



# Sexual Offences Act 2003

## 2003 CHAPTER 42

### PART 2

#### NOTIFICATION AND ORDERS

##### *Notification requirements*

#### **80 Persons becoming subject to notification requirements**

- (1) A person is subject to the notification requirements of this Part for the period set out in section 82 (“the notification period”) if—
  - (a) he is convicted of an offence listed in Schedule 3;
  - (b) he is found not guilty of such an offence by reason of insanity;
  - (c) he is found to be under a disability and to have done the act charged against him in respect of such an offence; or
  - (d) in England and Wales or Northern Ireland, he is cautioned in respect of such an offence.
- (2) A person for the time being subject to the notification requirements of this Part is referred to in this Part as a “relevant offender”.

#### **81 Persons formerly subject to Part 1 of the Sex Offenders Act 1997**

- (1) A person is, from the commencement of this Part until the end of the notification period, subject to the notification requirements of this Part if, before the commencement of this Part—
  - (a) he was convicted of an offence listed in Schedule 3;
  - (b) he was found not guilty of such an offence by reason of insanity;
  - (c) he was found to be under a disability and to have done the act charged against him in respect of such an offence; or
  - (d) in England and Wales or Northern Ireland, he was cautioned in respect of such an offence.

*Status: Point in time view as at 25/06/2012.*

*Changes to legislation: Sexual Offences Act 2003, Part 2 is up to date with all changes known to be in force on or before 21 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) Subsection (1) does not apply if the notification period ended before the commencement of this Part.
- (3) Subsection (1)(a) does not apply to a conviction before 1st September 1997 unless, at the beginning of that day, the person—
- (a) had not been dealt with in respect of the offence;
  - (b) was serving a sentence of imprisonment <sup>F1</sup> . . . , or was subject to a community order, in respect of the offence;
  - (c) was subject to supervision, having been released from prison after serving the whole or part of a sentence of imprisonment in respect of the offence; or
  - (d) was detained in a hospital or was subject to a guardianship order, following the conviction.
- (4) Paragraphs (b) and (c) of subsection (1) do not apply to a finding made before 1st September 1997 unless, at the beginning of that day, the person—
- (a) had not been dealt with in respect of the finding; or
  - (b) was detained in a hospital, following the finding.
- (5) Subsection (1)(d) does not apply to a caution given before 1st September 1997.
- (6) A person who would have been within subsection (3)(b) or (d) or (4)(b) but for the fact that at the beginning of 1st September 1997 he was unlawfully at large or absent without leave, on temporary release or leave of absence, or on bail pending an appeal, is to be treated as being within that provision.
- (7) Where, immediately before the commencement of this Part, an order under a provision within subsection (8) was in force in respect of a person, the person is subject to the notification requirements of this Part from that commencement until the order is discharged or otherwise ceases to have effect.
- (8) The provisions are—
- (a) section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders);
  - (b) section 2 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders made in England and Wales);
  - (c) section 2A of the Crime and Disorder Act 1998 (interim orders made in England and Wales);
  - (d) section 20 of the Crime and Disorder Act 1998 (sex offender orders and interim orders made in Scotland);
  - (e) Article 6 of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders made in Northern Ireland);
  - (f) Article 6A of the Criminal Justice (Northern Ireland) Order 1998 (interim orders made in Northern Ireland).

#### Textual Amendments

- F1** S. 81(3)(b) repealed (28.3.2009 for certain purposes and otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383(2), Sch. 16 para. 206, [Sch. 17](#); S.I. 2009/812, [art. 3](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)

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## 82 The notification period

- (1) The notification period for a person within section 80(1) or 81(1) is the period in the second column of the following Table opposite the description that applies to him.

TABLE

<i>Description of relevant offender</i>	<i>Notification period</i>
A person who, in respect of the offence, is or has been sentenced to imprisonment for life [ <sup>F2</sup> , to imprisonment for public protection under section 225 of the Criminal Justice Act 2003 [ <sup>F3</sup> , to an indeterminate custodial sentence under Article 13(4) (a) of the Criminal Justice (Northern Ireland) Order 2008] or to imprisonment for] a term of 30 months or more	An indefinite period beginning with the relevant date
A person who, in respect of the offence, has been made the subject of an order under section 210F(1) of the Criminal Procedure (Scotland) Act 1995 (order for lifelong restriction)	An indefinite period beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital subject to a restriction order	An indefinite period beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of more than 6 months but less than 30 months	10 years beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of 6 months or less	7 years beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital without being subject to a restriction order	7 years beginning with that date
A person within section 80(1)(d)	2 years beginning with that date
A person in whose case an order for conditional discharge or, in Scotland, [ <sup>F4</sup> a community payback order imposing an offender supervision requirement], is made in respect of the offence	The period of conditional discharge or, in Scotland, [ <sup>F5</sup> the specified period for the offender supervision requirement]
A person of any other description	5 years beginning with the relevant date

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- (2) Where a person is under 18 on the relevant date, subsection (1) has effect as if for any reference to a period of 10 years, 7 years, 5 years or 2 years there were substituted a reference to one-half of that period.
- (3) Subsection (4) applies where a relevant offender within section 80(1)(a) or 81(1)(a) is or has been sentenced, in respect of two or more offences listed in Schedule 3—
  - (a) to consecutive terms of imprisonment; or
  - (b) to terms of imprisonment which are partly concurrent.
- (4) Where this subsection applies, subsection (1) has effect as if the relevant offender were or had been sentenced, in respect of each of the offences, to a term of imprisonment which —
  - (a) in the case of consecutive terms, is equal to the aggregate of those terms;
  - (b) in the case of partly concurrent terms (X and Y, which overlap for a period Z), is equal to X plus Y minus Z.
- (5) Where a relevant offender the subject of a finding within section 80(1)(c) or 81(1)(c) is subsequently tried for the offence, the notification period relating to the finding ends at the conclusion of the trial.
- (6) In this Part, “relevant date” means—
  - (a) in the case of a person within section 80(1)(a) or 81(1)(a), the date of the conviction;
  - (b) in the case of a person within section 80(1)(b) or (c) or 81(1)(b) or (c), the date of the finding;
  - (c) in the case of a person within section 80(1)(d) or 81(1)(d), the date of the caution;
  - (d) in the case of a person within section 81(7), the date which, for the purposes of Part 1 of the Sex Offenders Act 1997 (c. 51), was the relevant date in relation to that person.

#### Textual Amendments

- F2** Words in table in s. 82(1) substituted (S.) (8.12.2005) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\), ss. 17, 24\(1\)](#); and those same words substituted (E.W.N.I.) (12.2.2007) by [Violent Crime Reduction Act 2006 \(c. 38\), ss. 57, 66\(2\)](#); S.I. 2007/74, [art. 2](#)
- F3** S. 82(1) table: words inserted (N.I.) (15.5.2008) by [The Criminal Justice \(Northern Ireland\) Order 2008 \(S.I. 2008/1216 \(N.I. 1\)\), art. 1, Sch. 5 para. 10\(1\)](#); S.R. 2008/217, [art. 2](#), Sch. para. 18(e) (subject to art. 3)
- F4** Words in table in s. 82(1) substituted (S.) (1.2.2011) by [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Consequential and Supplementary Provisions\) Order 2011 \(S.S.I. 2011/25\), arts. 1, 2, Sch. para. 2\(2\)\(a\)](#) (with art. 3)
- F5** Words in table in s. 82(1) substituted (S.) (1.2.2011) by [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Consequential and Supplementary Provisions\) Order 2011 \(S.S.I. 2011/25\), arts. 1, 2, Sch. para. 2\(2\)\(b\)](#) (with art. 3)

### 83 Notification requirements: initial notification **E+W+N.I.**

- (1) A relevant offender must, within the period of 3 days beginning with the relevant date (or, if later, the commencement of this Part), notify to the police the information set out in subsection (5).

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*Status: Point in time view as at 25/06/2012.*

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- (2) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 80(1) if—
- (a) immediately before the conviction, finding or caution, he was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court (“the earlier event”),
  - (b) at that time, he had made a notification under subsection (1) in respect of the earlier event, and
  - (c) throughout the period referred to in subsection (1), he remains subject to the notification requirements as a result of the earlier event.
- (3) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 81(1) or an order within section 81(7) if the offender complied with section 2(1) of the Sex Offenders Act 1997 in respect of the conviction, finding, caution or order.
- (4) Where a notification order is made in respect of a conviction, finding or caution, subsection (1) does not apply to the relevant offender in respect of the conviction, finding or caution if—
- (a) immediately before the order was made, he was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court (“the earlier event”),
  - (b) at that time, he had made a notification under subsection (1) in respect of the earlier event, and
  - (c) throughout the period referred to in subsection (1), he remains subject to the notification requirements as a result of the earlier event.
- (5) The information is—
- (a) the relevant offender’s date of birth;
  - (b) his national insurance number;
  - (c) his name on the relevant date and, where he used one or more other names on that date, each of those names;
  - (d) his home address on the relevant date;
  - (e) his name on the date on which notification is given and, where he uses one or more other names on that date, each of those names;
  - (f) his home address on the date on which notification is given;
  - (g) the address of any other premises in the United Kingdom at which, at the time the notification is given, he regularly resides or stays;
  - [<sup>F6</sup>(h) any prescribed information.]
- [<sup>F7</sup>(5A) In subsection (5)(h) “prescribed” means prescribed by regulations made by the Secretary of State.]
- (6) When determining the period for the purpose of subsection (1), there is to be disregarded any time when the relevant offender is—
- (a) remanded in or committed to custody by an order of a court [<sup>F8</sup>or kept in service custody];
  - (b) serving a sentence of imprisonment or a term of service detention;
  - (c) detained in a hospital; or
  - (d) outside the United Kingdom.
- (7) In this Part, “home address” means, in relation to any person—

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- (a) the address of his sole or main residence in the United Kingdom, or
- (b) where he has no such residence, the address or location of a place in the United Kingdom where he can regularly be found and, if there is more than one such place, such one of those places as the person may select.

#### Extent Information

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

#### Textual Amendments

- F6** S. 83(5)(h) inserted "at the end of subsection (5)" (E.W.N.I.) (14.7.2008) by virtue of [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 73, 142\(1\)\(a\), 153\(7\); S.I. 2008/1586, art. 2, Sch. 1 para. 45](#) (subject to [Sch. 2](#))
- F7** S. 83(5A) inserted "after [subsection (5)]" (E.W.N.I.) (14.7.2008) by virtue of [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 73, 142\(1\)\(b\), 153\(7\); S.I. 2008/1586, art. 2, Sch. 1 para. 45](#) (subject to [Sch. 2](#))
- F8** Words in s. 83(6)(a) inserted (E.W.N.I.) (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 148\(1\), 153\(7\), Sch. 26 para. 54; S.I. 2009/2606, art. 3\(i\)](#)

### 83 Notification requirements: initial notification **S**

- (1) A relevant offender must, within the period of 3 days beginning with the relevant date (or, if later, the commencement of this Part), notify to the police the information set out in subsection (5).
- (2) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 80(1) if—
  - (a) immediately before the conviction, finding or caution, he was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court (“the earlier event”),
  - (b) at that time, he had made a notification under subsection (1) in respect of the earlier event, and
  - (c) throughout the period referred to in subsection (1), he remains subject to the notification requirements as a result of the earlier event.
- (3) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 81(1) or an order within section 81(7) if the offender complied with section 2(1) of the Sex Offenders Act 1997 in respect of the conviction, finding, caution or order.
- (4) Where a notification order is made in respect of a conviction, finding or caution, subsection (1) does not apply to the relevant offender in respect of the conviction, finding or caution if—
  - (a) immediately before the order was made, he was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court (“the earlier event”),
  - (b) at that time, he had made a notification under subsection (1) in respect of the earlier event, and
  - (c) throughout the period referred to in subsection (1), he remains subject to the notification requirements as a result of the earlier event.

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- (5) The information is—
- (a) the relevant offender’s date of birth;
  - (b) his national insurance number;
  - (c) his name on the relevant date and, where he used one or more other names on that date, each of those names;
  - (d) his home address on the relevant date;
  - (e) his name on the date on which notification is given and, where he uses one or more other names on that date, each of those names;
  - (f) his home address on the date on which notification is given;
  - (g) the address of any other premises in the United Kingdom at which, at the time the notification is given, he regularly resides or stays;
  - [<sup>F135</sup>(h) whether he has any passports and, in relation to each passport he has, the details set out in subsection (5A);
  - (i) such other information, about him or his personal affairs, as the Scottish Ministers may prescribe in regulations.
- (5A) The details are—
- (a) the issuing authority;
  - (b) the number;
  - (c) the dates of issue and expiry;
  - (d) the name and date of birth given as being those of the passport holder.]
- (6) When determining the period for the purpose of subsection (1), there is to be disregarded any time when the relevant offender is—
- (a) remanded in or committed to custody by an order of a court;
  - (b) serving a sentence of imprisonment or a term of service detention;
  - (c) detained in a hospital; or
  - (d) outside the United Kingdom.
- (7) In this Part, “home address” means, in relation to any person—
- (a) the address of his sole or main residence in the United Kingdom, or
  - (b) where he has no such residence, the address or location of a place in the United Kingdom where he can regularly be found and, if there is more than one such place, such one of those places as the person may select.
- [<sup>F136</sup>(8) In this section, “passport” means—
- (a) a United Kingdom passport within the meaning of the Immigration Act 1971 (c. 77);
  - (b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;
  - (c) a document that can be used (in some or all circumstances) instead of a passport.]

#### **Extent Information**

- E6** This version of this provision extends to Scotland only; a separate version has been created for England and Wales and Northern Ireland only

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### Textual Amendments

**F135** S. 83(5)(h)(i)(5A) inserted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), ss. 78(2), 104; S.S.I. 2006/432, art. 2(d)

**F136** S. 83(8) inserted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), ss. 78(3), 104; S.S.I. 2006/432, art. 2(d)

## 84 Notification requirements: changes **E+W+N.I.**

- (1) A relevant offender must, within the period of 3 days beginning with—
- (a) his using a name which has not been notified to the police under section 83(1), this subsection, or section 2 of the Sex Offenders Act 1997 (c. 51),
  - (b) any change of his home address,
  - (c) his having resided or stayed, for a qualifying period, at any premises in the United Kingdom the address of which has not been notified to the police under section 83(1), this subsection, or section 2 of the Sex Offenders Act 1997,
- <sup>F9</sup>(ca) any prescribed change of circumstances, or
- (d) his release from custody pursuant to an order of a court or from imprisonment, service detention or detention in a hospital,
- notify to the police that name, the new home address, the address of those premises <sup>F10</sup>, the prescribed details] or (as the case may be) the fact that he has been released, and (in addition) the information set out in section 83(5).
- (2) A notification under subsection (1) may be given before the name is used, the change of home address <sup>F11</sup>or the prescribed change of circumstances] occurs or the qualifying period ends, but in that case the relevant offender must also specify the date when the event is expected to occur.
- (3) If a notification is given in accordance with subsection (2) and the event to which it relates occurs more than 2 days before the date specified, the notification does not affect the duty imposed by subsection (1).
- (4) If a notification is given in accordance with subsection (2) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified—
- (a) the notification does not affect the duty imposed by subsection (1), and
  - (b) the relevant offender must, within the period of 6 days beginning with the date specified, notify to the police the fact that the event did not occur within the period of 3 days beginning with the date specified.
- (5) Section 83(6) applies to the determination of the period of 3 days mentioned in subsection (1) and the period of 6 days mentioned in subsection (4)(b), as it applies to the determination of the period mentioned in section 83(1).

<sup>F12</sup>(5A) In this section—

- (a) “prescribed change of circumstances” means any change—
  - (i) occurring in relation to any matter in respect of which information is required to be notified by virtue of section 83(5)(h), and
  - (ii) of a description prescribed by regulations made by the Secretary of State;
- (b) “the prescribed details”, in relation to a prescribed change of circumstances, means such details of the change as may be so prescribed.]



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- (6) In this section, “qualifying period” means—
- (a) a period of 7 days, or
  - (b) two or more periods, in any period of 12 months, which taken together amount to 7 days.

#### Extent Information

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

#### Textual Amendments

- F9** S. 84(1)(ca) inserted (E.W.N.I.) (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 73, [142\(3\)\(a\)](#), 153(7); S.I. 2008/1586, [art. 2](#), Sch. 1 para. 45 (subject to Sch. 2)
- F10** Words in s. 84(1) inserted (E.W.N.I.) (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 73, [142\(3\)\(b\)](#), 153(7); S.I. 2008/1586, [art. 2](#), Sch. 1 para. 45 (subject to Sch. 2)
- F11** Words in s. 84(2) inserted (E.W.N.I.) (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 73, [142\(4\)](#), 153(7); S.I. 2008/1586, [art. 2](#), Sch. 1 para. 45 (subject to Sch. 2)
- F12** S. 84(5A) inserted (E.W.N.I.) (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 73, [142\(5\)](#), 153(7); S.I. 2008/1586, [art. 2](#), Sch. 1 para. 45 (subject to Sch. 2)

## 84 Notification requirements: changes **S**

- (1) A relevant offender must, within the period of 3 days beginning with—
- (a) his using a name which has not been notified to the police under section 83(1), this subsection, or section 2 of the Sex Offenders Act 1997 (c. 51),
  - (b) any change of his home address,
  - (c) his having resided or stayed, for a qualifying period, at any premises in the United Kingdom the address of which has not been notified to the police under section 83(1), this subsection, or section 2 of the Sex Offenders Act 1997,<sup>F137</sup>
  - (d) his release from custody pursuant to an order of a court or from imprisonment, service detention or detention in a hospital,
  - <sup>F138</sup>(e) his losing or ceasing to have a passport notified to the police under section 83(1) or this subsection,
  - (f) his receiving a passport which has not been notified to the police under section 83(1) or this subsection, or
  - (g) the occurrence, in relation to information required to be notified by virtue of regulations made under section 83(5)(i), of an event prescribed by the Scottish Ministers in regulations,]

notify to the police that name, the new home address, the address of those premises or <sup>F139</sup>the fact that he has been released, the fact that he has lost or ceased to have the passport, the details set out in section 83(5A) in relation to the passport or (as the case may be) such information as the Scottish Ministers prescribe in regulations], and (in addition) the information set out in section 83(5).

<sup>F140</sup>(1A) In subsection (1), “passport” has the same meaning as in section 83.]

- (2) A notification under subsection (1) may be given before the name is used, the change of home address occurs or the qualifying period ends, but in that case the relevant offender must also specify the date when the event is expected to occur.

