

Protection of Children and Prevention of Sexual Offences (Scotland) Bill

[AS INTRODUCED]

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Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 30-EN. A Policy Memorandum is printed separately as SP Bill 30-PM.

Protection of Children and Prevention of Sexual Offences (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make it an offence to meet a child following certain preliminary contact and to make other provision for the purposes of protecting children from harm of a sexual nature; and to make further provision about the prevention of sexual offences.

Offence

5 **1 Meeting a child following certain preliminary contact**

- (1) A person aged 18 or over (the “adult”) commits an offence if—
- (a) having met or communicated with a person aged under 16 (the “child”) on at least two earlier occasions, the adult—
 - (i) intentionally meets the child; or
 - 10 (ii) travels, in any part of the world, with the intention of meeting the child in any part of the world;
 - (b) at the time, the adult intends to do anything to or in respect of the child—
 - (i) during or after the meeting; and
 - (ii) in any part of the world,15 which if done will constitute the commission by the adult of a relevant offence;
 - (c) the adult does not reasonably believe that the child is 16 or over; and
 - (d) at least one of the following is the case—
 - (i) one of the meetings or communications on earlier occasions referred to in paragraph (a) has a relevant Scottish connection;
 - 20 (ii) the meeting referred to in sub-paragraph (i) of that paragraph or, as the case may be, the travelling referred in sub-paragraph (ii) of that paragraph, has a relevant Scottish connection;
 - (iii) the adult is a British citizen or resident in the United Kingdom.

- (2) In subsection (1) above—

- (a) the reference to the adult’s having met or communicated with the child is a reference to the adult’s having met the child in any part of the world or having communicated with the child by any means from or in any part of the world (and irrespective of where the child is in the world);
- 5 (b) “relevant offence” means—
- (i) any offence mentioned in the schedule to this Act;
- (ii) anything done outside Scotland which is not an offence mentioned in that schedule but would be if done in Scotland; and
- 10 (c) a meeting or travelling has a relevant Scottish connection if it, or any part of it, takes place in Scotland; and a communication has such a connection if it is made from or to or takes place in Scotland.
- (3) 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;
- 15 (b) on conviction on indictment, to imprisonment for a term not exceeding ten years or a fine or both.
- (4) Subsections (6A) and (6B) of section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) (which determines the sheriff court district in which proceedings against persons committing certain sexual acts outside the United Kingdom are to be taken) apply in relation to proceedings for an offence under this section as they apply to an offence to which that section applies.
- 20 (5) The Scottish Ministers may by order modify the schedule to this Act and, in particular, may add a reference to an offence to Part 1 of the schedule, delete any such reference from that Part or alter any such reference in that Part.
- 25 (6) An order under subsection (5) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

Risk of sexual harm orders

2 Risk of sexual harm orders: applications, grounds and effect

- 30 (1) The chief constable of a police force may apply for an order under this section (a “risk of sexual harm order”) in respect of a person aged 18 or over who resides in the area of the police force or who the chief constable believes is in, or is intending to come to, that area if it appears to the chief constable that—
- (a) the person has on at least two occasions, whether before or after the commencement of this section, done an act within subsection (3) below; and
- 35 (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) above may be made to any sheriff—
- (a) in whose sheriffdom the person against whom the order is sought resides;
- (b) in whose sheriffdom that person is believed by the applicant to be;
- 40 (c) to whose sheriffdom that person is believed by the applicant to be intending to come; or

(d) whose sheriffdom includes any place where it is alleged that that person did an act within subsection (3) below.

(3) The acts referred to in subsections (1) and (2) above 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;

(d) communicating with a child, where any part of the communication is sexual.

(4) On the application, the sheriff may make a risk of sexual harm order if satisfied that—

(a) the person against whom the order is sought has on at least two occasions, whether before or after the commencement of this section, done an act within subsection (3) above; and

(b) it is necessary to make such an order for the purpose of protecting children generally or any child from harm from that person.

(5) Such an order—

(a) prohibits the person against whom the order has effect from doing anything described in the order;

(b) subject to subsection (7) below, has effect for a fixed period (not less than 2 years) specified in the order.

(6) The only prohibitions that may be imposed by virtue of subsection (5) above are those necessary for the purpose of protecting children generally or any child from harm from the person against whom the order has effect.

(7) Where a sheriff makes a risk of sexual harm order in relation to a person already subject to such an order (whether made by that sheriff or another), the earlier order ceases to have effect.

3 Interpretation of section 2

For the purposes of section 2 above—

(a) the references in that section to protecting children generally or any child from harm from a person are references to protecting them or it from physical or psychological harm caused by that person doing any of the acts within subsection (3) of that section;

(b) “child” means a person under 16;

(c) “image” means an image produced by any means and whether of a real or imaginary subject;

(d) “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;

(e) a communication is sexual if—

(i) any part of it relates to sexual activity (construed at large); or

(ii) a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider any part of the communication to be sexual;

- (f) an image is sexual if—
 - (i) any part of it relates to sexual activity (construed at large); or
 - (ii) a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider any part of the image to be sexual.

