

Status: Point in time view as at 24/04/2017.

Changes to legislation: There are currently no known outstanding effects for the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. (See end of Document for details)

VALID FROM 03/07/2017

SCHEDULE 1

(introduced by section 4)

SECTION 2: SPECIAL PROVISION IN RELATION TO PROVIDERS OF INFORMATION SOCIETY SERVICES

Exceptions for mere conduits

- 1 (1) A service provider is not capable of being guilty of an offence under section 2 in respect of anything done in the course of providing so much of an information society service as consists in—
- (a) the provision of access to a communication network, or
 - (b) the transmission in a communication network of information provided by a recipient of the service,
- if the transmission condition is satisfied.
- (2) The transmission condition is satisfied if the service provider does not—
- (a) initiate the transmission,
 - (b) select the recipient of the transmission, or
 - (c) select or modify the information contained in the transmission.
- (3) For the purposes of sub-paragraph (1)—
- (a) the provision of access to a communication network, and
 - (b) the transmission of information in a communication network,
- includes the automatic, intermediate and transient storage of the information transmitted as far as the storage is solely for the purpose of carrying out the transmission in the network.
- (4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

Exception for caching

- 2 (1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.
- (2) The service provider is not capable of being guilty of an offence under section 2 in respect of the automatic, intermediate and temporary storage of information so provided, if—
- (a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and
 - (b) the condition in sub-paragraph (3) is satisfied.
- (3) The condition is that the service provider—
- (a) does not modify the information,

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- (b) complies with any conditions attached to having access to the information, and
 - (c) where sub-paragraph (4) applies, expeditiously removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that—
- (a) the information at the initial source of transmission has been removed from the network,
 - (b) access to it has been disabled, or
 - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

Exception for hosting

- 3
- (1) A service provider is not capable of being guilty of an offence under section 2 in respect of anything done in the course of providing so much of an information society service as consists of the storage of information provided by a recipient of the service, if sub-paragraph (2) or (3) is satisfied.
 - (2) This sub-paragraph is satisfied if the service provider had no actual knowledge when the information was provided that the provision of the information amounted to an offence under section 2.
 - (3) This sub-paragraph is satisfied if, on obtaining such knowledge, the service provider expeditiously removed the information or disabled access to it.
 - (4) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

Interpretation

- 4
- (1) In this schedule—
 - “information society services”—
 - (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive [98/34/EC](#) of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and
 - (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”,
 - “recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible,
 - “service provider” means a person providing an information society service.
 - (2) In sub-paragraph (1), “the E-Commerce Directive” means Directive [2000/31/EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).

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SCHEDULE 2
(introduced by section 43)
MINOR AND CONSEQUENTIAL MODIFICATIONS

VALID FROM 31/03/2023

Criminal Procedure (Scotland) Act 1995

- 1 (1) The 1995 Act is amended as follows.
- (2) In section 19AA(1)—
- (a) in paragraph (b), for “section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) (a risk of sexual harm order)” substitute “ section 27 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 ”,
 - (b) in paragraph (c), for “section 2 of that Act of 2005” substitute “ section 27 of that Act of 2016 ”.
- (3) In section 19AB—
- (a) in subsection (4), for “risk of sexual harm orders” substitute “ sexual risk orders ”,
 - (b) in subsection (5)—
 - (i) for “risk of sexual harm order” substitute “ sexual risk order ”,
 - (ii) for the words from “under” to the end substitute “ of a court considering an appeal against the making of a sexual risk order suspending the effect of the order pending the determination of the appeal ”,
 - (c) in subsection (7)—
 - (i) omit the definitions of “risk of sexual harm order” and “the 2005 Act”,
 - (ii) insert, immediately before the definition of “ the 2003 Act ”, the following definition—

““sexual risk order” means an order under section 27 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, and also includes an order under section 122A or 123 of the 2003 Act;”
 - (d) the title becomes “ **Section 19AA: supplementary provision in sexual risk order cases** ”.

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Police Act 1997

- 2 (1) The Police Act 1997 is amended as follows.
- (2) In section 113CA(2)—
- (a) after paragraph (fb) insert—

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- “(fc) if a sexual harm prevention order, made under section 11(2) or 12(1) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, is in effect in respect of the applicant—
- (i) the prohibitions and requirements contained in that order;
 - (ii) the date of that order;
 - (iii) the period for which each of the prohibitions and requirements contained in that order has effect by virtue of section 16(3) or, as the case may be, 17(1) of that Act;
 - (iv) details as to whether that order has been varied or renewed under section 20(1) of that Act;
- (fd) if an interim sexual harm prevention order, made under section 21 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, is in effect in respect of the applicant—
- (i) the prohibitions and requirements contained in that order;
 - (ii) the date of that order;
 - (iii) the period for which each of the prohibitions and requirements contained in that order has effect by virtue of section 21(5) of that Act;
 - (iv) details as to whether that order has been varied or renewed under section 21(10) of that Act;”

(b) after paragraph (ib) insert—

“(ic) if a sexual risk order, made under section 27(1) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, is in effect in respect of the applicant—