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- (3) If a notification is given in accordance with subsection (2) and the event to which it relates occurs more than 2 days before the date specified, the notification does not affect the duty imposed by subsection (1).
- (4) If a notification is given in accordance with subsection (2) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified—
  - (a) the notification does not affect the duty imposed by subsection (1), and
  - (b) the relevant offender must, within the period of 6 days beginning with the date specified, notify to the police the fact that the event did not occur within the period of 3 days beginning with the date specified.
- (5) Section 83(6) applies to the determination of the period of 3 days mentioned in subsection (1) and the period of 6 days mentioned in subsection (4)(b), as it applies to the determination of the period mentioned in section 83(1).
- (6) In this section, “qualifying period” means—
  - (a) a period of 7 days, or
  - (b) two or more periods, in any period of 12 months, which taken together amount to 7 days.

#### Extent Information

- E7** This version of this provision extends to Scotland only; a separate version has been created for England, Wales and Northern Ireland only

#### Textual Amendments

- F137** Word in s. 84(1) repealed (S.) (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 78\(5\)\(a\)](#), 104; S.S.I. 2006/432, [art. 2\(d\)](#)
- F138** S. 84(1)(e)-(g) inserted (S.) (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 78\(5\)\(b\)](#), 104; S.S.I. 2006/432, [art. 2\(d\)](#)
- F139** Words in s. 84(1) substituted (S.) (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 78\(5\)\(c\)](#), 104; S.S.I. 2006/432, [art. 2\(d\)](#)
- F140** S. 84(1A) inserted (S.) (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 78\(6\)](#), 104; S.S.I. 2006/432, [art. 2\(d\)](#)

## 85 Notification requirements: periodic notification

- (1) A relevant offender must, within [<sup>F13</sup>the applicable period] after each event within subsection (2), notify to the police the information set out in section 83(5), unless within that period he has given a notification under section 84(1).
- (2) The events are—
  - (a) the commencement of this Part (but only in the case of a person who is a relevant offender from that commencement);
  - (b) any notification given by the relevant offender under section 83(1) or 84(1); and
  - (c) any notification given by him under subsection (1).
- (3) Where [<sup>F14</sup>the applicable period] would (apart from this subsection) end whilst subsection (4) applies to the relevant offender, that period is to be treated as continuing

*Status: Point in time view as at 25/06/2012.*

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until the end of the period of 3 days beginning when subsection (4) first ceases to apply to him.

- (4) This subsection applies to the relevant offender if he is—
- (a) remanded in or committed to custody by an order of a court [<sup>F15</sup>or kept in service custody],
  - (b) serving a sentence of imprisonment or a term of service detention,
  - (c) detained in a hospital, or
  - (d) outside the United Kingdom.

[<sup>F16</sup>(5) In this section, the “applicable period” means—

- (a) in any case where subsection (6) applies to the relevant offender, such period not exceeding one year as the Scottish Ministers may prescribe in regulations, and
- (b) in any other case, the period of one year.

- (6) This subsection applies to the relevant offender if the last home address notified by the offender under section 83(1) or 84(1) or subsection (1) was the address or location of such a place as is mentioned in section 83(7)(b).]

[<sup>F17</sup>(5) In this section, “the applicable period” means—

- (a) in any case where subsection (6) applies to the relevant offender, such period as may be prescribed by regulations made by the Secretary of State, and
- (b) in any other case, the period of one year.

- (6) This subsection applies to the relevant offender if the last home address notified by him under section 83(1) or 84(1) or subsection (1) was the address or location of such a place as is mentioned in section 83(7)(b).]

#### Textual Amendments

- F13** Words in s. 85(1) substituted (E.W.N.I.) (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 73, [142\(7\)](#), 153(7); S.I. 2008/1586, [art. 2](#), [Sch. 1 para. 45](#) (subject to [Sch. 2](#)) and said words substituted (S.) (28.3.2011 for certain purposes, 8.7.2013 in so far as not already in force) by virtue of [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. [102\(2\)\(a\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), [Sch.](#); S.S.I. 2013/214, [art. 2](#) (with [art. 3](#))
- F14** Words in s. 85(3) substituted (E.W.N.I.) (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 73, [142\(8\)](#), 153(7); S.I. 2008/1586, [art. 2](#), [Sch. 1 para. 45](#) (subject to [Sch. 2](#)) and said words substituted (S.) (28.3.2011 for certain purposes, 8.7.2013 in so far as not already in force) by virtue of [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. [102\(2\)\(b\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), [Sch.](#); S.S.I. 2013/214, [art. 2](#) (with [art. 3](#))
- F15** Words in s. 85(4)(a) inserted (E.W.N.I.) (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 148(1), 153(7), [Sch. 26 para. 55](#); S.I. 2009/2606, [art. 3\(i\)](#)
- F16** S. 85(5)(6) inserted (S.) (28.3.2011 for specified purposes, 8.7.2013 in so far as not already in force) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. [102\(2\)\(c\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), [sch.](#); S.S.I. 2013/214, [art. 2](#) (with [art. 3](#))
- F17** S. 85(5)(6) inserted (E.W.N.I.) (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 73, [142\(9\)](#), 153(7); S.I. 2008/1586, [art. 2](#), [Sch. 1 para. 45](#) (subject to [Sch. 2](#))

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## 86 Notification requirements: travel outside the United Kingdom

- (1) The Secretary of State may by regulations make provision requiring relevant offenders who leave the United Kingdom, or any description of such offenders—
  - (a) to give in accordance with the regulations, before they leave, a notification under subsection (2);
  - (b) if they subsequently return to the United Kingdom, to give in accordance with the regulations a notification under subsection (3).
- (2) A notification under this subsection must disclose—
  - (a) the date on which the offender will leave the United Kingdom;
  - (b) the country (or, if there is more than one, the first country) to which he will travel and his point of arrival (determined in accordance with the regulations) in that country;
  - (c) any other information prescribed by the regulations which the offender holds about his departure from or return to the United Kingdom or his movements while outside the United Kingdom.
- (3) A notification under this subsection must disclose any information prescribed by the regulations about the offender’s return to the United Kingdom.

<sup>F18</sup>(4) <sup>F19</sup> .....

### Textual Amendments

- F18** S. 86(4) repealed (S.) (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. [102\(3\)](#), [206\(1\)](#); S.I. 2011/178, art. 2, Sch.
- F19** S. 86(4) repealed (E.W.N.I.) (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 73, 149, 153(7), [Sch. 28 Pt. 4](#); S.I. 2008/1586, art. 2, Sch. 1 para. 50(4)(d) (subject to Sch. 2)

## 87 Method of notification and related matters **E+W+N.I.**

- (1) A person gives a notification under section 83(1), 84(1) or 85(1) by—
  - (a) attending at such police station in his local police area as the Secretary of State may by regulations prescribe or, if there is more than one, at any of them, and
  - (b) giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station.
- (2) A person giving a notification under section 84(1)—
  - (a) in relation to a prospective change of home address, or
  - (b) in relation to premises referred to in subsection (1)(c) of that section,
 may give the notification at a police station that would fall within subsection (1) above if the change in home address had already occurred or (as the case may be) if the address of those premises were his home address.
- (3) Any notification under this section must be acknowledged; and an acknowledgment under this subsection must be in writing, and in such form as the Secretary of State may direct.
- (4) Where a notification is given under section 83(1), 84(1) or 85(1), the relevant offender must, if requested to do so by the police officer or person referred to in subsection (1) (b), allow the officer or person to—

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*Changes to legislation: Sexual Offences Act 2003, Part 2 is up to date with all changes known to be in force on or before 21 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) take his fingerprints,
  - (b) photograph any part of him, or
  - (c) do both these things.
- (5) The power in subsection (4) is exercisable for the purpose of verifying the identity of the relevant offender.
- (6) <sup>F20</sup> .....

#### Extent Information

**E3** This version of this provision extends to England, Wales and Northern Ireland only; a separate version has been created for Scotland only

#### Textual Amendments

**F20** S. 87(6) repealed (E.W.N.I.) (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 73, 149, 153(7), [Sch. 28 Pt. 4](#); [S.I. 2008/1586](#), [art. 2](#), [Sch. 1 para. 50\(4\)\(d\)](#) (subject to [Sch. 2](#))

## 87 Method of notification and related matters **S**

- (1) A person gives a notification under section 83(1), 84(1) or 85(1) by—
- (a) attending at such police station in his local police area as the Secretary of State may by regulations prescribe or, if there is more than one, at any of them, and
  - (b) giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station.
- (2) A person giving a notification under section 84(1)—
- (a) in relation to a prospective change of home address, or
  - (b) in relation to premises referred to in subsection (1)(c) of that section,
- may give the notification at a police station that would fall within subsection (1) above if the change in home address had already occurred or (as the case may be) if the address of those premises were his home address.
- (3) Any notification under this section must be acknowledged; and an acknowledgment under this subsection must be in writing, and in such form as the Secretary of State may direct.
- [<sup>F141</sup>(5A) Where a notification is given in Scotland under section 83(1), 84(1) or 85(1), the relevant offender must, if requested to do so by the police officer or person referred to in subsection (1)(b), do one or more of the following—
- (a) allow the officer or person to photograph any part of the offender,
  - (b) allow the officer or person to take from the offender, or provide to the officer or person, such relevant physical data as the officer or person considers appropriate,
  - (c) allow the officer or person to take from the offender any sample mentioned in any of paragraphs (a) to (c) of subsection (6) of section 18 of the Criminal Procedure (Scotland) Act 1995 by the means specified in that paragraph in relation to that sample,
  - (d) allow the officer or person to take from the offender any sample mentioned in subsection (6A) of that section by the means specified in that subsection.]

*Status: Point in time view as at 25/06/2012.*

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[<sup>F142</sup>(5B) Where a notification is given in Scotland under section 83(1), 84(1) or 85(1), the relevant offender must, if requested to do so by the police officer or person referred to in subsection (1)(b), produce each passport he has to that officer or person, for inspection by that officer or person.

(5C) In subsection (5B), “passport” has the same meaning as in section 83.]

(6) <sup>F143</sup> .....

#### Extent Information

**E8** This version of this provision extends to Scotland only; a separate version has been created for England, Wales and Northern Ireland only

#### Textual Amendments

- F141** S. 87(5A) substituted for s. 87(4)(5) (S.) (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), {ss. 77(7)}, 104; S.S.I. 2006/432, **art. 2(d)**
- F142** S. 87(5B)(5C) inserted (S.) (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), {ss. 78(7)}, 104; S.S.I. 2006/432, **art. 2(d)**
- F143** S. 87(6) repealed (S.) (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 102(4), 206(1)**; S.I. 2011/178, **art. 2, Sch.**

## 88 Section 87: interpretation

(1) Subsections (2) to (4) apply for the purposes of section 87.

(2) “Photograph” includes any process by means of which an image may be produced.

[<sup>F21</sup>(2A) “Relevant physical data” has the meaning given by section 18(7A) of the Criminal Procedure (Scotland) Act 1995.]

(3) “Local police area” means, in relation to a person—

- (a) the police area in which his home address is situated;
- (b) in the absence of a home address, the police area in which the home address last notified is situated;
- (c) in the absence of a home address and of any such notification, the police area in which the court which last dealt with the person in a way mentioned in subsection (4) is situated.

(4) The ways are—

- (a) dealing with a person in respect of an offence listed in Schedule 3 or a finding in relation to such an offence;
- (b) dealing with a person in respect of an offence under section 128 or a finding in relation to such an offence;
- (c) making, in respect of a person, a notification order, interim notification order, sexual offences prevention order or interim sexual offences prevention order;
- (d) making, in respect of a person, an order under section 2, 2A or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders and interim orders made in England and Wales or Scotland) or Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders and interim orders made in Northern Ireland);



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and in paragraphs (a) and (b), “finding” in relation to an offence means a finding of not guilty of the offence by reason of insanity or a finding that the person was under a disability and did the act or omission charged against him in respect of the offence.

(5) Subsection (3) applies as if Northern Ireland were a police area.

#### Textual Amendments

**F21** S. 88(2A) inserted (S.) (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#) (asp 10), [ss. 77\(8\)](#), 104; [S.S.I. 2006/432](#), [art. 2\(d\)](#)

### [<sup>F22</sup><sup>F23</sup>**88B** Review of indefinite notification requirements: applicable persons

- (1) Sections 88B to 88H apply to—
- (a) a person who, on or after 28th January 2011, becomes subject to the notification requirements of this Part for an indefinite period by virtue of section 80(1) or a notification order made under section 97(5); and
  - (b) a person who immediately before that date was subject to the notification requirements of this Part for an indefinite period by virtue of—
    - (i) section 80(1);
    - (ii) section 81(1); or
    - (iii) a notification order made under section 97(5).
- (2) A person who falls within subsection (1)(a) or (b) is referred to in sections 88B to 88G as a “relevant sex offender”.]

#### Textual Amendments

- F22** Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2010 \(S.S.I. 2010/370\)](#), [arts. 1\(1\)](#), [3](#) (which Order is revoked and re-enacted with modifications (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#))
- F23** Ss. 88A-88I inserted (S.) (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#), [arts. 1\(1\)](#), [3](#) (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](#))

### [<sup>F24</sup>**88B** Review of indefinite notification requirements: date of discharge and further date of discharge

- (1) For the purposes of this Part, the date of discharge is—
- (a) where the relevant sex offender was aged 18 or over on the relevant date, the date falling 15 years after that date;
  - (b) where the relevant sex offender was aged under 18 on the relevant date, the date falling 8 years after that date.
- (2) In determining the date of discharge under subsection (1), there is to be disregarded any time when the relevant sex offender was—
- (a) remanded in or committed to custody by order of a court;
  - (b) serving a sentence of imprisonment or a term of service detention;
  - (c) detained in hospital; or

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- (d) outside the United Kingdom,  
before the relevant sex offender first notified information to the police under section 2(1) of the Sex Offenders Act 1997 or section 83(1) of this Part.
- (3) Subsection (4) applies where—
- (a) the relevant sex offender is subject to the notification requirements of this Part;
  - (b) after the relevant sex offender first notified information to the police under section 2(1) of the Sex Offenders Act 1997 or section 83(1) of this Part, the relevant sex offender was sentenced to a period of imprisonment or a term of service detention in respect of the offence (or offences) to which the notification requirements relate; and
  - (c) the date of discharge would, apart from subsection (4), fall on or after 28th January 2011.
- (4) In determining the date of discharge under subsection (1), there is also to be disregarded any time when the relevant sex offender was serving a sentence of imprisonment or a term of service detention in respect of that offence (or those offences).
- (5) Where a notification continuation order made under this Part has effect in respect of the relevant sex offender, for the purposes of this Part the further date of discharge is the date of expiry of the fixed period specified in that order.
- (6) In this section and section 88D “relevant date”—
- (a) in relation to a relevant sex offender who is subject to the notification requirements of this Part for an indefinite period by virtue of section 80(1) or 81(1), has the meaning applicable to that offender specified in section 82(6) (a) to (c);
  - (b) in relation to a relevant sex offender who is subject to the notification requirements of this Part for an indefinite period by virtue of a notification order made under section 97(5), has the meaning applicable to that offender specified in section 98(2).]

#### Textual Amendments

- F22** Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2010 \(S.S.I. 2010/370\)](#), arts. 1(1), 3 (which Order is revoked and re-enacted with modifications (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#))
- F24** Ss. 88A-88I inserted (S.) (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#), arts. 1(1), 3 (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)

#### [<sup>F25</sup>88C Review of the indefinite notification requirements: procedure and grounds

- (1) The relevant chief constable must no later than the date of discharge—
- (a) make a notification continuation order in respect of the relevant sex offender;  
or
  - (b) notify the relevant sex offender that the offender ceases to be subject to the notification requirements of this Part on the date of discharge.



*Status: Point in time view as at 25/06/2012.*

*Changes to legislation: Sexual Offences Act 2003, Part 2 is up to date with all changes known to be in force on or before 21 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) A notification continuation order is an order making the relevant sex offender subject to the notification requirements of this Part for a fixed period of not more than 15 years from the date which would, but for the order, have been the date of discharge.
- (3) The relevant chief constable may make a notification continuation order only if satisfied, on the balance of probabilities, that the relevant sex offender poses a risk of sexual harm to the public, or any particular members of the public, in the United Kingdom.
- (4) In deciding whether to make a notification continuation order, the relevant chief constable must take into account—
  - (a) the seriousness of the offence (or offences)—
    - (i) of which the relevant sex offender was convicted;
    - (ii) of which the relevant sex offender was found not guilty by reason of insanity;
    - (iii) in respect of which the relevant sex offender was found to be under a disability and to have done the act charged; or
    - (iv) in respect of which the relevant sex offender was cautioned in England and Wales or Northern Ireland,  
which made the relevant sex offender subject to the notification requirements of this Part for an indefinite period;
  - (b) the period of time which has elapsed since the relevant sex offender committed the offence (or offences);
  - (c) where the relevant sex offender falls within section 88A(1)(b)(ii), whether the relevant sex offender committed any offence under section 3 of the Sex Offenders Act 1997;
  - (d) whether the relevant sex offender has committed any offence under section 91 of this Act;
  - (e) the age of the relevant sex offender at the time of the decision;
  - (f) the age of the relevant sex offender at the time the offence (or offences) referred to in paragraph (a) was (or were) committed;
  - (g) the age of any person who was a victim of any such offence (where applicable) and the difference in age between the victim and the relevant sex offender at the time the offence was committed;
  - (h) any convictions or findings made by a court in respect of the relevant sex offender for any other offence listed in Schedule 3;
  - (i) any caution which the relevant sex offender has received for an offence in England and Wales or Northern Ireland which is listed in Schedule 3;
  - (j) whether any criminal proceedings for any offences listed in Schedule 3 have been instituted against the relevant sex offender but have not concluded;
  - (k) any assessment of the risk posed by the relevant sex offender which has been made by the responsible authorities under the joint arrangements for managing and assessing risk established under section 10 of the Management of Offenders etc. (Scotland) Act 2005;
  - (l) any other submission or evidence of the risk of sexual harm posed by the relevant sex offender to the public, or any particular members of the public, in the United Kingdom;
  - (m) any submission or evidence presented by or on behalf of the relevant sex offender which demonstrates that the relevant sex offender does not pose a

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- risk of sexual harm to the public, or any particular members of the public, in the United Kingdom; and
- (n) any other matter which the relevant chief constable considers to be appropriate.
- (5) A notification continuation order must state—
- (a) the reasons why the order was made; and
- (b) the reasons for the determination of the fixed period in the order.
- (6) A notification continuation order must be notified to the relevant sex offender by—
- (a) the relevant chief constable sending a copy of the order to the relevant sex offender by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate); or
- (b) a constable serving a copy of the order on the relevant sex offender.
- (7) In this section—
- “sexual harm” means physical or psychological harm caused by the relevant sex offender doing anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom; and
- “responsible authorities” has the meaning given by section 10(7) of the Management of Offenders etc. (Scotland) Act 2005.
- (8) In this section and sections 88D to 88G, “relevant chief constable” means the chief constable of the police force for the police area in which the relevant sex offender resides.]

