

2023 No. 61

HIGH COURT OF JUSTICIARY

SHERIFF APPEAL COURT

SHERIFF COURT

**Act of Adjournal (Criminal Procedure Rules 1996 Amendment)
(Sexual Harm Prevention Orders) 2023**

Made - - - - - *1st March 2023*

Laid before the Scottish Parliament *2nd March 2023*

Coming into force - - - *31st March 2023*

The High Court of Justiciary makes this Act of Adjournal under the powers conferred on it by section 305 of the Criminal Procedure (Scotland) Act 1995(a), sections 11(6) and 20(8) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016(b) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Sexual Harm Prevention Orders) 2023.

(2) It comes into force on 31st March 2023.

(3) A certified copy is to be inserted in the Books of Adjournal.

Amendment of the Criminal Procedure Rules 1996

2.—(1) The Criminal Procedure Rules 1996(c) are amended in accordance with this paragraph.

(2) After Chapter 72 (overseas production orders)(d) insert—

(a) 1995 c. 46. Section 305 was amended by section 111(1) of the Criminal Justice (Scotland) Act 2016 (asp 1) and by S.S.I. 2015/338, and was extended by section 386(3)(a) of the Proceeds of Crime Act 2002 (c. 29), section 36A(4) of the Serious Crime Act 2007 (c. 27) and section 32(5) of the Psychoactive Substances Act 2016 (c. 2).

(b) 2016 asp 22.

(c) The Criminal Procedure Rules 1996 are in schedule 2 of the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513), last amended by S.S.I. 2022/231.

(d) Chapter 72 was inserted by S.S.I. 2022/231.

“CHAPTER 73

SEXUAL HARM PREVENTION ORDERS UNDER THE ABUSIVE BEHAVIOUR AND SEXUAL HARM (SCOTLAND) ACT 2016

Interpretation

73.1. In this Chapter—

“the 2016 Act” means the Abusive Behaviour and Sexual Harm (Scotland) Act 2016(a);

“sexual harm prevention order” means an order under section 11 (making of order on dealing with person for offence) of the 2016 Act.

Sexual harm prevention orders

73.2. A sexual harm prevention order is made in Form 73.2.

Variation, renewal or discharge of sexual harm prevention orders

73.3. An application for the variation, renewal or discharge of a sexual harm prevention order under section 20 (variation, renewal and discharge) of the 2016 Act is made in Form 73.3.

Notice under section 11(6) or section 20(8) of the 2016 Act

73.4. Notice under section 11(6) or section 20(8) (wish for a hearing to be held) of the 2016 Act is to be given to the court not later than seven days after the intention of the court to consider making, or (as the case may be) varying, renewing or discharging, a sexual harm prevention order is intimated to the person against whom the order would be made or its proposed subject.”.

(3) In the appendix after Form 72.4 (form of application to vary or revoke an overseas production order)(b) insert Forms 73.2 and 73.3 as set out in the schedule of this Act of Adjournal.

Revocation and saving

3.—(1) Subject to paragraph (2), the following provisions of the Criminal Procedure Rules 1996 are revoked—

- (a) Chapter 48 (Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005(c));
- (b) in the appendix, Forms 48.2 and 48.3.

(a) 2016 asp 22.

(b) Form 72.4 was inserted by S.S.I. 2022/231.

(c) Chapter 48 and associated forms were inserted by S.S.I. 2005/472.

(2) Notwithstanding the revocation of the provisions mentioned in paragraph (1), they continue to have effect until the end of the period of 5 years beginning with the date on which section 40 (saving and transitional provision) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 comes into force for the purpose of sexual offences prevention orders under section 104 or 105 of the Sexual Offences (Scotland) Act 2003^(a).

Edinburgh
1st March 2023

CJM SUTHERLAND
Lord Justice General
I.P.D.

(a) 2003 c. 42. Section 105 was last relevantly amended by S.S.I. 2013/119.

