 - (a) protecting the public in Scotland, or any particular members of the public in Scotland, from harm from the defendant, or
 - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the defendant outside the United Kingdom.
- (7) A sexual risk 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 harm from the defendant, or
 - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the defendant outside the United Kingdom.
- (8) A risk of sexual harm order may be renewed, or varied under this section so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting children generally or any child from physical or psychological harm from the defendant doing acts within section 123(3).
- (9) A risk of sexual harm order as renewed or varied under this section may contain only such prohibitions as are necessary for the purpose mentioned in subsection (8).
- (10) The court must not discharge a relevant order before the end of 2 years beginning with the day on which the order was made without the consent of the defendant and the chief constable.
- (11) The defendant 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](#)).
- (12) In this section—
 - “the appropriate sheriff” means—
 - (a) in any case, a sheriff in whose sheriffdom the defendant resides, or
 - (b) in a case where the application is made by the chief constable—
 - (i) a sheriff in whose sheriffdom the defendant is believed by the chief constable to be, or
 - (ii) a sheriff to whose sheriffdom the defendant is believed by the chief constable to be intending to come;
 - “the chief constable” means the chief constable of the Police Service of Scotland;
 - “child”—
 - (a) in relation to the renewal or variation of a sexual risk order, means a person under 18;

Changes to legislation: There are currently no known outstanding effects for the Police, Crime, Sentencing and Courts Act 2022, PART 2. (See end of Document for details)

(b) in relation to the renewal or variation of a risk of sexual harm order, means a person under 16;

“harm” and “vulnerable adult”, in relation to the renewal or variation of a sexual risk order, have the meanings given by section 122B(1).”

Commencement Information

I1 Sch. 18 para. 4 not in force at Royal Assent, see [s. 208\(1\)](#)

I2 [Sch. 18 para. 4](#) in force at 31.3.2023 by [S.I. 2023/387](#), [reg. 3\(g\)\(ii\)](#)

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—

- (a) protecting the public in Scotland, or any particular members of the public in Scotland, from sexual harm from the offender, or

Changes to legislation: There are currently no known outstanding effects for the Police, Crime, Sentencing and Courts Act 2022, PART 2. (See end of Document for details)

- (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.”

Commencement Information

I3 Sch. 18 para. 5 not in force at Royal Assent, see [s. 208\(1\)](#)

I4 [Sch. 18 para. 5](#) in force at 31.3.2023 by [S.I. 2023/387](#), [reg. 3\(g\)\(ii\)](#)

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