#### Textual Amendments

- F22** Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2010 \(S.S.I. 2010/370\)](#), arts. 1(1), 3 (which Order is revoked and re-enacted with modifications (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#))
- F25** Ss. 88A-88I inserted (S.) (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#), arts. 1(1), 3 (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)

#### [<sup>F26</sup>88D Review of indefinite notification requirement: transitional cases

- (1) This section applies to a case where—
- (a) the conditions in subsection (2) are satisfied in relation to a relevant sex offender falling within section 88A(1)(b)(ii); and
- (b) the relevant chief constable was, under this section as it had effect before the coming into force of the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011, under the duty in subsection (4).
- (2) The conditions referred to in subsection (1)(a) are that the person—
- (a) was aged under 18 on the relevant date; and
- (b) after disregarding any time referred to in subsection (3), had been subject to the notification requirements of Part 1 of the Sex Offenders Act 1997 and this Part for a total period of at least 8 years on 25th October 2010.

*Status: Point in time view as at 25/06/2012.*

*Changes to legislation: Sexual Offences Act 2003, Part 2 is up to date with all changes known to be in force on or before 21 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) That time is any time during which the relevant sex offender was—
- (a) remanded in or committed to custody by order of the court;
  - (b) serving a sentence of imprisonment or a term of service detention;
  - (c) detained in hospital; or
  - (d) outside the United Kingdom,
- before the relevant sex offender first notified information to the police under section 2(1) of the Sex Offenders Act 1997.
- (4) The duty referred to in subsection (1)(b) is a duty, no later than the applicable date, to—
- (a) make a notification continuation order in respect of the relevant sex offender; or
  - (b) notify the relevant sex offender that the offender ceases to be subject to the notification requirements of this Part on the applicable date.
- (5) In this section the “applicable date” is 25th January 2011.]

#### Textual Amendments

- F22** Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2010 \(S.S.I. 2010/370\)](#), arts. 1(1), 3 (which Order is revoked and re-enacted with modifications (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#))
- F26** Ss. 88A-88I inserted (S.) (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#), arts. 1(1), 3 (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)

#### [<sup>F27</sup>88E Review of indefinite notification requirements: further review

- (1) Where a notification continuation order has been made, the relevant chief constable must no later than the further date of discharge—
- (a) make another notification continuation order in respect of the relevant sex offender; or
  - (b) notify the relevant sex offender that the offender ceases to be subject to the notification requirements of this Part on the further date of discharge.
- (2) Section 88C(2) to (8) applies in relation to this section, but a reference to the date of discharge is to be read as a reference to the further date of discharge.]

#### Textual Amendments

- F22** Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2010 \(S.S.I. 2010/370\)](#), arts. 1(1), 3 (which Order is revoked and re-enacted with modifications (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#))
- F27** Ss. 88A-88I inserted (S.) (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#), arts. 1(1), 3 (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)

*Status: Point in time view as at 25/06/2012.*

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## **88F Review of the indefinite notification requirements: application to a sheriff**

- (1) Where a relevant chief constable fails to comply with section 88C(1), 88D(3) or 88E(1), the relevant sex offender may make an application to a sheriff for an order that the offender is no longer subject to the notification requirements of this Part.
- (2) An application under subsection (1) is to be made by summary application to the sheriff in whose sheriffdom the relevant sex offender resides.
- (3) On an application under subsection (1), the sheriff may—
  - (a) make the order sought in the application; or
  - (b) make a notification continuation order in respect of the relevant sex offender.
- (4) Section 88C(2) to (5) and (7) applies in relation to the making of a notification continuation order under this section, but—
  - (a) a reference to the relevant chief constable is to be read as a reference to the sheriff;
  - (b) if an application under subsection (1) is made in relation to the failure of the relevant chief constable to comply with section 88D(3), the reference to the date of discharge in section 88C(2) is to be read as a reference to the applicable date; and
  - (c) if an application under subsection (1) is made in relation to the failure of the relevant chief constable to comply with section 88E(1), the reference to the date of discharge in section 88C(2) is to be read as a reference to the further date of discharge.
- (5) The relevant chief constable and the relevant sex offender may appear or be represented at any hearing in respect of the application.
- (6) Where an application under subsection (1) is determined, the sheriff clerk must send a copy of the interlocutor, and where made a copy of the notification continuation order, to the relevant sex offender and the relevant chief constable.
- (7) The copy of the interlocutor, and where made the copy of the notification continuation order, is sent in accordance with subsection (6) if—
  - (a) sent by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate); or
  - (b) personally served on the relevant sex offender and the relevant chief constable.
- (8) The relevant sex offender remains subject to the notification requirements of this Part until the matter is finally determined as mentioned in section 88G(10).

### **Textual Amendments**

**F22** Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2010 \(S.S.I. 2010/370\)](#), arts. 1(1), 3 (which Order is revoked and re-enacted with modifications (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#))

*Status: Point in time view as at 25/06/2012.*

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## **88G Review of indefinite notification requirements: appeals**

- (1) The decision of the relevant chief constable—
  - (a) to make a notification continuation order; and
  - (b) setting the fixed period of the notification continuation order,may be appealed by the relevant sex offender within 21 days after the date specified in subsection (3).
- (2) An appeal under subsection (1) is to be made by summary application to the sheriff in whose sheriffdom the relevant sex offender resides.
- (3) The date is—
  - (a) where the appeal is brought against the decision of the relevant chief constable made under section 88C(1), the date of discharge;
  - (b) where the appeal is brought against the decision of the relevant chief constable made under section 88D(1), the applicable date; or
  - (c) where the appeal is brought against the decision of the relevant chief constable made under section 88E(1), the further date of discharge.
- (4) The decision of a sheriff—
  - (a) on an application made under section 88F(1);
  - (b) on appeal made under subsection (1); and
  - (c) in relation to the fixed period of the notification continuation order,may be appealed by the relevant sex offender or the relevant chief constable to the sheriff principal within 21 days of the date of that decision.
- (5) On an appeal under this section, the sheriff or the sheriff principal may—
  - (a) uphold or quash the decision of the relevant chief constable or, as the case may be, the sheriff;
  - (b) make a notification continuation order; or
  - (c) vary the fixed period in that order.
- (6) Section 88C(3) to (5) apply in relation to the making of a notification continuation order under this section but a reference to the relevant chief constable is to be read as a reference to the sheriff or, as the case may be, sheriff principal.
- (7) Where an appeal under this section is finally determined, the sheriff clerk must send a copy of the interlocutor, and where made a copy of the notification continuation order, to the relevant sex offender and the relevant chief constable.
- (8) The copy of the interlocutor, and where made the copy of the notification continuation order, shall be sent in accordance with subsection (7) if—
  - (a) sent by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate); or
  - (b) personally served on the relevant sex offender and relevant chief constable.
- (9) The relevant sex offender remains subject to the existing notification requirements of this Part until the matter is finally determined as mentioned in subsection (10).
- (10) The matter is finally determined—

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- (a) where it is decided that a relevant sex offender should cease to be subject to the notification requirements of this Part, or the decision to make a notification continuation order is quashed, on the expiry of the period of 21 days referred to in subsection (4) without an appeal being taken;
- (b) where a notification continuation order is made, or a decision to make such an order is upheld on appeal, on the expiry of the period of 21 days referred to in subsection (1) or (4) without an appeal being taken; or
- (c) where an appeal is taken—
  - (i) on the disposal of the appeal; or
  - (ii) on its being abandoned.

#### Textual Amendments

**F22** Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2010 \(S.S.I. 2010/370\)](#), arts. 1(1), 3 (which Order is revoked and re-enacted with modifications (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#))

### 88H Review of indefinite notification requirements: power to amend periods

The Secretary of State may by order amend—

- (a) the periods specified in sections 88B(1)(a) and (b); and
- (b) the fixed period specified in section 88C(2).

#### Textual Amendments

**F22** Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2010 \(S.S.I. 2010/370\)](#), arts. 1(1), 3 (which Order is revoked and re-enacted with modifications (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#))

### 88I Discharge from indefinite notification requirements: England, Wales and Northern Ireland

- (1) A relevant offender who is, under the relevant legislation, discharged from the notification requirements of this Part by a court, person or body in England and Wales or Northern Ireland is, by virtue of the discharge, also discharged from the notification requirements of this Part as it applies to Scotland.
- (2) In subsection (1) “relevant legislation” means legislation which makes provision equivalent to that made by sections 88A to 88H and this section for a relevant offender who is subject to the notification requirements of this Part as it applies to England and Wales or, as the case may be, Northern Ireland for an indefinite period to be discharged from those notification requirements.]

#### Textual Amendments

**F22** Ss. 88A-88I inserted (S.) (25.10.2010 at 17.00 hours) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2010 \(S.S.I. 2010/370\)](#), arts. 1(1), 3 (which Order is revoked and re-enacted with

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modifications (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#))

## 89 Young offenders: parental directions

- (1) Where a person within the first column of the following Table (“the young offender”) is under 18 (or, in Scotland, 16) when he is before the court referred to in the second column of the Table opposite the description that applies to him, that court may direct that subsection (2) applies in respect of an individual (“the parent”) having parental responsibility for (or, in Scotland, parental responsibilities in relation to) the young offender.

TABLE

<i>Description of person</i>	<i>Court which may make the direction</i>
A relevant offender within section 80(1) (a) to (c) or 81(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A relevant offender within section 129(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A person who is the subject of a notification order, interim notification order, sexual offences prevention order or interim sexual offences prevention order	The court which makes the order
A relevant offender who is the defendant to an application under subsection (4) (or, in Scotland, the subject of an application under subsection (5))	The court which hears the application

- (2) Where this subsection applies—
- the obligations that would (apart from this subsection) be imposed by or under sections 83 to 86 on the young offender are to be treated instead as obligations on the parent, and
  - the parent must ensure that the young offender attends at the police station with him, when a notification is being given.
- (3) A direction under subsection (1) takes immediate effect and applies—
- until the young offender attains the age of 18 (or, where a court in Scotland gives the direction, 16); or
  - for such shorter period as the court may, at the time the direction is given, direct.
- (4) A chief officer of police may, by complaint to any magistrates' court whose commission area includes any part of his police area, apply for a direction under subsection (1) in respect of a relevant offender (“the defendant”)—
- who resides in his police area, or who the chief officer believes is in or is intending to come to his police area, and
  - who the chief officer believes is under 18.



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- (5) In Scotland, a chief constable may, by summary application to any sheriff within whose sheriffdom lies any part of the area of his police force, apply for a direction under subsection (1) in respect of a relevant offender (“the subject”)—
- (a) who resides in that area, or who the chief constable believes is in or is intending to come to that area, and
  - (b) who the chief constable believes is under 16.

## 90 Parental directions: variations, renewals and discharges

- (1) A person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a direction under section 89(1).
- (2) The persons are—
- (a) the young offender;
  - (b) the parent;
  - (c) the chief officer of police for the area in which the young offender resides;
  - (d) a chief officer of police who believes that the young offender is in, or is intending to come to, his police area;
  - (e) in Scotland, where the appropriate court is a civil court—
    - (i) the chief constable of the police force within the area of which the young offender resides;
    - (ii) a chief constable who believes that the young offender is in, or is intending to come to, the area of his police force,
 and in any other case, the prosecutor;
  - (f) where the direction was made on an application under section 89(4), the chief officer of police who made the application;
  - (g) where the direction was made on an application under section 89(5), the chief constable who made the application.
- (3) An application under subsection (1) may be made—
- (a) where the appropriate court is the Crown Court (or in Scotland a criminal court), in accordance with rules of court;
  - (b) in any other case, by complaint (or, in Scotland, by summary application).
- (4) On the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the direction, that the court considers appropriate.
- (5) In this section, the “appropriate court” means—
- (a) where the Court of Appeal made the order, the Crown Court;
  - (b) in any other case, the court that made the direction under section 89(1).

## 91 Offences relating to notification **E+W+N.I.**

- (1) A person commits an offence if he—
- (a) fails, without reasonable excuse, to comply with section 83(1), 84(1), 84(4)(b), 85(1), 87(4) or 89(2)(b) or any requirement imposed by regulations made under section 86(1); or



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- (b) notifies to the police, in purported compliance with section 83(1), 84(1) or 85(1) or any requirement imposed by regulations made under section 86(1), any information which he knows to be false.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- (3) A person commits an offence under paragraph (a) of subsection (1) on the day on which he first fails, without reasonable excuse, to comply with section 83(1), 84(1) or 85(1) or a requirement imposed by regulations made under section 86(1), and continues to commit it throughout any period during which the failure continues; but a person must not be prosecuted under subsection (1) more than once in respect of the same failure.
- (4) Proceedings for an offence under this section may be commenced in any court having jurisdiction in any place where the person charged with the offence resides or is found.

#### **Extent Information**

- E4** This version of this provision extends to England, Wales and Northern Ireland only; a separate version has been created for Scotland only

## **91 Offences relating to notification** **S**

- (1) A person commits an offence if he—
- (a) fails, without reasonable excuse, to comply with section 83(1), 84(1), 84(4)(b), 85(1), <sup>[F144]</sup>87(5A) <sup>[F145]</sup>or (5B) or 89(2)(b) or any requirement imposed by regulations made under section 86(1); or
  - (b) notifies to the police, in purported compliance with section 83(1), 84(1) or 85(1) or any requirement imposed by regulations made under section 86(1), any information which he knows to be false.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- (3) A person commits an offence under paragraph (a) of subsection (1) on the day on which he first fails, without reasonable excuse, to comply with section 83(1), 84(1) or 85(1) or a requirement imposed by regulations made under section 86(1), and continues to commit it throughout any period during which the failure continues; but a person must not be prosecuted under subsection (1) more than once in respect of the same failure.
- <sup>[F146]</sup>(4) Proceedings for an offence under this section may be commenced in any court—
- (a) having jurisdiction in any place where the accused—
    - (i) resides;
    - (ii) is last known to have resided; or

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- (iii) is found;
- (b) which has convicted the accused of an offence if the accused is subject to the notification requirements of this Part by virtue of that conviction; or
- (c) which has made an order under section 104(1)(b) in respect of the accused if the accused is subject to those requirements by virtue of that order.]

#### Extent Information

- E9** This version of this provision extends to Scotland only; a separate version has been created for England, Wales and Northern Ireland only

#### Textual Amendments

- F144** Words in s. 91(1)(a) substituted (S.) (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 77\(9\)](#), 104; S.S.I. 2006/432, [art. 2\(d\)](#)
- F145** Words in s. 91(1)(a) inserted (S.) (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 78\(8\)](#), 104; S.S.I. 2006/432, [art. 2\(d\)](#)
- F146** S. 91(4) substituted (S.) (8.2.2006) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\)](#), [ss. 18](#), 24(2); S.S.I. 2006/48, [art. 3\(1\)](#), Sch. Pt. 1 (subject to [art. 3\(3\)](#))

## 92 Certificates for purposes of Part 2

- (1) Subsection (2) applies where on any date a person is—
  - (a) convicted of an offence listed in Schedule 3;
  - (b) found not guilty of such an offence by reason of insanity; or
  - (c) found to be under a disability and to have done the act charged against him in respect of such an offence.
- (2) If the court by or before which the person is so convicted or found—
  - (a) states in open court—
    - (i) that on that date he has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged against him, and
    - (ii) that the offence in question is an offence listed in Schedule 3, and
  - (b) certifies those facts, whether at the time or subsequently,
 the certificate is, for the purposes of this Part, evidence (or, in Scotland, sufficient evidence) of those facts.
- (3) Subsection (4) applies where on any date a person is, in England and Wales or Northern Ireland, cautioned in respect of an offence listed in Schedule 3.
- (4) If the constable—
  - (a) informs the person that he has been cautioned on that date and that the offence in question is an offence listed in Schedule 3, and
  - (b) certifies those facts, whether at the time or subsequently, in such form as the Secretary of State may by order prescribe,
 the certificate is, for the purposes of this Part, evidence (or, in Scotland, sufficient evidence) of those facts.

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### 93 Abolished homosexual offences

Schedule 4 (procedure for ending notification requirements for abolished homosexual offences) has effect.

#### *Information for verification*

### 94 Part 2: supply of information to Secretary of State etc. for verification

- (1) This section applies to information notified to the police under—
  - (a) section 83, 84 or 85, or
  - (b) section 2(1) to (3) of the Sex Offenders Act 1997 (c. 51).
- (2) A person within subsection (3) may, for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, supply information to which this section applies to—
  - (a) the Secretary of State,
  - [<sup>F28</sup>(aa) the Child Maintenance and Enforcement Commission,]
  - (b) a Northern Ireland Department, or
  - (c) a person providing services to the Secretary of State [<sup>F29</sup>, the Child Maintenance and Enforcement Commission] or a Northern Ireland Department in connection with a relevant function,for use for the purpose of verifying the information.
- (3) The persons are—
  - (a) a chief officer of police (in Scotland, a chief constable),
  - [<sup>F30</sup>(b) the National Policing Improvement Agency,]
  - [<sup>F31</sup>(c) the Serious Organised Crime Agency.]
- (4) In relation to information supplied under subsection (2) to any person, the reference to verifying the information is a reference to—
  - (a) checking its accuracy by comparing it with information held—
    - (i) where the person is the Secretary of State [<sup>F32</sup>, the Child Maintenance and Enforcement Commission] or a Northern Ireland Department, by him or it in connection with the exercise of a relevant function, or
    - (ii) where the person is within subsection (2)(c), by that person in connection with the provision of services referred to there, and
  - (b) compiling a report of that comparison.
- (5) Subject to subsection (6), the supply of information under this section is to be taken not to breach any restriction on the disclosure of information (however arising or imposed).
- (6) This section does not authorise the doing of anything that contravenes the Data Protection Act 1998 (c. 29).
- (7) This section does not affect any power existing apart from this section to supply information.
- (8) In this section—

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“Northern Ireland Department” means the Department for Employment and Learning, the Department of the Environment or the Department for Social Development;

“relevant function” means—

- (a) a function relating to social security, child support, employment or training,
- (aa) [<sup>F33</sup>in relation to the Child Maintenance and Enforcement Commission, any function of that Commission,]
- (b) a function relating to passports,
- (c) a function under Part 3 of the Road Traffic Act 1988 (c. 52) or Part 2 of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)).