5 **4 RSHOs: variations, renewals and discharges**

- (1) Any of the persons within subsection (2) below may apply to the appropriate sheriff for an order varying, renewing or discharging a risk of sexual harm order.
- (2) Those persons are—
 - (a) the person against whom the order has effect;
 - 10 (b) the chief constable on whose application the order was made;
 - (c) the chief constable of the police force in the area of which the person against whom the order has effect resides;
 - (d) a chief constable who believes that that person is in, or is intending to come to, the area of the chief constable’s police force.
- 15 (3) Subject to subsections (4) and (5) below, the sheriff, after hearing the person making the application and (if wishing to be heard) any of the other persons mentioned in subsection (2) above, may make any order varying, renewing or discharging the risk of sexual harm order that the sheriff considers appropriate.
- (4) A risk of sexual harm order may be renewed or varied so as to impose additional prohibitions only if it is necessary to do so for the purpose of protecting children generally or any child from harm from the person against whom the order has effect (and any renewed or varied order may contain only such prohibitions as are necessary for that purpose).
- 20 (5) A risk of sexual harm order shall not be discharged before the end of 2 years beginning with the day on which the order was made without—
 - 25 (a) where the application is made by a chief constable, the consent of the person against whom the order has effect;
 - (b) where the application is made by that person, the consent of the chief constable of the police force for the area in which that person resides.
- 30 (6) Section 3 above applies for the purposes of this section.
- (7) In this section, “the appropriate sheriff” means a sheriff—
 - (a) for the sheriffdom of the sheriff who made the risk of sexual harm order;
 - (b) in whose sheriffdom the person against whom the order has effect resides;
 - (c) in whose sheriffdom that person is believed by the applicant to be; or
 - 35 (d) to whose sheriffdom that person is believed by the applicant to be intending to come.

5 **5 Interim RSHOs**

- (1) This section applies where an application for a risk of sexual harm order (“the main application”) has been intimated to the person against whom the application is made but 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 way of the main application; or
 - (b) if the main application has been made, may be 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.
- (3) The sheriff may, if considering it just to do so, make an interim risk of sexual harm order prohibiting the person against whom the main application was made 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) The applicant or the person against whom an interim risk of sexual harm order has effect may apply to a sheriff for the sheriffdom of the sheriff who made the interim risk of sexual harm order for the order to be varied, renewed or discharged.

6 Appeals

- (1) An interlocutor granting, refusing, varying, renewing or discharging a risk of sexual harm order or an interim risk of sexual harm order is an appealable interlocutor.
- (2) Where an appeal is taken against an interlocutor granting, varying or renewing such an order, the court may, in the appeal proceedings, suspend the interlocutor appealed against pending the disposal of the appeal.

7 Offence: breach of RSHO or interim RSHO

- (1) A person, who without reasonable excuse, does anything which the person is prohibited from doing by—
- (a) a risk of sexual harm order; or
 - (b) an interim risk of sexual harm order,
- commits an offence.
- (2) The orders referred to in paragraphs (a) and (b) of subsection (1) above include, respectively, orders under sections 123 and 126 of the 2003 Act (which make provision for England and Wales and Northern Ireland corresponding to that made by sections 2 and 5 above).
- (3) 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 or a fine or both.
- (4) Where a person is convicted of an offence under this section, it is not open to the court by which the person is convicted to make a probation order in respect of the offence.

8 Effect of conviction etc. under section 7 above or section 128 of Sexual Offences Act 2003

(1) This section applies to a person who—

- (a) is convicted of an offence under section 7 above or section 128 of the 2003 Act (breach of RSHO or interim RSHO in England and Wales or Northern Ireland);
- (b) is, in England and Wales or Northern Ireland, cautioned in respect of an offence under section 128 of that Act;
- (c) is found not guilty of one of those offences on the grounds or by reason of insanity; or
- (d) is found to be under a disability and to have done the act charged against the person in respect of one of those offences.

(2) Where the person—

- (a) was a relevant offender immediately before this section applied to the person; and
- (b) would (apart from this subsection) cease to be subject to the notification requirements of Part 2 of the 2003 Act while the relevant order (as renewed from time to time) has effect,

the person remains subject to those notification requirements.

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

- (a) the person, by virtue of this section, becomes subject to the notification requirements of Part 2 of the 2003 Act from the time this section first applies to the person and remains so subject until the relevant order (as renewed from time to time) ceases to have effect; and
- (b) that Part of that Act applies to the person subject to the modification set out in subsection (4) below.

(4) In that application, “relevant date” means the date on which this section first applies to the person referred to in it.