 - (i) the prohibitions and requirements contained in that order;
 - (ii) the date of that order;
 - (iii) the period for which each of the prohibitions and requirements contained in that order has effect by virtue of section 28(3) or, as the case may be, 29(1) of that Act;
 - (iv) details as to whether that order has been varied or renewed under section 30(1) of that Act;

(id) if an interim sexual risk order, made under section 31(1) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, is in effect in respect of the applicant—

 - (i) the prohibitions and requirements contained in that order;
 - (ii) the date of that order;
 - (iii) the period for which each of the prohibitions and requirements contained in that order has effect by virtue of section 31(5) of that Act;
 - (iv) details as to whether that order has been varied or renewed under section 31(9) of that Act;”

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(c) paragraphs (l) and (m) are repealed.

(3) In section 113CB(2)—

(a) after paragraph (fb) insert—

“(fc) if a sexual harm prevention order, made under section 11(2) or 12(1) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, is in effect in respect of the applicant—

(i) the prohibitions and requirements contained in that order;

(ii) the date of that order;

(iii) the period for which each of the prohibitions and requirements contained in that order has effect by virtue of section 16(3) or, as the case may be, 17(1) of that Act;

(iv) details as to whether that order has been varied or renewed under section 20(1) of that Act;

(fd) if an interim sexual harm prevention order, made under section 21 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, is in effect in respect of the applicant—

(i) the prohibitions and requirements contained in that order;

(ii) the date of that order;

(iii) the period for which each of the prohibitions and requirements contained in that order has effect by virtue of section 21(5) of that Act;

(iv) details as to whether that order has been varied or renewed under section 21(10) of that Act;”

(b) after paragraph (ib) insert—

“(ic) if a sexual risk order, made under section 27(1) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, is in effect in respect of the applicant—

(i) the prohibitions and requirements contained in that order;

(ii) the date of that order;

(iii) the period for which each of the prohibitions and requirements contained in that order has effect by virtue of section 28(3) or, as the case may be, 29(1) of that Act;

(iv) details as to whether that order has been varied or renewed under section 30(1) of that Act;

(id) if an interim sexual risk order, made under section 31(1) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, is in effect in respect of the applicant—

(i) the prohibitions and requirements contained in that order;

(ii) the date of that order;

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- (iii) the period for which each of the prohibitions and requirements contained in that order has effect by virtue of section 31(5) of that Act;
- (iv) details as to whether that order has been varied or renewed under section 31(9) of that Act;”,
- (c) paragraphs (l) and (m) are repealed.

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Sexual Offences Act 2003

- 3 (1) The 2003 Act is amended as follows.
- (2) In section 88—
- (a) in subsection (1), for “Subsections (2) to (4)” substitute “ Subsections (2) and (2A) ”,
 - (b) subsections (4) and (5) are repealed.
- (3) In section 89, after subsection (1) insert—
- “(1A) In the Table—
- (a) the reference to a sexual harm prevention order includes an order made under section 11 or 12 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,
 - (b) the reference to an interim sexual harm prevention order includes an order made under section 21 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.”.

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Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

- 4 Subsections (1) to (5) of section 17 of the 2005 Act are repealed.

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Protection of Vulnerable Groups (Scotland) Act 2007

- 5 Paragraph 1 of schedule 1 of the Protection of Vulnerable Groups (Scotland) Act 2007 is amended as follows—
- (a) paragraph (r) is repealed,
 - (b) after paragraph (zr), insert—
 - “(zra) an offence under section 34 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,
 - (zrb) an offence under section 37 of that Act in respect of a breach of—

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- (i) a sexual risk order made under section 122A of the Sexual Offences Act 2003,
- (ii) an interim sexual risk order made under section 122E of the Sexual Offences Act 2003,
- (iii) a risk of sexual harm order made under section 123 of the Sexual Offences Act 2003, or
- (iv) an interim risk of sexual harm order made under section 126 of the Sexual Offences Act 2003.”.

Sexual Offences (Scotland) Act 2009

- 6 In section 54(8) of the 2009 Act, in the definition of “UK national”, for “relevant conduct” substitute “ act mentioned in subsection (1) ”.

Commencement Information

- II** Sch. 2 para. 6 in force at 24.4.2017 by S.S.I. 2017/93, reg. 2

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Criminal Justice and Licensing (Scotland) Act 2010

- 7 The following provisions of the Criminal Justice and Licensing (Scotland) Act 2010 are repealed—
- (a) section 103,
 - (b) section 104,
 - (c) paragraph 75 of schedule 7.

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Police and Fire Reform (Scotland) Act 2012

- 8 Paragraph 26 of schedule 7 of the Police and Fire Reform (Scotland) Act 2012 is repealed.

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Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 (S.S.I. 2011/45)

- 9 Article 4(1) of the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 (S.S.I. 2011/45) is repealed.

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Anti-social Behaviour, Crime and Policing Act 2014
Paragraphs 78 and 79 of schedule 11 of the Anti-social Behaviour, Crime and Policing Act 2014 are repealed.

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