#### Textual Amendments

- F28** S. 94(2)(aa) inserted (1.11.2008) by [The Child Support \(Consequential Provisions\) \(No. 2\) Regulations 2008 \(S.I. 2008/2656\)](#), [reg. 3\(2\)\(a\)\(i\)](#)
- F29** Words in s. 94(2)(c) inserted (1.11.2008) by [The Child Support \(Consequential Provisions\) \(No. 2\) Regulations 2008 \(S.I. 2008/2656\)](#), [reg. 3\(2\)\(a\)\(ii\)](#)
- F30** S. 94(3)(b) substituted (1.4.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 1(3), 53, [Sch. 1 para. 90](#); S.I. 2007/709, [art. 3\(a\)](#) (subject to arts. 6, 7)
- F31** S. 94(3)(c) substituted for s. 94(3)(c)(d) (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 194](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to art. 4(2)-(7))
- F32** Words in s. 94(4)(a)(i) inserted (1.11.2008) by [The Child Support \(Consequential Provisions\) \(No. 2\) Regulations 2008 \(S.I. 2008/2656\)](#), [reg. 3\(2\)\(b\)](#)
- F33** S. 94(8): para. (aa) inserted in definition of "relevant function" (1.11.2008) by [The Child Support \(Consequential Provisions\) \(No. 2\) Regulations 2008 \(S.I. 2008/2656\)](#), [reg. 3\(2\)\(c\)](#)

## 95 Part 2: supply of information by Secretary of State etc.

- (1) A report compiled under section 94 may be supplied by—
  - (a) the Secretary of State,
  - [<sup>F34</sup>(aa) the Child Maintenance and Enforcement Commission,]
  - (b) a Northern Ireland Department, or
  - (c) a person within section 94(2)(c),
 to a person within subsection (2).
- (2) The persons are—
  - (a) a chief officer of police (in Scotland, a chief constable),
  - [<sup>F35</sup>(b) the Serious Organised Crime Agency.]
- (3) Such a report may contain any information held—
  - (a) by the Secretary of State [<sup>F36</sup>, the Child Maintenance and Enforcement Commission] or a Northern Ireland Department in connection with the exercise of a relevant function, or
  - (b) by a person within section 94(2)(c) in connection with the provision of services referred to there.
- (4) Where such a report contains information within subsection (3), the person within subsection (2) to whom it is supplied—

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- (a) may retain the information, whether or not used for the purposes of the prevention, detection, investigation or prosecution of an offence under this Part, and
  - (b) may use the information for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Part), but for no other purpose.
- (5) Subsections (5) to (8) of section 94 apply in relation to this section as they apply in relation to section 94.

**Textual Amendments**

- F34** S. 95(1)(aa) inserted (1.11.2008) by [The Child Support \(Consequential Provisions\) \(No. 2\) Regulations 2008 \(S.I. 2008/2656\)](#), [reg. 3\(3\)\(a\)](#)
- F35** S. 95(2)(b) substituted for s. 95(b)(c) (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), [ss. 59, 178](#), [Sch. 4 para. 195](#); [S.I. 2006/378](#), [art. 4\(1\)](#), [Sch. para. 10](#) (subject to [art. 4\(2\)-\(7\)](#))
- F36** Words in s. 95(3)(a) inserted (1.11.2008) by [The Child Support \(Consequential Provisions\) \(No. 2\) Regulations 2008 \(S.I. 2008/2656\)](#), [reg. 3\(3\)\(b\)](#)

*Information about release or transfer*

**96 Information about release or transfer**

- (1) This section applies to a relevant offender who is serving a sentence of imprisonment or a term of service detention, or is detained in a hospital.
- (2) The Secretary of State may by regulations make provision requiring notice to be given by the person who is responsible for that offender to persons prescribed by the regulations, of any occasion when the offender is released or a different person becomes responsible for him.
- [<sup>F37</sup>(2A) The regulations may make provision requiring the person who is responsible for an offender, in giving notice under the regulations, to provide—
  - (a) any information about the offender, or
  - (b) a photograph of any part of the offender.
- (2B) In subsection (2A), “photograph” is to be construed in accordance with section 88(2).]
- (3) The regulations may make provision for determining who is to be treated for the purposes of this section as responsible for an offender.
- (4) <sup>F38</sup> .....

**Textual Amendments**

- F37** S. 96(2A)(2B) inserted (S.) (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 79\(2\)](#), [104](#); [S.S.I. 2006/432](#), [art. 2\(d\)](#)
- F38** S. 96(4) repealed (S.) (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 102\(5\)](#), [206\(1\)](#); [S.I. 2011/178](#), [art. 2](#), [Sch.](#)

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## **[<sup>F39</sup>96A Entry and examination of home address**

Police powers of entry to and examination of relevant offender's home address

- (1) A sheriff may, if satisfied on the application of a senior police officer of the relevant force as to the matters mentioned in subsection (2), grant a warrant authorising any constable of the relevant force to enter premises in the sheriffdom (if necessary using reasonable force) and to examine and search them, and the things in them, for the purpose mentioned in subsection (3).
- (2) Those matters are—
  - (a) that the premises are either—
    - (i) premises whose address has been notified by a relevant offender as his home address in his most recent notification of a home address under this Part; or
    - (ii) premises whose address has been notified by a relevant offender as the address of any other premises at which he regularly resides or stays, in his most recent notification under section 83(1) or 85(1) or in any notification under section 84(1) given by him since that notification;
  - (b) that the offender is not one to whom subsection (4) applies;
  - (c) that it would assist the carrying out of the purpose mentioned in subsection (3), for a constable of the relevant force to examine and search the premises and the things in them; and
  - (d) that on more than one occasion, a constable of the relevant force has attempted to examine and search the premises and the things in them for the purpose mentioned in subsection (3) and has been unable (whether by not being able to search and examine the premises and the things in them, or by not being able to obtain entry to the premises) to do so.
- (3) That purpose is assessing the risk of the offender committing a sexual offence.
- (4) This subsection applies to the relevant offender if he is—
  - (a) remanded in or committed to custody by an order of a court;
  - (b) serving a sentence of imprisonment or a term of service detention;
  - (c) detained in a hospital; or
  - (d) outside the United Kingdom.
- (5) A sheriff is to determine an application for a warrant under subsection (1) without hearing from the relevant offender or any other person who has an interest in the premises.
- (6) A warrant under subsection (1) does not confer power to seize anything in the premises to which it relates.
- (7) A warrant under subsection (1) must be executed at a reasonable hour.
- (8) A warrant under subsection (1) continues in force until the expiry of the period of one month beginning with the date of the warrant's grant.
- (9) A warrant under subsection (1) authorises entry on one occasion only.
- (10) This section does not prejudice any other power of entry, examination, search or seizure.
- (11) In this section—

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“the relevant force” means the police force maintained for the area in which the premises are situated;

“senior police officer” means a constable of the rank of superintendent or above; and

“sexual offence” means—

- (a) an offence within any of paragraphs 36 to 59C of Schedule 3; or
- (b) any other offence in circumstances in which it would be likely that a determination such as is mentioned in paragraph 60 of that Schedule would be made in relation to the offence.]

#### Textual Amendments

**F39** S. 96A inserted (S.) (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 80, 104](#); [S.S.I. 2006/432](#), [art. 2\(d\)](#)

### *[<sup>F40</sup>Entry and search of home address*

#### Textual Amendments

**F40** S. 96B and cross-heading inserted (E.W.N.I.) (31.5.2007) by [Violent Crime Reduction Act 2006 \(c. 38\)](#), [ss. 58\(1\), 66\(2\)](#); [S.I. 2007/858](#), [art. 3\(f\)](#)

## **96B Power of entry and search of relevant offender's home address**

- (1) If on an application made by a senior police officer of the relevant force a justice of the peace is satisfied that the requirements in subsection (2) are met in relation to any premises, he may issue a warrant authorising a constable of that force—
  - (a) to enter the premises for the purpose of assessing the risks posed by the relevant offender to which the warrant relates; and
  - (b) to search the premises for that purpose.
- (2) The requirements are—
  - (a) that the address of each set of premises specified in the application is an address falling within subsection (3);
  - (b) that the relevant offender is not one to whom subsection (4) applies;
  - (c) that it is necessary for a constable to enter and search the premises for the purpose mentioned in subsection (1)(a); and
  - (d) that on at least two occasions a constable has sought entry to the premises in order to search them for that purpose and has been unable to obtain entry for that purpose.
- (3) An address falls within this subsection if—
  - (a) it is the address which was last notified in accordance with this Part by a relevant offender to the police as his home address; or
  - (b) there are reasonable grounds to believe that a relevant offender resides there or may regularly be found there.
- (4) This subsection applies to a relevant offender if he is—
  - (a) remanded in or committed to custody by order of a court;

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- (b) serving a sentence of imprisonment or a term of service detention;
  - (c) detained in a hospital; or
  - (d) outside the United Kingdom.
- (5) A warrant issued under this section must specify the one or more sets of premises to which it relates.
- (6) The warrant may authorise the constable executing it to use reasonable force if necessary to enter and search the premises.
- (7) The warrant may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose mentioned in subsection (1)(a).
- (8) Where a warrant issued under this section authorises multiple entries, the number of entries authorised may be unlimited or limited to a maximum.
- (9) In this section a reference to the relevant offender to whom the warrant relates is a reference to the relevant offender—
- (a) who has in accordance with this Part notified the police that the premises specified in the warrant are his home address; or
  - (b) in respect of whom there are reasonable grounds to believe that he resides there or may regularly be found there.
- (10) In this section—
- “the relevant force” means the police force maintained for the police area in which the premises in respect of which the application is made or the warrant is issued are situated;
  - “senior police officer” means a constable of the rank of superintendent or above.]

### *Notification orders*

## **97 Notification orders: applications and grounds**

- (1) A chief officer of police may, by complaint to any magistrates' court whose commission area includes any part of his police area, apply for an order under this section (a “notification order”) in respect of a person (“the defendant”) if—
- (a) it appears to him that the following three conditions are met with respect to the defendant, and
  - (b) the defendant resides in his police area or the chief officer believes that the defendant is in, or is intending to come to, his police area.
- (2) The first condition is that under the law in force in a country outside the United Kingdom—
- (a) he has been convicted of a relevant offence (whether or not he has been punished for it),
  - (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity,



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- (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or
  - (d) he has been cautioned in respect of a relevant offence.
- (3) The second condition is that—
- (a) the first condition is met because of a conviction, finding or caution which occurred on or after 1st September 1997,
  - (b) the first condition is met because of a conviction or finding which occurred before that date, but the person was dealt with in respect of the offence or finding on or after that date, or has yet to be dealt with in respect of it, or
  - (c) the first condition is met because of a conviction or finding which occurred before that date, but on that date the person was, in respect of the offence or finding, subject under the law in force in the country concerned to detention, supervision or any other disposal equivalent to any of those mentioned in section 81(3) (read with sections 81(6) and 131).
- (4) The third condition is that the period set out in section 82 (as modified by subsections (2) and (3) of section 98) in respect of the relevant offence has not expired.
- (5) If on the application it is proved that the conditions in subsections (2) to (4) are met, the court must make a notification order.
- (6) In this section and section 98, “relevant offence” has the meaning given by section 99.

## **98 Notification orders: effect**

- (1) Where a notification order is made—
- (a) the application of this Part to the defendant in respect of the conviction, finding or caution to which the order relates is subject to the modifications set out below, and
  - (b) subject to those modifications, the defendant becomes or (as the case may be) remains subject to the notification requirements of this Part for the notification period set out in section 82.
- (2) The “relevant date” means—
- (a) in the case of a person within section 97(2)(a), the date of the conviction;
  - (b) in the case of a person within section 97(2)(b) or (c), the date of the finding;
  - (c) in the case of a person within section 97(2)(d), the date of the caution.
- (3) In section 82—
- (a) references, except in the Table, to a person (or relevant offender) within any provision of section 80 are to be read as references to the defendant;
  - (b) the reference in the Table to section 80(1)(d) is to be read as a reference to section 97(2)(d);
  - (c) references to an order of any description are to be read as references to any corresponding disposal made in relation to the defendant in respect of an offence or finding by reference to which the notification order was made;
  - (d) the reference to offences listed in Schedule 3 is to be read as a reference to relevant offences.
- (4) In sections 83 and 85, references to the commencement of this Part are to be read as references to the date of service of the notification order.

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## **99 Sections 97 and 98: relevant offences**

- (1) “Relevant offence” in sections 97 and 98 means an act which—
  - (a) constituted an offence under the law in force in the country concerned, and
  - (b) would have constituted an offence listed in Schedule 3 (other than at paragraph 60) if it had been done in any part of the United Kingdom.
- (2) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (1) however it is described in that law.
- (3) Subject to subsection (4), on an application for a notification order the condition in subsection (1)(b) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice—
  - (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met,
  - (b) showing his grounds for that opinion, and
  - (c) requiring the applicant to prove that the condition is met.
- (4) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (3).

## **100 Interim notification orders**

- (1) This section applies where an application for a notification order (“the main application”) has not been determined.
- (2) An application for an order under this section (“an interim notification order”)—
  - (a) may be made in the complaint containing the main application, or
  - (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.
- (3) The court may, if it considers it just to do so, make an interim notification order.
- (4) Such an order—
  - (a) has effect only for a fixed period, specified in the order;
  - (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (5) While such an order has effect—
  - (a) the defendant is subject to the notification requirements of this Part;
  - (b) this Part applies to the defendant, subject to the modification set out in subsection (6).
- (6) The “relevant date” means the date of service of the order.
- (7) The applicant or the defendant may by complaint apply to the court that made the interim notification order for the order to be varied, renewed or discharged.

## **101 Notification orders and interim notification orders: appeals**

A defendant may appeal to the Crown Court against the making of a notification order or interim notification order.

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## **102 Appeals in relation to notification orders and interim notification orders: Scotland**

In Scotland—

- (a) an interlocutor granting or refusing a notification order or interim notification order is an appealable interlocutor; and
- (b) where an appeal is taken against an interlocutor so granting such an order the order shall, without prejudice to any power of the court to vary or recall it, continue to have effect pending the disposal of the appeal.

## **103 Sections 97 to 100: Scotland**

- (1) Sections 97 to 100 apply to Scotland with the following modifications—
  - (a) references to a chief officer of police and to his police area are to be read, respectively, as references to a chief constable and to the area of his police force;
  - (b) references to the defendant are to be read as references to the person in respect of whom the order is sought or has effect;
  - (c) an application for a notification order or interim notification order is made by summary application to any sheriff within whose sheriffdom lies any part of the area of the applicant's police force (references to "the court" being construed accordingly).
- (2) A record of evidence shall be kept on any summary application made by virtue of subsection (1)(c) above.
- (3) The clerk of the court by which, by virtue of that subsection, a notification order or interim notification order is made, varied, renewed or discharged shall cause a copy of, as the case may be—
  - (a) the order as so made, varied or renewed; or
  - (b) the interlocutor by which discharge is effected,to be given to the person named in the order or sent to him by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate).

### *Sexual offences prevention orders*

## **104 Sexual offences prevention orders: applications and grounds**

- (1) A court may make an order under this section in respect of a person ("the defendant") where any of subsections (2) to (4) applies to the defendant and—
  - (a) where subsection (4) applies, it is satisfied that the defendant's behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant;
  - (b) in any other case, it is satisfied that it is necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.
- (2) This subsection applies to the defendant where the court deals with him in respect of an offence listed in Schedule 3 or 5.

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- (3) This subsection applies to the defendant where the court deals with him in respect of a finding—
- (a) that he is not guilty of an offence listed in Schedule 3 or 5 by reason of insanity, or
  - (b) that he is under a disability and has done the act charged against him in respect of such an offence.
- (4) This subsection applies to the defendant where—
- (a) an application under subsection (5) has been made to the court in respect of him, and
  - (b) on the application, it is proved that he is a qualifying offender.
- (5) A chief officer of police may by complaint to a magistrates' court apply for an order under this section in respect of a person who resides in his police area or who the chief officer believes is in, or is intending to come to, his police area if it appears to the chief officer that—
- (a) the person is a qualifying offender, and
  - (b) the person has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.
- (6) An application under subsection (5) may be made to any magistrates' court whose commission area includes—
- (a) any part of the applicant's police area, or
  - (b) any place where it is alleged that the person acted in a way mentioned in subsection (5)(b).

## 105 SOPOs: further provision as respects Scotland

- (1) A chief constable may apply for an order under this section in respect of a person who he believes is in, or is intending to come to, the area of his police force if it appears to the chief constable that—
- (a) the person has been convicted of, found not guilty by reason of insanity or found to be under a disability and to have done the act charged against him in respect of—
    - (i) an offence listed in paragraph 60 of Schedule 3; or
    - (ii) before the commencement of this Part, an offence in Scotland other than is mentioned in paragraphs 36 to 59 of that Schedule if the chief constable considers that had the conviction or finding been after such commencement it is likely that a determination such as is mentioned in paragraph 60 would have been made in relation to the offence; and
  - (b) the person has since the conviction or finding acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.
- (2) An application under subsection (1) may be made by summary application to a sheriff
- [<sup>F41</sup>(aa) within whose sheriffdom the person in respect of whom the order is sought resides;
  - (ab) within whose sheriffdom the person is believed by the applicant to be;
  - (ac) to whose sheriffdom the person is believed by the applicant to be intending to come;]
  - (b) [<sup>F42</sup>Within whose sheriffdom lies] any place where it is alleged that the person acted in a way mentioned in subsection (1)(b).

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- (3) The sheriff may make the order where satisfied—
- (a) that the person’s behaviour since the conviction or finding makes it necessary to make such an order, for the purposes of protecting the public or any particular members of the public from serious sexual harm from the person; and
  - (b) where the application is by virtue of subsection (1)(a)(ii), that there was a significant sexual aspect to the person’s behaviour in committing the offence.
- (4) Subsection (3) of section 106 applies for the purposes of this section as it applies for the purposes of section 104 and subsections (2) and (3) of section 112 apply in relation to a summary application made by virtue of subsection (1) as they apply in relation to one made by virtue of subsection [F43(1)(e)] of that section.