SCHEDULE

Paragraph 2(3)

Rule 73.2

Form 73.2

Form of sexual harm prevention order under section 11 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016

SEXUAL HARM PREVENTION ORDER

COURT:

DATE:

NAME, ADDRESS AND DATE OF BIRTH OF PERSON SUBJECT TO THE ORDER:

THE COURT, dealing with a person

convicted of an offence listed in schedule 3 of the Sexual Offences Act 2003,

[*or* acquitted of an offence listed in schedule 3 of the Sexual Offences Act 2003, by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995,]

[*or* found by the court, in respect of an offence listed in schedule 3 of the Sexual Offences Act 2003, to be unfit for trial under section 53F of the Criminal Procedure (Scotland) Act 1995 and the court has determined that the person has done the act or made the omission constituting the offence,]

namely the offence(s) of (*specify*):

AND having held a hearing;

[*or* having given an opportunity to make written representations to the person against whom the order is to be made and to the prosecutor;]

AND being satisfied that it is necessary to do so, for the purpose of protecting the public, or any particular members of the public, from sexual harm from the person;

[*or* protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the person outside the United Kingdom;]

ORDERS that the person, (*specify name of person*), shall from the date of this order be prohibited from (*or* required to do) (*specify in numbered paragraphs the prohibitions or requirements imposed and the period which applies to each prohibition or requirement*).

[AND ORDERS that the person, (*specify name of person*), comply with the electronic monitoring requirement in respect of (*state the aspects of the disposal specified by the court*) under the Management of Offenders (Scotland) Act 2019 as set out in the attached Form 71.1.]

Signed

Clerk of Court

Form 73.3

Form of application for variation, renewal or discharge of a sexual harm prevention order

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, THE LORD JUSTICE CLERK, and LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF (name of sheriffdom)]

AT (place)

APPLICATION

[A.B.] (address *or* prisoner at the prison of (place))

[*or* THE CHIEF CONSTABLE, POLICE SERVICE OF SCOTLAND]

[*or* HER MAJESTY'S ADVOCATE]

[*or* THE PROCURATOR FISCAL]

APPLICANT

HUMBLY SHEWETH:

1. That there is annexed to this petition a copy of the sexual harm prevention order which was made by the sheriff at (place) [*or* by the High Court sitting at (place)] on (date).

[2. That the sexual harm prevention order has been varied or renewed as follows:– (*specify details of any previous variation or renewal*).]

2. That the applicant seeks to vary [*or* renew [*or* discharge]] the sexual harm prevention order for the following reasons:– (*specify reasons*).

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [*or* THE COURT]:

(1) to appoint intimation of this petition to be made to [A.B.] [*or* Her Majesty's Advocate] [*or* the Procurator Fiscal] [*or* the Chief Constable, the Police Service of Scotland];

(2) to fix a hearing [*or* to give an opportunity, within such time period as is specified by the court, to make and intimate to other parties written representations to [A.B.] [*or* Her Majesty's Advocate] [*or* the Procurator Fiscal] [*or* the Chief Constable, the Police Service of Scotland]]; and

(3) thereafter, on being duly satisfied, to make an order varying [*or* renewing] [*or* discharging] the sexual harm prevention order [by] (*specify the terms of the variation or renewal sought*) and to do further and otherwise as to your Lordship[s] [*or* to the court] seems proper.

ACCORDING TO JUSTICE, etc

(Signed)

Solicitor for [A.B.]

[or Solicitor for the Chief Constable, Police Service of Scotland]

[or Prosecutor]

(address, e-mail address and telephone number)

EXPLANATORY NOTE

(This note is not part of the Act of Adjournal)

This Act of Adjournal inserts a new Chapter 73 (sexual harm prevention orders) into the Criminal Procedure Rules 1996 to make provision for the making, variation, renewal and discharge of sexual harm prevention orders imposed by the criminal courts under the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

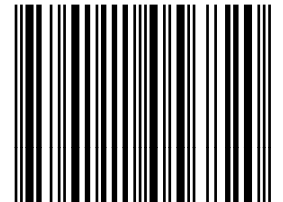
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