#### Textual Amendments

- F41** Words in s. 105(2) substituted (7.10.2005) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\), ss. 17\(1\)\(a\)\(i\)](#), 20; S.S.I. 2005/480, [art. 2](#) (subject to [art. 3](#)) (which amending s. 17 was extended (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\)](#), s. 56(1)(a))
- F42** Words in s. 105(2)(b) inserted (7.10.2005) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\), ss. 17\(1\)\(a\)\(ii\)](#), 20; S.S.I. 2005/480, [art. 2](#) (subject to [art. 3](#)) (which amending s. 17 was extended (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\)](#), s. 56(1)(a))
- F43** Words in s. 105(4) substituted (7.10.2005) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\), ss. 17\(1\)\(b\)](#), 20; S.S.I. 2005/480, [art. 2](#) (subject to [art. 3](#)) (which amending s. 17 was extended (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\)](#), s. 56(1)(a))

## 106 Section 104: supplemental

- (1) In this Part, “sexual offences prevention order” means an order under section 104 or 105.
- (2) Subsections (3) to (8) apply for the purposes of section 104.
- (3) “Protecting the public or any particular members of the public from serious sexual harm from the defendant” means protecting the public in the United Kingdom or any particular members of that public from serious physical or psychological harm, caused by the defendant committing one or more offences listed in Schedule 3.
- (4) Acts, behaviour, convictions and findings include those occurring before the commencement of this Part.
- (5) “Qualifying offender” means a person within subsection (6) or (7).
- (6) A person is within this subsection if, whether before or after the commencement of this Part, he—
- (a) has been convicted of an offence listed in Schedule 3 (other than at paragraph 60) or in Schedule 5,
  - (b) has been found not guilty of such an offence by reason of insanity,
  - (c) has been found to be under a disability and to have done the act charged against him in respect of such an offence, or

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- (d) in England and Wales or Northern Ireland, has been cautioned in respect of such an offence.
- (7) A person is within this subsection if, under the law in force in a country outside the United Kingdom and whether before or after the commencement of this Part—
- (a) he has been convicted of a relevant offence (whether or not he has been punished for it),
  - (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity,
  - (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or
  - (d) he has been cautioned in respect of a relevant offence.
- (8) “Appropriate date”, in relation to a qualifying offender, means the date or (as the case may be) the first date on which he was convicted, found or cautioned as mentioned in subsection (6) or (7).
- (9) In subsection (7), “relevant offence” means an act which—
- (a) constituted an offence under the law in force in the country concerned, and
  - (b) would have constituted an offence listed in Schedule 3 (other than at paragraph 60) or in Schedule 5 if it had been done in any part of the United Kingdom.
- (10) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (9), however it is described in that law.
- (11) Subject to subsection (12), on an application under section 104(5) the condition in subsection (9)(b) (where relevant) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice—
- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met,
  - (b) showing his grounds for that opinion, and
  - (c) requiring the applicant to prove that the condition is met.
- (12) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (11).
- <sup>F44</sup>(13) Subsection (14) applies for the purposes of section 104 and this section <sup>F45</sup>in their application in relation to England and Wales or Northern Ireland].
- (14) In construing any reference to an offence listed in Schedule 3, any condition subject to which an offence is so listed that relates—
- (a) to the way in which the defendant is dealt with in respect of an offence so listed or a relevant finding (as defined by section 132(9)), or
  - (b) to the age of any person,
- is to be disregarded.]

#### Textual Amendments

**F44** S. 106(13)(14) inserted (E.W.N.I.) (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), [ss. 141\(1\), 153\(7\)](#); [S.I. 2008/1586](#), [art. 2](#), [Sch. 1 para. 44](#) (subject to [Sch. 2](#))

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**F45** Words in s. 106(13) repealed (S.) (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), [ss. 100\(2\)\(a\), 206\(1\)](#); S.S.I. 2011/354, art. 2, sch.

## 107 SOPOs: effect

- (1) A sexual offences prevention order—
  - (a) prohibits the defendant from doing anything described in the order, and
  - (b) has effect for a fixed period (not less than 5 years) specified in the order or until further order.
- (2) The only prohibitions that may be included in the order are those necessary for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.
- (3) Where—
  - (a) an order is made in respect of a defendant who was a relevant offender immediately before the making of the order, and
  - (b) the defendant would (apart from this subsection [<sup>F46</sup>and sections 88F and 88G]) cease to be subject to the notification requirements of this Part while the order (as renewed from time to time) has effect,the defendant remains subject to the notification requirements.
- [<sup>F47</sup>(3A) Where—
  - (a) a sexual offences prevention order is in effect in relation to a relevant sex offender (within the meaning of section 88A); and
  - (b) by virtue of section 88F or 88G the relevant sex offender ceases to be subject to the notification requirements of this Part,the sexual offences prevention order ceases to have effect.
- (3B) Subsection (3A) applies to the orders mentioned in section 108(8)(b) and (c) as it applies to sexual offences prevention orders.]
- (4) Where an order is made in respect of a defendant who was not a relevant offender immediately before the making of the order—
  - (a) the order causes the defendant to become subject to the notification requirements of this Part from the making of the order until the order (as renewed from time to time) ceases to have effect, and
  - (b) this Part applies to the defendant, subject to the modification set out in subsection (5).
- (5) The “relevant date” is the date of service of the order.
- (6) Where a court makes a sexual offences prevention order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.
- (7) Section 106(3) applies for the purposes of this section and section 108.

### Textual Amendments

**F46** Words in s. 107(3)(b) inserted (S.) (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011](#) (S.S.I. 2011/45), arts. 1(1), [4\(1\)\(a\)](#)

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**F47** S. 107(3A) inserted (S.) (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#), arts. 1(1), **4(1)(b)**

## 108 SOPOs: variations, renewals and discharges

- (1) A person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a sexual offences prevention order.
- (2) The persons are—
  - (a) the defendant;
  - (b) the chief officer of police for the area in which the defendant resides;
  - (c) a chief officer of police who believes that the defendant is in, or is intending to come to, his police area;
  - (d) where the order was made on an application under section 104(5), the chief officer of police who made the application.
- (3) An application under subsection (1) may be made—
  - (a) where the appropriate court is the Crown Court, in accordance with rules of court;
  - (b) in any other case, by complaint.
- (4) Subject to subsections (5) and (6), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the sexual offences prevention order, that the court considers appropriate.
- (5) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).
- (6) The court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of the defendant and—
  - (a) where the application is made by a chief officer of police, that chief officer, or
  - (b) in any other case, the chief officer of police for the area in which the defendant resides.
- (7) In this section “the appropriate court” means—
  - (a) where the Crown Court or the Court of Appeal made the sexual offences prevention order, the Crown Court;
  - (b) where a magistrates' court made the order, that court, a magistrates' court for the area in which the defendant resides or, where the application is made by a chief officer of police, any magistrates' court whose commission area includes any part of the chief officer's police area;
  - (c) where a youth court made the order, that court, a youth court for the area in which the defendant resides or, where the application is made by a chief officer of police, any youth court whose commission area includes any part of the chief officer's police area.
- (8) This section applies to orders under—
  - (a) section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders),



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- (b) section 2 or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders made in England and Wales or Scotland), and
  - (c) Article 6 of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders made in Northern Ireland),
- as it applies to sexual offences prevention orders.

## 109 Interim SOPOs

- (1) This section applies where an application under section 104(5) or 105(1) (“the main application”) has not been determined.
- (2) An application for an order under this section (“an interim sexual offences prevention order”)—
  - (a) may be made by the complaint by which the main application is made, or
  - (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.
- (3) The court may, if it considers it just to do so, make an interim sexual offences prevention order, prohibiting the defendant from doing anything described in the order.
- (4) Such an order—
  - (a) has effect only for a fixed period, specified in the order;
  - (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (5) Section [<sup>F48</sup>107(3)][<sup>F48</sup>107(2)] to (5) apply to an interim sexual offences prevention order as if references to an order were references to such an order, and with the omission of “as renewed from time to time” in both places.
- (6) The applicant or the defendant may by complaint apply to the court that made the interim sexual offences prevention order for the order to be varied, renewed or discharged.
- (7) Subsection (6) applies to orders under—
  - (a) section 2A or 20(4)(a) of the Crime and Disorder Act 1998 (c. 37) (interim orders made in England and Wales or Scotland), and
  - (b) Article 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (interim orders made in Northern Ireland),as it applies to interim sexual offences prevention orders.

### Textual Amendments

**F48** Word in s. 109(5) substituted (S.) (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), **ss. 100(2)(b)**, 206(1); S.S.I. 2011/354, art. 2, sch.

## 110 SOPOs and interim SOPOs: appeals **U.K.**

- (1) A defendant may appeal against the making of a sexual offences prevention order—
  - (a) where section 104(2) applied to him, as if the order were a sentence passed on him for the offence;

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- (b) where section 104(3) (but not section 104(2)) applied to him, as if he had been convicted of the offence and the order were a sentence passed on him for that offence;
  - (c) where the order was made on an application under section 104(5), to the Crown Court.
- (2) A defendant may appeal to the Crown Court against the making of an interim sexual offences prevention order.
- (3) A defendant may appeal against the making of an order under section 108, or the refusal to make such an order—
- (a) where the application for such an order was made to the Crown Court, to the Court of Appeal;
  - (b) in any other case, to the Crown Court.
- (4) On an appeal under subsection (1)(c), (2) or (3)(b), the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.
- (5) Any order made by the Crown Court on an appeal under subsection (1)(c) or (2) (other than an order directing that an application be re-heard by a magistrates' court) is for the purpose of section 108(7) or 109(7) (respectively) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court).

## 110 SOPOs and interim SOPOs: appeals **E+W+N.I.**

- (1) A defendant may appeal against the making of a sexual offences prevention order—
- (a) where section 104(2) applied to him, as if the order were a sentence passed on him for the offence;
  - (b) where section 104(3) (but not section 104(2)) applied to him, as if he had been convicted of the offence and the order were a sentence passed on him for that offence;
  - (c) where the order was made on an application under section 104(5), to the Crown Court.
- (2) A defendant may appeal to the Crown Court against the making of an interim sexual offences prevention order.
- (3) A defendant may appeal against the making of an order under section 108, or the refusal to make such an order—
- (a) where the application for such an order was made to the Crown Court, to the Court of Appeal;
  - (b) in any other case, to the Crown Court.
- (4) On an appeal under subsection (1)(c), (2) or (3)(b), the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.
- (5) Any order made by the Crown Court on an appeal under subsection (1)(c) or (2) (other than an order directing that an application be re-heard by a magistrates' court) is for the purpose of section 108(7) or 109(7) (respectively) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court).

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## 111 Appeals in relation to SOPOs and interim SOPOs: Scotland

In Scotland—

- (a) an interlocutor granting, <sup>F49</sup> . . . a sexual offences prevention order [<sup>F50</sup>on an application under section 104(5) or 105(1)] or interim sexual offences prevention order [<sup>F51</sup>or refusing, varying, renewing or discharging either such order] is an appealable interlocutor; <sup>F52</sup> . . .
- (b) where an appeal is taken against an interlocutor so granting, varying or renewing such an order the order shall, without prejudice to any power of the court to vary or recall it, continue to have effect pending the disposal of the appeal.
- <sup>F53</sup>(c) a sexual offences prevention order made in any other case and any order granting or refusing a variation, renewal or discharge of such a sexual offences prevention order are, for the purposes of appeal, to be regarded—
  - (i) in the case of solemn proceedings, as if they were orders of the kind referred to in [<sup>F54</sup>section 106(1)(dza) of the Criminal Procedure (Scotland) Act 1995 (c.46) (appeal against community payback order)];
  - (ii) in the case of summary proceedings, as if they were orders of the kind referred to in [<sup>F55</sup>section 175(2)(cza) of that Act (appeal against community payback order)]; and
- (d) where an appeal is taken by virtue of paragraph (c) above, the High Court of Justiciary may, in the appeal proceedings, suspend the order appealed against pending the disposal of the appeal.]

### Textual Amendments

- F49** Words in s. 111(a) repealed (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), ss. 17(2)(a)(i); S.S.I. 2005/480, art. 2 (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))
- F50** Words in s. 111(a) inserted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), ss. 17(2)(a)(ii), 20; S.S.I. 2005/480, art. 2 (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))
- F51** Words in s. 111(a) inserted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), ss. 17(2)(a)(iii), 20; S.S.I. 2005/480, art. 2 (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))
- F52** Word in s. 111 repealed (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), ss. 17(2)(b), 20; S.S.I. 2005/480, art. 2 (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))
- F53** S. 111(c)(d) added (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), ss. 17(2)(c), 20; S.S.I. 2005/480, art. 2 (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by Violent Crime Reduction Act 2006 (c. 38), s. 56(1)(a))
- F54** Words in s. 111(c)(i) substituted (1.2.2011) by The Criminal Justice and Licensing (Scotland) Act 2010 (Consequential and Supplementary Provisions) Order 2011 (S.S.I. 2011/25), arts. 1, 2, Sch. para. 2(3)(a) (with art. 3)
- F55** Words in s. 111(c)(ii) substituted (1.2.2011) by The Criminal Justice and Licensing (Scotland) Act 2010 (Consequential and Supplementary Provisions) Order 2011 (S.S.I. 2011/25), arts. 1, 2, Sch. para. 2(3)(b) (with art. 3)

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## [<sup>F56</sup>111A SOPO and interim SOPO requirements: Scotland

- (1) This section applies in relation to a sexual offences prevention order or an interim sexual offences prevention order made, or to be made, by a court in Scotland.
- (2) Such an order, in addition to or instead of prohibiting the defendant from doing anything described in the order, may require the defendant to do anything described in the order.
- (3) Accordingly, in relation to such an order—
  - (a) the references in sections 107(2) and 108(5) to a prohibition include a reference to a requirement, and
  - (b) the reference in section 113(1) to a person's doing anything which he is prohibited from doing includes a reference to his failing to do anything which he is required to do.]

### Textual Amendments

**F56** S. 111A inserted (S.) (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. [100\(2\)\(c\)](#), [206\(1\)](#); S.S.I. 2011/354, art. 2, sch.

## 112 Sections 104 and 106 to 109: Scotland

- (1) Sections 104 and 106 to 109 apply to Scotland with the following modifications—
  - <sup>F57</sup>[<sup>F58</sup>(aa) the references in subsection (2) and (3)(a) of section 104 to an offence listed in Schedule 3 or 5 shall be read as references to an offence listed at paragraphs 36 to 60 of Schedule 3;]
  - (b) an application under subsection (5) of section 104 shall not be competent in respect of a person who is a qualifying offender by virtue only of a conviction or finding which relates to any offence listed at paragraphs 64 to 111 of Schedule 5;
  - (c) references to a chief officer of police and to his police area are to be read, respectively, as references to a chief constable and to the area of his police force;
  - (d) references to the defendant are to be read as references to the person in respect of whom the order is sought or has effect;
  - <sup>F59</sup>(da) a court may make an order under section 104(1)—
    - (i) at its own instance, or
    - (ii) on the motion of the prosecutor;]
    - (e) an application for a sexual offences prevention order <sup>F60</sup>. . . is made by summary application to any sheriff
      - <sup>F61</sup>(ia) within whose sheriffdom the person in respect of whom the order is sought resides;
      - (ib) within whose sheriffdom that person is believed by the applicant to be;
      - (ic) to whose sheriffdom that person is believed by the applicant to be intending to come;]
      - (ii) [<sup>F62</sup>within whose sheriffdom lies] any place where it is alleged that [<sup>F63</sup>that person] acted in a way mentioned in subsection (5)(b) of section 104,

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- (<sup>F64</sup>and, in relation to such an order, references to a court or the court shall be] construed accordingly);
- <sup>F65</sup>(ea) an application for an interim sexual offences prevention order—
- (i) is made by way of the main application; or
  - (ii) if the main application has been made, is made, by application to a sheriff for the sheriffdom of the sheriff to whom the main application was made, by the person who made that application,
- (and, in relation to such an order, references to a court or the court shall be construed accordingly,]
- (f) an application for the variation, renewal or discharge of [<sup>F66</sup>a sexual offences prevention order which was made on an application under section 104(5) or 105(1) or an interim sexual offences prevention order] is made by summary application to the sheriff who made the order or to a sheriff—
- (i) within whose sheriffdom the person subject to the order resides; <sup>F67</sup> . . .
  - [<sup>F68</sup>(ia) within whose sheriffdom that person is believed by the applicant to be; or
  - (iib) to whose sheriffdom that person is believed by the applicant to be intending to come,]
- (<sup>F69</sup>and, in relation to an application made by virtue of this paragraph, references to a court or the court shall be] construed accordingly).
- <sup>F70</sup>(g) an application for the variation, renewal or discharge of a sexual offences prevention order which was made where subsection (2) or (3) of section 104 applies may be made only by the person in respect of whom the order has effect or the prosecutor;
- (h) such an application is made—
- (i) where the sexual offences prevention order sought to be varied, renewed or discharged was made by the High Court of Justiciary, to that court;
  - (ii) where that order was made by the sheriff, to the appropriate sheriff.]

<sup>F71</sup>(1A) In subsection (1)(h)(ii), the “appropriate sheriff” is—

    - (a) in a case where the person in respect of whom the order has effect is, at the time of the application for its variation, renewal or discharge, resident in a sheriffdom other than the sheriffdom of the sheriff who made the order, any sheriff exercising criminal jurisdiction in the sheriffdom in which the person is resident;
    - (b) in any other case, any sheriff exercising criminal jurisdiction in the sheriff court district of the sheriff who made the order.]

(2) A record of evidence shall be kept on any summary application made by virtue of subsection (1)(e) or (f) above.

(3) The clerk of the court by which, by virtue of that subsection, a sexual offences prevention order or interim sexual offences prevention order is made, varied, renewed or discharged shall cause a copy of, as the case may be—

    - (a) the order as so made, varied or renewed; or
    - (b) the interlocutor by which discharge is effected,

to be given to the person named in the order or sent to him by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so

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sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate).

### Textual Amendments

- F57** S. 112(1)(a) repealed (7.10.2005) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\), ss. 17\(4\)\(a\), 20; S.S.I. 2005/480, art. 2](#) (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\), s. 56\(1\)\(a\)](#))
- F58** S. 112(1)(aa) inserted (7.10.2005) in place of s. 112(1)(a) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\), ss. 17\(4\)\(b\), 20; S.S.I. 2005/480, art. 2](#) (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\), s. 56\(1\)\(a\)](#))
- F59** S. 112(1)(da) inserted (S.) (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), ss. 100\(2\)\(d\), 206\(1\); S.S.I. 2011/354, art. 2, sch.](#)
- F60** Words in s. 112(1)(e) omitted (7.10.2005) by virtue of [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\), ss. 17\(4\)\(c\)\(i\), 20; S.S.I. 2005/480, art. 2](#) (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\), s. 56\(1\)\(a\)](#))
- F61** Words in s. 112(1)(e) substituted (7.10.2005) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\), ss. 17\(4\)\(c\)\(ii\), 20; S.S.I. 2005/480, art. 2](#) (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\), s. 56\(1\)\(a\)](#))
- F62** Words in s. 112(1)(e)(ii) inserted (7.10.2005) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\), ss. 17\(4\)\(c\)\(iii\), 20; S.S.I. 2005/480, art. 2](#) (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\), s. 56\(1\)\(a\)](#))
- F63** Words in s. 112(1)(e)(ii) substituted (7.10.2005) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\), ss. 17\(4\)\(c\)\(iv\), 20; S.S.I. 2005/480, art. 2](#) (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\), s. 56\(1\)\(a\)](#))
- F64** Words in s. 112(1)(e) substituted (7.10.2005) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\), ss. 17\(4\)\(c\)\(v\), 20; S.S.I. 2005/480, art. 2](#) (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\), s. 56\(1\)\(a\)](#))
- F65** S. 112(1)(ea) inserted (7.10.2005) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\), ss. 17\(4\)\(d\), 20; S.S.I. 2005/480, art. 2](#) (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\), s. 56\(1\)\(a\)](#))
- F66** Words in s. 112(1)(f) substituted (7.10.2005) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\), ss. 17\(4\)\(e\)\(i\), 20; S.S.I. 2005/480, art. 2](#) (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\), s. 56\(1\)\(a\)](#))
- F67** Word in s. 112(1)(f) repealed (7.10.2005) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\), ss. 17\(4\)\(e\)\(ii\), 20; S.S.I. 2005/480, art. 2](#) (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\), s. 56\(1\)\(a\)](#))
- F68** S. 112(1)(f)(iia)(iib) substituted (7.10.2005) for s. 112(1)(f)(ii) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\), ss. 17\(4\)\(e\)\(iii\), 20; S.S.I. 2005/480, art. 2](#) (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\), s. 56\(1\)\(a\)](#))
- F69** Words in s. 112(1)(f) substituted (7.10.2005) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\), s. 17\(4\)\(e\)\(iv\)](#) (as amended (8.11.2006) by [2006 c. 38, s. 56\(1\)\(a\); S.S.I. 2005/480, art. 2](#) (subject to art. 3)



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- F70** S. 112(1)(g)(h) inserted (7.10.2005) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\)](#), **ss. 17(4)(f)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\)](#), s. 56(1)(a))
- F71** S. 112(1A) inserted (7.10.2005) by [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 \(asp 9\)](#), **ss. 17(5)**, 20; S.S.I. 2005/480, **art. 2** (subject to art. 3) (which amending s. 17 was extended (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\)](#), s. 56(1)(a))

### 113 Offence: breach of SOPO or interim SOPO

- (1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by—
- a sexual offences prevention order;
  - an interim sexual offences prevention order;
  - an order under section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders);
  - an order under section 2, 2A or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders and interim orders made in England and Wales and in Scotland);
  - an order under Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders and interim orders made in Northern Ireland).
- (2) A person guilty of an offence under this section is liable—
- on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- (3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge or, in Scotland, a [<sup>F72</sup>community payback order].

#### Textual Amendments

- F72** Words in s. 113(3) substituted (S.) (1.2.2011) by [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Consequential and Supplementary Provisions\) Order 2011 \(S.S.I. 2011/25\)](#), arts. 1, 2, **Sch. para. 2(4)** (with art. 3)

### *Foreign travel orders*

### 114 Foreign travel orders: applications and grounds

- (1) A chief officer of police may by complaint to a magistrates' court apply for an order under this section (a “foreign travel order”) in respect of a person (“the defendant”) who resides in his police area or who the chief officer believes is in or is intending to come to his police area if it appears to the chief officer that—
- the defendant is a qualifying offender, and
  - the defendant has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.

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- (2) An application under subsection (1) may be made to any magistrates' court whose commission area includes any part of the applicant's police area.
- (3) On the application, the court may make a foreign travel order if it is satisfied that—
  - (a) the defendant is a qualifying offender, and
  - (b) the defendant's behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom.

## 115 Section 114: interpretation

- (1) Subsections (2) to (5) apply for the purposes of section 114.
- (2) "Protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom" means protecting persons [<sup>F73</sup>under 18] generally or any particular person [<sup>F73</sup>under 18] from 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.
- (3) Acts and behaviour include those occurring before the commencement of this Part.
- (4) "Qualifying offender" has the meaning given by section 116.
- (5) "Appropriate date", in relation to a qualifying offender, means the date or (as the case may be) the first date on which he was convicted, found or cautioned as mentioned in subsection (1) or (3) of section 116.
- (6) <sup>F74</sup> .....

### Textual Amendments

**F73** Words in s. 115(2) substituted (E.W.N.I.) (1.4.2010) by Policing and Crime Act 2009, {ss. 23(1)(a)}, 116(1) (with 23(2)); S.I. 2010/507, **art. 5(j)** (subject to **art. 6**) and "18" substituted (S.) (13.12.2010) for "16" by virtue of **Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)**, **ss. 101(2)**, 206(1); S.S.I. 2010/413, **art. 2**, **Sch.**

**F74** S. 115(6) repealed (E.W.N.I.) (1.4.2010) by Policing and Crime Act 2009, ss. 112(2), 116(1), {Sch. 8 Pt. 2}; S.I. 2010/507, **art. 5(x)** (subject to **art. 6**)

## 116 Section 114: qualifying offenders **E+W+N.I.**

- (1) A person is a qualifying offender for the purposes of section 114 if, whether before or after the commencement of this Part, he—
  - (a) has been convicted of an offence within subsection (2),
  - (b) has been found not guilty of such an offence by reason of insanity,
  - (c) has been found to be under a disability and to have done the act charged against him in respect of such an offence, or
  - (d) in England and Wales or Northern Ireland, has been cautioned in respect of such an offence.
- (2) The offences are—



*Status: Point in time view as at 25/06/2012.*

*Changes to legislation: Sexual Offences Act 2003, Part 2 is up to date with all changes known to be in force on or before 21 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) an offence within any of paragraphs 13 to 15, 44 to 46, 77, 78 and 82 of Schedule 3;
- (b) an offence within paragraph 31 [<sup>F75</sup>or 92S] of that Schedule, if the intended offence was an offence against a person [<sup>F76</sup>under 18];
- (c) an offence within paragraph 93 [<sup>F77</sup>or 93A] of that Schedule, if—
  - (i) the corresponding civil offence is an offence within any of paragraphs 13 to 15 of that Schedule;
  - (ii) the corresponding civil offence is an offence within paragraph 31 of that Schedule, and the intended offence was an offence against a person [<sup>F76</sup>under 18]; or
  - (iii) the corresponding civil offence is an offence within any of paragraphs 1 to 12, 16 to 30 and 32 to 35 of that Schedule, and the victim of the offence was [<sup>F76</sup>under 18] at the time of the offence.
- (d) an offence within any other paragraph of that Schedule, if the victim of the offence was [<sup>F76</sup>under 18] at the time of the offence.

[<sup>F78</sup>(2A) In subsection (2)(c) references to the corresponding civil offence are to be read, in relation to an offence within paragraph 93A of Schedule 3, as references to the corresponding offence under the law of England and Wales.]

- (3) A person is also a qualifying offender for the purposes of section 114 if, under the law in force in a country outside the United Kingdom and whether before or after the commencement of this Part—
  - (a) he has been convicted of a relevant offence (whether or not he has been punished for it),
  - (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity,
  - (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or
  - (d) he has been cautioned in respect of a relevant offence.
- (4) In subsection (3), “relevant offence” means an act which—
  - (a) constituted an offence under the law in force in the country concerned, and
  - (b) would have constituted an offence within subsection (2) if it had been done in any part of the United Kingdom.
- (5) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (4), however it is described in that law.
- (6) Subject to subsection (7), on an application under section 114 the condition in subsection (4)(b) above (where relevant) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice—
  - (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met,
  - (b) showing his grounds for that opinion, and
  - (c) requiring the applicant to prove that the condition is met.
- (7) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (6).

*Status: Point in time view as at 25/06/2012.*

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#### Extent Information

- E5** This version of this provision extends to England, Wales and Northern Ireland only; a separate version has been created for Scotland only

#### Textual Amendments

- F75** Words in s. 116(2)(b) inserted (N.I.) (5.7.2011) by [Justice Act \(Northern Ireland\) 2011 \(c. 24\)](#), s. 111(2), [Sch. 7 para. 12\(1\)](#)
- F76** Words in s. 116(2)(b)(c)(ii)(iii)(d) substituted (E.W.N.I.) (1.4.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss. 23\(1\)\(b\)\(2\)](#), 116(1); S.I. 2010/507, [art. 5\(j\)](#) (subject to [art. 6](#))
- F77** Words in s. 116(2)(c) inserted (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. 207\(a\)](#); S.I. 2009/812, [art. 3](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)
- F78** S. 116(2A) inserted (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. 207\(b\)](#); S.I. 2009/812, [art. 3](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)

## 116 Section 114: qualifying offenders **S**

- (1) A person is a qualifying offender for the purposes of section 114 if, whether before or after the commencement of this Part, he—
- (a) has been convicted of an offence within subsection (2),
  - (b) has been found not guilty of such an offence by reason of insanity,
  - (c) has been found to be under a disability and to have done the act charged against him in respect of such an offence, or
  - (d) in England and Wales or Northern Ireland, has been cautioned in respect of such an offence.
- (2) The offences are—
- (a) an offence within any of paragraphs 13 to 15, 44 to 46, 77, 78 and 82 of Schedule 3;
  - (b) an offence within paragraph 31 of that Schedule, if the intended offence was an offence against a person under 16;
  - (c) an offence within paragraph 93 <sup>[F77]</sup>or 93A ]of that Schedule, if—
    - (i) the corresponding civil offence is an offence within any of paragraphs 13 to 15 of that Schedule;
    - (ii) the corresponding civil offence is an offence within paragraph 31 of that Schedule, and the intended offence was an offence against a person under 16; or
    - (iii) the corresponding civil offence is an offence within any of paragraphs 1 to 12, 16 to 30 and 32 to 35 of that Schedule, and the victim of the offence was under 16 at the time of the offence.
  - (d) an offence within any other paragraph of that Schedule, if the victim of the offence was under <sup>[F147]</sup>18] at the time of the offence.

<sup>[F78]</sup>(2A) In subsection (2)(c) references to the corresponding civil offence are to be read, in relation to an offence within paragraph 93A of Schedule 3, as references to the corresponding offence under the law of England and Wales.]

*Status: Point in time view as at 25/06/2012.*

*Changes to legislation: Sexual Offences Act 2003, Part 2 is up to date with all changes known to be in force on or before 21 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) A person is also a qualifying offender for the purposes of section 114 if, under the law in force in a country outside the United Kingdom and whether before or after the commencement of this Part—
- (a) he has been convicted of a relevant offence (whether or not he has been punished for it),
  - (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity,
  - (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or
  - (d) he has been cautioned in respect of a relevant offence.
- (4) In subsection (3), “relevant offence” means an act which—
- (a) constituted an offence under the law in force in the country concerned, and
  - (b) would have constituted an offence within subsection (2) if it had been done in any part of the United Kingdom.
- (5) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (4), however it is described in that law.
- (6) Subject to subsection (7), on an application under section 114 the condition in subsection (4)(b) above (where relevant) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice—
- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met,
  - (b) showing his grounds for that opinion, and
  - (c) requiring the applicant to prove that the condition is met.
- (7) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (6).

#### Extent Information

- E10** This version of this provision extends to Scotland only; a separate version has been created for England, Wales and Northern Ireland only

#### Textual Amendments

- F77** Words in s. 116(2)(c) inserted (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. 207\(a\)](#); S.I. 2009/812, [art. 3](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)
- F78** S. 116(2A) inserted (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. 207\(b\)](#); S.I. 2009/812, [art. 3](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)
- F147** Word in s. 116(2)(d) substituted (S.) (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. [101\(3\)](#), 206(1); S.S.I. 2010/413, [art. 2](#), [Sch.](#)

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## 117 Foreign travel orders: effect

- (1) A foreign travel order has effect for a fixed period of not more than [<sup>F79</sup>5 years], specified in the order.
- (2) The order prohibits the defendant from doing whichever of the following is specified in the order—
  - (a) travelling to any country outside the United Kingdom named or described in the order,
  - (b) travelling to any country outside the United Kingdom other than a country named or described in the order, or
  - (c) travelling to any country outside the United Kingdom.
- (3) The only prohibitions that may be included in the order are those necessary for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom.
- (4) If at any time while an order (as renewed from time to time) has effect a defendant is not a relevant offender, the order causes him to be subject to the requirements imposed by regulations made under section 86(1) (and for these purposes the defendant is to be treated as if he were a relevant offender).
- (5) Where a court makes a foreign travel order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.
- (6) Section 115(2) applies for the purposes of this section and section 118.

### Textual Amendments

**F79** Words in s. 117(1) substituted (E.W.N.I.) (1.4.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss. 24\(1\)](#), [116\(1\)](#) (with [s. 24\(2\)](#)); [S.I. 2010/507](#), [art. 5\(k\)](#) (subject to [art. 6](#)) and said words substituted (S.) (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 101\(4\)](#), [206\(1\)](#); [S.S.I. 2010/413](#), [art. 2](#), [Sch.](#)

## [<sup>F80</sup>117A Foreign travel orders: surrender of passports

- (1) This section applies in relation to a foreign travel order which contains a prohibition within section 117(2)(c).
- (2) The order must require the defendant to surrender all of the defendant's passports, at a police station specified in the order—
  - (a) on or before the date when the prohibition takes effect, or
  - (b) within a period specified in the order.
- (3) Any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a foreign travel order containing a prohibition within section 117(2)(c).
- (4) Subsection (3) does not apply in relation to—
  - (a) a passport issued by or on behalf of the authorities of a country outside the United Kingdom if the passport has been returned to those authorities;
  - (b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

*Status: Point in time view as at 25/06/2012.*

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- (5) In this section “passport” means—
- (a) a United Kingdom passport within the meaning of the Immigration Act 1971;
  - (b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;
  - (c) a document that can be used (in some or all circumstances) instead of a passport.]

#### Textual Amendments

**F80** S. 117A inserted (E.W.N.I.) (1.4.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 25(2), 116(1)** (with [s. 25\(4\)](#)); [S.I. 2010/507](#), **art. 5(I)** (subject to [art. 6](#))

### [<sup>F81</sup> 117B Surrender of passports: Scotland

- (1) This section applies in relation to a foreign travel order which contains a prohibition within section 117(2)(c).
- (2) The order must require the person in respect of whom the order has effect to surrender all of the person's passports, at a police station in Scotland specified in the order—
  - (a) on or before the date when the prohibition takes effect, or
  - (b) within a period specified in the order.
- (3) Any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a foreign travel order containing a prohibition within section 117(2)(c).
- (4) Subsection (3) does not apply in relation to—
  - (a) a passport issued by or on behalf of the authorities of a country outside the United Kingdom if the passport has been returned to those authorities;
  - (b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.
- (5) In this section “passport” means—
  - (a) a United Kingdom passport within the meaning of the Immigration Act 1971 (c.77);
  - (b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;
  - (c) a document that can be used (in some or all circumstances) instead of a passport.]

#### Textual Amendments

**F81** S. 117B inserted (S.) (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 101(5), 206(1)**; [S.S.I. 2010/413](#), **art. 2, Sch.**

### 118 Foreign travel orders: variations, renewals and discharges

- (1) A person within subsection (2) may by complaint to the appropriate court apply for an order varying, renewing or discharging a foreign travel order.

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*Status: Point in time view as at 25/06/2012.*

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- (2) The persons are—
- (a) the defendant;
  - (b) the chief officer of police on whose application the foreign travel order was made;
  - (c) the chief officer of police for the area in which the defendant resides;
  - (d) a chief officer of police who believes that the defendant is in, or is intending to come to, his police area.
- (3) Subject to subsection (4), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the foreign travel order, that the court considers appropriate.
- (4) An order may be renewed, or varied 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 (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).
- (5) In this section “the appropriate court” means—
- (a) the court which made the foreign travel order;
  - (b) a magistrates' court for the area in which the defendant resides; or
  - (c) where the application is made by a chief officer of police, any magistrates' court whose commission area includes any part of his police area.

## **119 Foreign travel orders: appeals**

- (1) A defendant may appeal to the Crown Court—
- (a) against the making of a foreign travel order;
  - (b) against the making of an order under section 118, or the refusal to make such an order.
- (2) On any such appeal, the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.
- (3) Any order made by the Crown Court on an appeal under subsection (1)(a) (other than an order directing that an application be re-heard by a magistrates' court) is for the purposes of section 118(5) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court).

## **120 Appeals in relation to foreign travel orders: Scotland**

In Scotland—

- (a) an interlocutor granting, refusing, varying, renewing or discharging a foreign travel order is an appealable interlocutor; and
- (b) where an appeal is taken against an interlocutor so granting, varying or renewing such an order the order shall, without prejudice to any power of the court to vary or recall it, continue to have effect pending the disposal of the appeal.

*Status: Point in time view as at 25/06/2012.*

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## 121 Sections 114 to 118: Scotland

- (1) Sections 114 to 118 apply to Scotland with the following modifications—
- (a) references to a chief officer of police and to his police area are to be read, respectively, as references to a chief constable and to the area of his police force;
  - (b) references to the defendant are to be read as references to the person in respect of whom the order is sought or has effect;
  - (c) an application for a foreign travel order is made by summary application to any sheriff within whose sheriffdom lies any part of the area of the applicant's police force (references to “the court” being construed accordingly);
  - (d) for paragraphs (a) to (c) of section 118(5) there is substituted—
    - “(a) the sheriff who made the foreign travel order; or
    - (b) where the application is made by a chief constable, a sheriff whose sheriffdom includes any part of the area of the applicant's police force.”
- (2) A record of evidence shall be kept on any summary application made by virtue of subsection (1)(c) above.
- (3) The clerk of the court by which, by virtue of that subsection, a foreign travel order is made, varied, renewed or discharged shall cause a copy of, as the case may be—
- (a) the order as so made, varied or renewed; or
  - (b) the interlocutor by which discharge is effected,
- to be given to the person named in the order or sent to him by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate).

## 122 Offence: breach of foreign travel order

- (1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by a foreign travel order.

[<sup>F82</sup>(1A) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement under section 117A(2).]

[<sup>F83</sup>(1B) A person commits an offence if, without reasonable excuse, the person fails to comply with—

- (a) a requirement under section 117A(2) (surrender of passports: England and Wales and Northern Ireland), or
- (b) a requirement under section 117B(2) (surrender of passports: Scotland).

(1C) A person may be prosecuted, tried and punished for any offence under subsection (1B)

- (a) in any sheriff court district in which the person is apprehended or is in custody, or

(b) in such sheriff court district as the Lord Advocate may determine, as if the offence had been committed in that district (and the offence is, for all purposes incidental to or consequential on the trial or punishment, to be deemed to have been committed in that district).]

*Status: Point in time view as at 25/06/2012.*

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- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- (3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge (or, in Scotland, a [<sup>F84</sup>community payback order]).

#### Textual Amendments

- F82** S. 122(1A) inserted (E.W.N.I.) (1.4.2010) by [Policing and Crime Act 2009 \(c. 26\), ss. 25\(3\)](#), 116(1); [S.I. 2010/507, art. 5\(I\)](#) (subject to [art. 6](#))
- F83** S. 122(1B)(1C) inserted (S.) (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), ss. 101\(6\)](#), 206(1); [S.S.I. 2010/413, art. 2, Sch.](#)
- F84** Words in s. 122(3) substituted (S.) (1.2.2011) by [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Consequential and Supplementary Provisions\) Order 2011 \(S.S.I. 2011/25\)](#), arts. 1, 2, **Sch. para. 2(5)** (with [art. 3](#))

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

- C1** S. 122(1B)(b) extended (E.W.N.I.) (16.9.2011) by [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Consequential Provisions and Modifications\) Order 2011 \(S.I. 2011/2298\)](#), art. 1, **Sch. para. 3(1)** (with [art. 4\(4\)](#))

### *Risk of sexual harm orders*

#### **123 Risk of sexual harm orders: applications, grounds and effect**

- (1) A chief officer of police may by complaint to a magistrates' court apply for an order under this section (a “risk of sexual harm order”) in respect of a person aged 18 or over (“the defendant”) who resides in his police area or who the chief officer believes is in, or is intending to come to, his police area if it appears to the chief officer that—
- (a) the defendant has on at least two occasions, whether before or after the commencement of this Part, done an act within subsection (3), and
  - (b) as a result of those acts, there is reasonable cause to believe that it is necessary for such an order to be made.
- (2) An application under subsection (1) may be made to any magistrates' court whose commission area includes—
- (a) any part of the applicant’s police area, or
  - (b) any place where it is alleged that the defendant acted in a way mentioned in subsection (1)(a).
- (3) The acts are—
- (a) engaging in sexual activity involving a child or in the presence of a child;
  - (b) causing or inciting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual;
  - (c) giving a child anything that relates to sexual activity or contains a reference to such activity;



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- (d) communicating with a child, where any part of the communication is sexual.
- (4) On the application, the court may make a risk of sexual harm order if it is satisfied that—
  - (a) the defendant has on at least two occasions, whether before or after the commencement of this section, done an act within subsection (3); and
  - (b) it is necessary to make such an order, for the purpose of protecting children generally or any child from harm from the defendant.
- (5) Such an order—
  - (a) prohibits the defendant from doing anything described in the order;
  - (b) has effect for a fixed period (not less than 2 years) specified in the order or until further order.
- (6) The only prohibitions that may be imposed are those necessary for the purpose of protecting children generally or any child from harm from the defendant.
- (7) Where a court makes a risk of sexual harm order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

## 124 Section 123: interpretation

- (1) Subsections (2) to (7) apply for the purposes of section 123.
- (2) “Protecting children generally or any child from harm from the defendant” means protecting children generally or any child from physical or psychological harm, caused by the defendant doing acts within section 123(3).
- (3) “Child” means a person under 16.
- (4) “Image” means an image produced by any means, whether of a real or imaginary subject.
- (5) “Sexual activity” means an activity that a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider to be sexual.
- (6) A communication is sexual if—
  - (a) any part of it relates to sexual activity, or
  - (b) a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider that any part of the communication is sexual.
- (7) An image is sexual if—
  - (a) any part of it relates to sexual activity, or
  - (b) a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider that any part of the image is sexual.

<sup>F85</sup>(8) .....

### Textual Amendments

**F85** S. 124(8) repealed (N.I.) (5.7.2011) by Justice Act (Northern Ireland) 2011 (c. 24), s. 111(2), Sch. 7 para. 12(2), Sch. 8 Pt. 5

*Status: Point in time view as at 25/06/2012.*

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## **125 RSHOs: variations, renewals and discharges**

- (1) A person within subsection (2) may by complaint to the appropriate court apply for an order varying, renewing or discharging a risk of sexual harm order.
- (2) The persons are—
  - (a) the defendant;
  - (b) the chief officer of police on whose application the risk of sexual harm order was made;
  - (c) the chief officer of police for the area in which the defendant resides;
  - (d) a chief officer of police who believes that the defendant is in, or is intending to come to, his police area.
- (3) Subject to subsections (4) and (5), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the risk of sexual harm order, that the court considers appropriate.
- (4) An order may be renewed, or varied 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 harm from the defendant (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).
- (5) The court must not discharge an order before the end of 2 years beginning with the day on which the order was made, without the consent of the defendant and—
  - (a) where the application is made by a chief officer of police, that chief officer, or
  - (b) in any other case, the chief officer of police for the area in which the defendant resides.
- (6) Section 124(2) applies for the purposes of this section.
- (7) In this section “the appropriate court” means—
  - (a) the court which made the risk of sexual harm order;
  - (b) a magistrates' court for the area in which the defendant resides; or
  - (c) where the application is made by a chief officer of police, any magistrates' court whose commission area includes any part of his police area.

## **126 Interim RSHOs**

- (1) This section applies where an application for a risk of sexual harm order (“the main application”) has not been determined.
- (2) An application for an order under this section (“an interim risk of sexual harm order”) —
  - (a) may be made by the complaint by which the main application is made, or
  - (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.
- (3) The court may, if it considers it just to do so, make an interim risk of sexual harm order, prohibiting the defendant from doing anything described in the order.
- (4) Such an order—
  - (a) has effect only for a fixed period, specified in the order;

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- (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (5) The applicant or the defendant may by complaint apply to the court that made the interim risk of sexual harm order for the order to be varied, renewed or discharged.

## **127 RSHOs and interim RSHOs: appeals**

- (1) A defendant may appeal to the Crown Court—
  - (a) against the making of a risk of sexual harm order;
  - (b) against the making of an interim risk of sexual harm order; or
  - (c) against the making of an order under section 125, or the refusal to make such an order.
- (2) On any such appeal, the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.
- (3) Any order made by the Crown Court on an appeal under subsection (1)(a) or (b) (other than an order directing that an application be re-heard by a magistrates' court) is for the purpose of section 125(7) or 126(5) (respectively) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court).

## **128 Offence: breach of RSHO or interim RSHO**

- (1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by—
  - (a) a risk of sexual harm order; or
  - (b) an interim risk of sexual harm order.

[<sup>F86</sup>(1A) In subsection (1) and, accordingly, in section 129(5) the references to a risk of sexual harm order and to an interim risk of sexual harm order include references, respectively—

- (a) to an order under section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (RSHOs in Scotland); and
- (b) to an order under section 5 of that Act (interim RSHOs in Scotland);

and, for the purposes of this section, prohibitions imposed by an order made in one part of the United Kingdom apply (unless expressly confined to particular localities) throughout that and every other part of the United Kingdom.]

- (2) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- (3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge.

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### Textual Amendments

**F86** S. 128(1A) inserted (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\)](#), [ss. 56\(2\)](#), [66\(2\)](#)

## 129 Effect of conviction etc. of an offence under section 128

- (1) This section applies to a person (“the defendant”) who—
- (a) is convicted of an offence [<sup>F87</sup> mentioned in subsection (1A)] ;
  - (b) is found not guilty of such an offence by reason of insanity;
  - (c) is found to be under a disability and to have done the act charged against him in respect of such an offence; or
  - (d) is cautioned in respect of such an offence.

[<sup>F88</sup>(1A) Those offences are—

- (a) an offence under section 128 of this Act;
- (b) an offence under section 7 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (contravention of RSHO or interim RSHO in Scotland).]

(2) Where —

- (a) a defendant was a relevant offender immediately before this section applied to him, and
- (b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the relevant order (as renewed from time to time) has effect,

the defendant remains subject to the notification requirements.

(3) Where the defendant was not a relevant offender immediately before this section applied to him—

- (a) this section causes the defendant to become subject to the notification requirements of this Part from the time the section first applies to him until the relevant order (as renewed from time to time) ceases to have effect, and
- (b) this Part applies to the defendant, subject to the modification set out in subsection (4).

(4) The “relevant date” is the date on which this section first applies to the defendant.

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

- (a) where the conviction, finding or caution within subsection (1) is in respect of a breach of a risk of sexual harm order, that order;
- (b) where the conviction, finding or caution within subsection (1) is in respect of a breach of an interim risk of sexual harm order, any risk of sexual harm order made on the hearing of the application to which the interim risk of sexual harm order relates or, if no such order is made, the interim risk of sexual harm order.

### Textual Amendments

**F87** Words in s. 129(1)(a) substituted (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\)](#), [ss. 56\(3\)](#), [66\(2\)](#)

**F88** S. 129(1A) inserted (8.11.2006) by [Violent Crime Reduction Act 2006 \(c. 38\)](#), [ss. 56\(3\)](#), [66\(2\)](#)

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### *Power to amend Schedules 3 and 5*

#### **130 Power to amend Schedules 3 and 5**

- (1) The Secretary of State may by order amend Schedule 3 or 5.
- (2) Subject to subsection (3), an amendment within subsection (4) does not apply to convictions, findings and cautions before the amendment takes effect.
- (3) For the purposes of sections 106 and 116, an amendment within subsection (4) applies to convictions, findings and cautions before as well as after the amendment takes effect.
- (4) An amendment is within this subsection if it—
  - (a) adds an offence,
  - (b) removes a threshold relating to an offence, or
  - (c) changes a threshold in such a way as to cause an offence committed by or against a person of a particular age or in certain circumstances, or resulting in a particular disposal, to be within a Schedule when it would not otherwise be.

### *General*

#### **131 Young offenders: application**

This Part applies to—

- (a) a period of detention which a person is liable to serve under a detention and training order [<sup>F89</sup>(including an order under section 211 of the Armed Forces Act 2006)], or a secure training order,
- (b) a period for which a person is ordered to be detained in residential accommodation under section 44(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46),
- (c) a period of training in a training school, or of custody in a remand centre, which a person is liable to undergo or serve by virtue of an order under section 74(1)(a) or (e) of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.)),
- (d) a period for which a person is ordered to be detained in a juvenile justice centre under Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)),
- (e) a period for which a person is ordered to be kept in secure accommodation under Article 44A of the Order referred to in paragraph (d),
- (f) a sentence of detention in a young offender institution, a young offenders institution or a young offenders centre,
- (g) a sentence under a custodial order within the meaning of section 71AA of, or paragraph 10(1) of Schedule 5A to, the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 43AA of, or paragraph 10(1) of Schedule 4A to, the Naval Discipline Act 1957 (c. 53),
- (h) a sentence of detention under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), [<sup>F90</sup>section 209 or 218 of the Armed Forces Act 2006,] section 208 of the Criminal Procedure (Scotland) Act 1995 or Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998,

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- (i) a sentence of custody for life under section 93 or 94 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6),
  - (j) a sentence of detention, or custody for life, under section 71A of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 43A of the Naval Discipline Act 1957 (c. 53),
  - [<sup>F91</sup>(k) a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003 [<sup>F92</sup>(including one passed as a result of section 221 of the Armed Forces Act 2006)],
  - (l) an extended sentence under section 228 of [<sup>F93</sup>the Criminal Justice Act 2003 (including one passed as a result of section 222 of the Armed Forces Act 2006)],
  - [<sup>F94</sup>(m) a sentence of detention under Article 13(4)(b) or 14(5) of the Criminal Justice (Northern Ireland) Order 2008,]
- as it applies to an equivalent sentence of imprisonment; and references in this Part to prison or imprisonment are to be interpreted accordingly.

#### Textual Amendments

- F89** Words in s. 131(a) inserted (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. 208\(2\)](#); S.I. 2009/812, [art. 3](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)
- F90** Words in s. 131(h) inserted (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. 208\(3\)](#); S.I. 2009/812, [art. 3](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)
- F91** S. 131(k)(l) inserted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 304, 336, [Sch. 32 para. 143](#); S.I. 2005/950, [art. 2\(1\)](#), Sch. 1 para. 42(39) (subject to [art. 2\(2\)](#), [Sch. 2](#) (as amended by S.I. 2005/2122, [art. 2](#)))
- F92** Words in s. 131(k) inserted (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. 208\(4\)](#); S.I. 2009/812, [art. 3](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)
- F93** Words in s. 131(l) 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. 208\(5\)](#); S.I. 2009/812, [art. 3](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)
- F94** S. 131(m) added (N.I.) (15.5.2008) by [The Criminal Justice \(Northern Ireland\) Order 2008 \(S.I. 2008/1216 \(N.I. 1\)\)](#), [art. 1](#), [Sch. 5 para. 10\(2\)](#); S.R. 2008/217, [art. 2](#), Sch. para. 18(e) (subject to [art. 3](#))

## 132 Offences with thresholds

- (1) This section applies to an offence which in Schedule 3 is listed subject to a condition relating to the way in which the defendant is dealt with in respect of the offence or (where a relevant finding has been made in respect of him) in respect of the finding (a “sentencing condition”).
- (2) Where an offence is listed if either a sentencing condition or a condition of another description is met, this section applies only to the offence as listed subject to the sentencing condition.
- (3) For the purposes of this Part (including in particular section 82(6))—
  - (a) a person is to be regarded as convicted of an offence to which this section applies, or
  - (b) (as the case may be) a relevant finding in relation to such an offence is to be regarded as made,

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at the time when the sentencing condition is met.

- (4) In the following subsections, references to a foreign offence are references to an act which—
- (a) constituted an offence under the law in force in a country outside the United Kingdom (“the relevant foreign law”), and
  - (b) would have constituted an offence to which this section applies (but not an offence, listed in Schedule 3, to which this section does not apply) if it had been done in any part of the United Kingdom.
- (5) In relation to a foreign offence, references to the corresponding UK offence are references to the offence (or any offence) to which subsection (4)(b) applies in the case of that foreign offence.
- (6) For the purposes of this Part, a person is to be regarded as convicted under the relevant foreign law of a foreign offence at the time when he is, in respect of the offence, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding UK offence.
- (7) Where in the case of any person a court exercising jurisdiction under the relevant foreign law makes in respect of a foreign offence a finding equivalent to a relevant finding, the court’s finding is, for the purposes of this Part, to be regarded as made at the time when the person is, in respect of the finding, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding UK offence.
- (8) Where (by virtue of an order under section 130 or otherwise) an offence is listed in Schedule 5 subject to a sentencing condition, this section applies to that offence as if references to Schedule 3 were references to Schedule 5.
- (9) In this section, “relevant finding”, in relation to an offence, means—
- (a) a finding that a person is not guilty of the offence by reason of insanity, or
  - (b) a finding that a person is under a disability and did the act charged against him in respect of the offence.

### [<sup>F95</sup>132A] Disapplication of time limit for complaints

Section 127 of the Magistrates' Courts Act 1980 (time limits) does not apply to a complaint under any provision of this Part.]

#### Textual Amendments

**F95** S. 132A inserted (E.W.N.I.) (1.4.2010) by [Policing and Crime Act 2009 \(c. 26\), ss. 22\(2\), 116\(1\)](#) (with s. 22(4)); S.I. 2010/507, [art. 5\(i\)](#) (subject to art. 6)

## 133 Part 2: general interpretation

- (1) In this Part—
- “admitted to a hospital” means admitted to a hospital under—
- (a) section 37 of the Mental Health Act 1983 (c. 20), section 57(2)(a) or [<sup>F96</sup>57A(2)] of the Criminal Procedure (Scotland) Act 1995 (c. 46) or

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- Article 44 or 50A(2) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));
- (b) Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25); or
- (c) [<sup>F97</sup>section 46 of the Mental Health Act 1983, [<sup>F98</sup>section 69 of the Mental Health (Scotland) Act 1984] or Article 52 of the Mental Health (Northern Ireland) Order 1986;]
- [<sup>F99F100</sup>“applicable date” has the meaning given by section 88D(5)]
- “cautioned” means—
- (a) cautioned [<sup>F101</sup>(or, in Northern Ireland, cautioned by a police officer)] after the person concerned has admitted the offence, or
- (b) reprimanded or warned within the meaning given by section 65 of the Crime and Disorder Act 1998 (c. 37),
- and “caution” is to be interpreted accordingly;
- “community order” means—
- (a) a community order within the meaning of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) [<sup>F102</sup>(as that Act had effect before the passing of the Criminal Justice Act 2003)];
- (b) [<sup>F103</sup>a community payback order made under the Criminal Procedure (Scotland) Act 1995 (c.46);]
- (c) a community order within the meaning of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)), a probation order under section 1 of the Probation Act (Northern Ireland) 1950 (c. 7 (N.I.)) or a community service order under Article 7 of the Treatment of Offenders (Northern Ireland) Order 1976 (S.I. 1976/226 (N.I. 40)); or
- (d) a community supervision order;
- “community supervision order” means an order under paragraph 4 of Schedule 5A to the Army Act 1955 or the Air Force Act 1955 or Schedule 4A to the Naval Discipline Act 1957;
- “country” includes territory;
- [<sup>F104F105</sup>“date of discharge” has the meaning given by section 88B(1)]
- “detained in a hospital” means detained in a hospital under—
- (a) Part 3 of the Mental Health Act 1983, [<sup>F106</sup>section 136 of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13)], Part 6 of the Criminal Procedure (Scotland) Act 1995 or Part III of the Mental Health (Northern Ireland) Order 1986;
- (b) Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991; or
- (c) [<sup>F107</sup>section 46 of the Mental Health Act 1983, [<sup>F108</sup>section 69 of the Mental Health (Scotland) Act 1984] or Article 52 of the Mental Health (Northern Ireland) Order 1986;]
- [<sup>F109F110</sup>“further date of discharge” has the meaning given by section 88B(3)]
- “guardianship order” means a guardianship order under section 37 of the Mental Health Act 1983 (c. 20), section 58 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or Article 44 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));
- “home address” has the meaning given by section 83(7);
- “interim notification order” has the meaning given by section 100(2);



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“interim risk of sexual harm order” has the meaning given by section 126(2);  
“interim sexual offences prevention order” has the meaning given by section 109(2);

[<sup>F111</sup>“kept in service custody” means kept in service custody by virtue of an order under section 105(2) of the Armed Forces Act 2006 (but see also subsection (3));]

“local police area” has the meaning given by section 88(3);

“local probation board” has the same meaning as in the Criminal Justice and Court Services Act 2000 (c. 43);

[<sup>F112</sup><sup>F113</sup>“notification continuation order” has the meaning given by section 88C(2)]

“notification order” has the meaning given by section 97(1);

“notification period” has the meaning given by section 80(1);

[<sup>F114</sup>“order for conditional discharge” means an order under any of the following provisions discharging the offender conditionally—

- (a) section 12 of the Powers of Criminal Courts (Sentencing) Act 2000;
- (b) Article 4 of the Criminal Justice (Northern Ireland) Order 1996;
- (c) section 185 of the Armed Forces Act 2006;
- (d) paragraph 3 of Schedule 5A to the Army Act 1955 or Air Force Act 1955 or Schedule 4A to the Naval Discipline Act 1957;]

“parental responsibility” has the same meaning as in the Children Act 1989 (c. 41) or the Children (Northern Ireland) Order 1995 (S.I. 1995/ 755 (N.I. 2)), and “parental responsibilities” has the same meaning as in Part 1 of the Children (Scotland) Act 1995 (c. 36);

“the period of conditional discharge” has the meaning given by each of the following—

- (a) section 12(3) of the Powers of Criminal Courts (Sentencing) Act 2000;
- (b) Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996;
- (c) [<sup>F115</sup>section 185(2) of the Armed Forces Act 2006;]

<sup>F116</sup>  
.....  
<sup>F116</sup>  
.....

“relevant date” has the meaning given by section 82(6) (save in the circumstances mentioned in sections [<sup>F117</sup><sup>F118</sup>88B,] 98, 100, 107, 109 and 129);

“relevant offender” has the meaning given by section 80(2);

“restriction order” means—

- (a) an order under section 41 of the Mental Health Act 1983, section 57(2) (b) or 59 of the Criminal Procedure (Scotland) Act 1995 or Article 47(1) of the Mental Health (Northern Ireland) Order 1986;
- (b) a direction under paragraph 2(1)(b) of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25) or Article 50A(3)(b) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)); or
- (c) [<sup>F119</sup>a direction under section 46 of the Mental Health Act 1983, [<sup>F120</sup>section 69 of the Mental Health (Scotland) Act 1984] or Article 52 of the Mental Health (Northern Ireland) Order 1986;]

“risk of sexual harm order” has the meaning given by section 123(1);

[<sup>F121</sup>“service detention” has the meaning given by section 374 of the Armed Forces Act 2006;]

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“sexual offences prevention order” has the meaning given by section 106(1);  
[<sup>F122</sup>“specified”, in relation to an offender supervision requirement, means specified in the requirement.]

“supervision” means supervision in pursuance of an order made for the purpose or, in the case of a person released from prison on licence, in pursuance of a condition contained in his licence;

<sup>F123</sup>  
.....

[<sup>F124</sup>(1A) A reference to a provision specified in paragraph (a) of the definition of “admitted to a hospital”, “detained in a hospital” or “restriction order” includes a reference to the provision as it applies by virtue of—

- (a) section 5 of the Criminal Procedure (Insanity) Act 1964,
- (b) section 6 or 14 of the Criminal Appeal Act 1968,

[<sup>F125</sup>(ba) section 16(2) of the Court Martial Appeals Act 1968),]

- (c) section 116A of the Army Act 1955 or the Air Force Act 1955 or section 63A of the Naval Discipline Act 1957, or
- (d) section 16 or 23 of the Courts-Martial (Appeals) Act 1968.]

(2) Where under section 141 different days are appointed for the commencement of different provisions of this Part, a reference in any such provision to the commencement of this Part is to be read (subject to section 98(4)) as a reference to the commencement of that provision.

[<sup>F126</sup>(3) In relation to any time before the commencement of section 105(2) of the Armed Forces Act 2006, “kept in service custody” means being kept in military, air-force or naval custody by virtue of an order made under section 75A(2) of the Army Act 1955 or of the Air Force Act 1955 or section 47G(2) of the Naval Discipline Act 1957 (as the case may be).]

#### Textual Amendments

**F96** S. 133(1): words in definition of "admitted to a hospital" substituted (S.) (27.9.2005) and otherwise (5.10.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 2, **Sch. 1 para. 33(2)(a)** and [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2005 \(S.I. 2005/2078\)](#), art. 15, **Sch. 1 para. 7(a)**

**F97** In s. 133(1) in definition of "admitted to a hospital" para. (c) substituted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), ss. 58(1), 60, **Sch. 10 para. 57(2)(a)**; S.I. 2005/579, **art. 3(f)(g)**

**F98** S. 133(1): words in definition of "admitted to a hospital" repealed (S.) (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 3, **Sch. 2**

**F99** S. 133(1): definition of "applicable date" inserted (S.) (25.10.2010) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2010 \(S.S.I. 2010/370\)](#), arts. 1(1), **4(1)(a)** (which Order is revoked and re-enacted with modifications (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#))

**F100** S. 133(1): definition of "applicable date" 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)(a)** (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)

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- F101** S. 133(1): words in definition of "cautioned" substituted for "by a police officer" (E.W.N.I.) (14.7.2008) by virtue of Criminal Justice and Immigration Act 2008 (c. 4), ss. 148(1), 153(7), **Sch. 26 para. 56(2)(a)**; S.I. 2008/1586, **art. 2**, Sch. 1 para. 48(r) (subject to Sch. 2)
- F102** S. 133(1): words in definition of "community order" inserted (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 304, 336, **Sch. 32 para. 144**; S.I. 2005/950, **art. 2(1)**, Sch. 1 para. 42(39) (subject to art. 2(2), Sch. 2 (as amended by S.I. 2005/2122, art. 2))
- F103** Words in definition of "community order" in s. 133(1) substituted (S.) (1.2.2011) by The Criminal Justice and Licensing (Scotland) Act 2010 (Consequential and Supplementary Provisions) Order 2011 (S.S.I. 2011/25), arts. 1, 2, **Sch. para. 2(6)(a)** (with art. 3)
- F104** S. 133(1): definition of "date of discharge" 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(1)(a)** (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))
- F105** S. 133(1): definition of "date of discharge" 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)(a)** (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)
- F106** S. 133(1): words in definition of "detained in a hospital" substituted (S.) (27.9.2005) and otherwise (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 2, **Sch. 1 para. 33(2)(b)** and The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 15, **Sch. 1 para. 7(b)**
- F107** In s. 133(1) in definition of "detained in a hospital" para. (c) substituted (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 57(2)(b)**; S.I. 2005/579, **art. 3(f)(g)**
- F108** S. 133(1): words in definition of "detained in a hospital" repealed (S.) (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 3, **Sch. 2**
- F109** S. 133(1): definition of "further date of discharge" 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(1)(a)** (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))
- F110** S. 133(1): definition of "further date of discharge" 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)(a)** (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)
- F111** S. 133(1): definition of "kept in service custody" inserted (E.W.N.I.) (31.10.2009) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 148(1), 153(7), **Sch. 26 para. 56(2)(b)**; S.I. 2009/2606, **art. 3(i)**
- F112** S. 133(1): definition of "notification continuation order" 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(1)(a)** (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))
- F113** S. 133(1): definition of "notification continuation order" 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)(a)** (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)
- F114** S. 133(1): definition of "order for conditional charge" 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. 209(2)(a)**; S.I. 2009/812, **art. 3** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**
- F115** S. 133(1): words in definition of "the period of conditional discharge" 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. 209(2)(b)**; S.I. 2009/812, **art. 3** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**

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- F116** S. 133(1): definitions of "probation order" and "probation period" repealed (S.) (1.2.2011) by [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Consequential and Supplementary Provisions\) Order 2011 \(S.S.I. 2011/25\)](#), arts. 1, 2, [Sch. para. 2\(6\)\(b\)](#) (with art. 3)
- F117** S. 133(1): words in definition of "relevant date" 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\(1\)\(b\)](#) (which Order is revoked and re-enacted with modifications (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#))
- F118** S. 133(1): words in definition of "relevant date" inserted (S.) (28.1.2011) by [The Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(S.S.I. 2011/45\)](#), arts. 1(1), [4\(2\)\(b\)](#) (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)
- F119** In s. 133(1) in definition of "restriction order" para. (c) substituted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), ss. 58(1), 60, [Sch. 10 para. 57\(2\)\(c\)](#); S.I. 2005/579, [art. 3\(f\)\(g\)](#)
- F120** S. 133(1): words in definition of "restriction order" repealed (S.) (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 3, [Sch. 2](#)
- F121** S. 133(1): definition of "service detention" inserted (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. 209\(2\)\(c\)](#); S.I. 2009/812, [art. 3](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)
- F122** S. 133(1): definition of "specified" inserted (S.) (1.2.2011) by [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Consequential and Supplementary Provisions\) Order 2011 \(S.S.I. 2011/25\)](#), arts. 1, 2, [Sch. para. 2\(6\)\(c\)](#) (with art. 3)
- F123** S. 133(1): definition of "term of service detention" repealed (28.3.2009 for certain purposes and otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383(2), [Sch. 16 para. 209\(2\)\(d\)](#), [Sch. 17](#); S.I. 2009/812, [art. 3](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)
- F124** S. 133(1A) inserted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), ss. 58(1), 60, [Sch. 10 para. 57\(3\)](#); S.I. 2005/579, [art. 3\(f\)\(g\)](#)
- F125** S. 133(1A)(ba) inserted (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. 209\(3\)](#); S.I. 2009/812, [art. 3](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)
- F126** S. 133(3) inserted (E.W.N.I.) (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 148(1), 153(7), [Sch. 26 para. 56\(3\)](#); S.I. 2009/2606, [art. 3\(i\)](#)

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

- C2** S. 133(1) 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\(1\)](#)

## 134 Conditional discharges and probation orders

- (1) The following provisions do not apply for the purposes of this Part to a conviction for an offence in respect of which an order for conditional discharge<sup>F127</sup> . . . is made—
- (a) section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (conviction with absolute or conditional discharge deemed not to be a conviction);
  - (b) Article 6(1) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)) (conviction with absolute or conditional discharge deemed not to be a conviction);
  - (c) section 247(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (conviction with<sup>F128</sup> . . . absolute discharge deemed not to be a conviction);
- [<sup>F129</sup>(ca) section 187(1) of the Armed Forces Act 2006 (conviction with absolute or conditional discharge deemed not to be a conviction);]

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- (d) paragraph 5(1) of Schedule 5A to the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or Schedule 4A to the Naval Discipline Act 1957 (c. 53) (conviction with absolute or conditional discharge or community supervision order deemed not to be a conviction).
- (2) Subsection (1) applies only to convictions after the commencement of this Part.
- (3) The provisions listed in subsection (1)(d) do not apply for the purposes of this Part to a conviction for an offence in respect of which a community supervision order is or has (before or after the commencement of this Part) been made.

#### Textual Amendments

- F127** Words in s. 134(1) repealed (S.) (1.2.2011) by [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Consequential and Supplementary Provisions\) Order 2011 \(S.S.I. 2011/25\)](#), arts. 1, 2, **Sch. para. 2(7)(a)** (with art. 3)
- F128** Words in s. 134(1)(c) repealed (S.) (1.2.2011) by [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Consequential and Supplementary Provisions\) Order 2011 \(S.S.I. 2011/25\)](#), arts. 1, 2, **Sch. para. 2(7)(b)** (with art. 3)
- F129** S. 134(1)(ca) inserted (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. 210**; S.I. 2009/812, **art. 3** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**

### 135 Interpretation: mentally disordered offenders

- (1) In this Part, a reference to a conviction includes a reference to a finding of a court in summary proceedings, where the court makes an order under an enactment within subsection (2), that the accused did the act charged; and similar references are to be interpreted accordingly.
- (2) The enactments are—
  - (a) section 37(3) of the Mental Health Act 1983 (c. 20);
  - (b) section 58(3) of the Criminal Procedure (Scotland) Act 1995 (c. 46);
  - (c) Article 44(4) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)).
- [<sup>F130</sup>(2A) In the application of this Part in relation to Scotland, a reference to a person being found not guilty of an offence by reason of insanity is to be read as a reference to a person being acquitted of an offence by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995.]
- (3) In this Part, a reference to a person being or having been found to be under a disability and to have done the act charged against him in respect of an offence includes a reference to his being or having been found—
  - (a) unfit to be tried for the offence;
  - (b) to be insane so that his trial for the offence cannot or could not proceed; or
  - (c) unfit to be tried and to have done the act charged against him in respect of the offence.
- (4) In section 133—

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- (a) a reference to admission or detention under Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), and the reference to a direction under paragraph 2(1)(b) of that Schedule, include respectively—
  - (i) a reference to admission or detention under Schedule 1 to the Criminal Procedure (Insanity) Act 1964 (c. 84); and
  - (ii) a reference to a restriction order treated as made by paragraph 2(1) of that Schedule;
- (b) a reference to admission or detention under any provision of Part 6 of the Criminal Procedure (Scotland) Act 1995, and the reference to an order under section 57(2)(b) or 59 of that Act, include respectively—
  - (i) a reference to admission or detention under section 174(3) or 376(2) of the Criminal Procedure (Scotland) Act 1975 (c. 21); and
  - (ii) a reference to a restriction order made under section 178(1) or 379(1) of that Act;
- (c) <sup>F131</sup> .....

#### Textual Amendments

**F130** S. 135(2A) inserted (S.) (25.6.2012 with application in accordance with art. 3 of the commencing S.S.I.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 7 para. 73](#); [S.S.I. 2012/160](#), art. 3, sch.

**F131** S. 135(4)(c) repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), ss. 58, 60, [Sch. 10 para. 58](#), [Sch. 11](#); [S.I. 2005/579](#), art. 3(f)-(h)(i)(xi)

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

**C3** S. 135(1) applied by [Criminal Justice and Public Order Act 1994 \(c. 33\)](#), s. [327B\(10\)](#) (as inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. [140\(1\)](#), 153(7); [S.I. 2008/1586](#), [art. 2](#), [Sch. 1 para. 43](#) (subject to [Sch. 2](#)))

**C4** S. 135(2)(a) applied by [Criminal Justice and Public Order Act 1994 \(c. 33\)](#), s. [327B\(10\)](#) (as inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. [140\(1\)](#), 153(7); [S.I. 2008/1586](#), [art. 2](#), [Sch. 1 para. 43](#) (subject to [Sch. 2](#)))

**C5** S. 135(3) applied by [Criminal Justice and Public Order Act 1994 \(c. 33\)](#), s. [327B\(10\)](#) (as inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. [140\(1\)](#), 153(7); [S.I. 2008/1586](#), [art. 2](#), [Sch. 1 para. 43](#) (subject to [Sch. 2](#)))

**C6** S. 135(3) applied by [Criminal Justice and Public Order Act 1994 \(c. 33\)](#), s. [327B\(10\)](#) (as inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. [140\(1\)](#), 153(7); [S.I. 2008/1586](#), [art. 2](#), [Sch. 1 para. 43](#) (subject to [Sch. 2](#)))

## 136 Part 2: Northern Ireland

- (1) This Part applies to Northern Ireland with the following modifications.
- (2) References to a chief officer of police are to be read as references to the Chief Constable of the Police Service of Northern Ireland.
- (3) References to police areas are to be read as references to Northern Ireland.
- (4) References to a complaint are to be read as references to a complaint under Part VIII of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) to a court of summary jurisdiction.



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- [<sup>F132</sup>(4A) In section 132A the reference to section 127 of the Magistrates' Courts Act 1980 is to be read as a reference to Article 78 of the Magistrates' Courts (Northern Ireland) Order 1981.]
- (5) Subject to subsection (6), references to a magistrates' court are to be read as references to a court of summary jurisdiction.
- (6) References to a magistrates' court for the area in which the defendant resides are to be read as references to a court of summary jurisdiction for the petty sessions district which includes the area where the defendant resides.
- (7) References to a youth court for the area in which the defendant resides are to be read as references to a youth court for the petty sessions district which includes the area where the defendant resides.
- [<sup>F133</sup>(7A) References to a justice of the peace are to be read as references to a lay magistrate.]
- (8) References in sections 101, 110(1), (2), (3)(b), (4) and (5), 119 and 127 to the Crown Court are to be read as references to a county court.
- (9) Any direction of the county court made under section 89(1) on an appeal under Article 143 of the Magistrates' Courts (Northern Ireland) Order 1981 (appeals in other cases) (other than one directing that an application be re-heard by a court of summary jurisdiction) is, for the purposes of section 90, to be treated as if it were made by the court from which the appeal was brought and not by the county court.
- (10) Any order of the county court made on an appeal under Article 143 of the Magistrates' Courts (Northern Ireland) Order 1981 (other than one directing that an application be re-heard by a court of summary jurisdiction) is, for the purposes of section 108, to be treated as if it were an order of the court from which the appeal was brought and not an order of the county court.
- [<sup>F134</sup>(11) References to the Secretary of State, except in sections 94 and 95, are to be read as references to the Department of Justice in Northern Ireland.]

#### Textual Amendments

**F132** S. 136(4A) inserted (E.W.N.I.) (1.4.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss. 22\(3\)](#), [116\(1\)](#); [S.I. 2010/507](#), [art. 5\(i\)](#) (subject to [art. 6](#))

**F133** S. 136(7A) inserted (E.W.N.I.) (31.5.2007) by [Violent Crime Reduction Act 2006 \(c. 38\)](#), [ss. 58\(2\)](#), [66\(2\)](#); [S.I. 2007/858](#), [art. 3\(f\)](#)

**F134** S. 136(11) 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\(2\)](#) (with [arts. 28-31](#))

**Status:**

Point in time view as at 25/06/2012.

**Changes to legislation:**

Sexual Offences Act 2003, Part 2 is up to date with all changes known to be in force on or before 21 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.