(5) In this section—

“relevant offender” has the meaning given by section 80(2) of the 2003 Act;

“relevant order” means—

- (a) where the conviction or finding referred to in subsection (1)(a), (c) or (d) above is in respect of a breach of a risk of sexual harm order under section 2 above or section 123 of the 2003 Act, that order;
- (b) where the caution referred to in subsection (1)(b) above is in respect of a breach of a risk of sexual harm order under section 123 of the 2003 Act, that order;
- (c) where the conviction or finding referred to in subsection (1)(a), (c) or (d) above is in respect of a breach of an interim risk of harm order under section 5 above or section 126 of the 2003 Act—
 - (i) any risk of sexual harm order made upon the application to which the interim risk of sexual harm order relates; or
 - (ii) if no such risk of sexual harm order has been made, the interim risk of sexual harm order;

- (d) where the caution referred to in subsection (1)(b) above is in respect of a breach of an interim risk of sexual harm order under section 126 of the 2003 Act—
- (i) any risk of sexual harm order under section 123 of that Act made on the hearing of the application to which the interim risk of sexual harm order relates; or
- (ii) if no such risk of sexual harm order has been made, the interim risk of sexual harm order.

Sexual offences prevention orders

9 Prevention of sexual offences: further provision

- (1) In section 105 of the 2003 Act (further provision as to sexual offences prevention orders)—
- (a) in subsection (2)—
- (i) for the words from “within” to the end of paragraph (a) there is substituted—
- “(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;”; and
- (ii) at the beginning of paragraph (b) there is inserted “within whose sheriffdom lies”; and
- (b) in subsection (4), for “(1)(g)” there is substituted “(1)(e)”.
- (2) In section 111 of that Act (appeals in relation to sexual offences prevention orders)—
- (a) in paragraph (a)—
- (i) the words “refusing, varying, renewing or discharging” are repealed;
- (ii) after “order” where first occurring there is inserted “on an application under section 104(5) or 105(1)”;
- (iii) after “order” where secondly occurring there is inserted “or refusing, varying, renewing or discharging either such order”;
- (b) the word “and” immediately following that paragraph is repealed; and
- (c) there is added at the end—
- “(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 section 106(1)(d) of the Criminal Procedure (Scotland) Act 1995 (c.46) (appeal against probation and community service orders);

(ii) in the case of summary proceedings, as if they were orders of the kind referred to in section 175(2)(c) of that Act (appeal against probation, community service and other orders); 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.”.

(3) Section 112 of that Act (which provides for the application, with modifications, to Scotland of certain provisions of the Act relating to sexual offences prevention orders) is amended in accordance with subsections (4) and (5) below.

(4) In subsection (1)—

(a) paragraph (a) is repealed;

(b) in its place there is inserted—

“(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;”;

(c) in paragraph (e)—

(i) the words “or interim sexual offences prevention order” are omitted;

(ii) for the words from “within” to the end of sub-paragraph (i) there is substituted—

“(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;”;

(iii) at the beginning of sub-paragraph (ii) there is inserted “within whose sheriffdom lies”;

(iv) in that sub-paragraph, for “the person in respect of whom the order is sought or has effect” there is substituted “that person”; and

(v) for “references to “the court” being” there is substituted “and, in relation to such an order, references to a court or the court shall be”;

(d) after that paragraph there is inserted—

“(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);”;

(e) in paragraph (f)—

(i) for “either such order” there is substituted “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”;

(ii) the word “or” immediately following sub-paragraph (i) is repealed;

(iii) for sub-paragraph (ii) there is substituted—

“(iia) 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.”;

(iv) for “references to “the court” being” there is substituted “and, in relation to an application made by virtue of this paragraph, references to a court or the court shall be”;

(f) after paragraph (f) there is inserted—

“(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.”.

(5) After that subsection there is inserted—

“(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.”.

(6) In section 142(3) of that Act (its Scottish extent) after “93” there is inserted “, 110”.

General

10 Interpretation

In this Act, “the 2003 Act” means the Sexual Offences Act 2003 (c.42).

11 Citation and commencement

(1) This Act may be cited as the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2004.

- (2) This Act, except this section, comes into force on such day as the Scottish Ministers may by order made by statutory instrument appoint and different days may be so appointed for different purposes.
- (3) An order under subsection (2) above may contain transitional, transitory or saving provision.

SCHEDULE
(introduced by section 1)

OFFENCES FOR THE PURPOSES OF SECTION 1

PART 1

LIST OF OFFENCES

5

- 1 Rape.
- 2 Abduction of woman or girl with intent to rape.
- 3 Assault with intent to rape or ravish.
- 4 Indecent assault.
- 10 5 Lewd, indecent or libidinous behaviour or practices.
- 6 Public indecency.
- 7 Sodomy.
- 8 An offence under section 52 of the Civic Government (Scotland) Act 1982 (c.45) (taking and distribution of indecent images of children).
- 15 9 An offence under section 1 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) (incest).
- 10 An offence under section 2 of that Act (intercourse with a step child).
- 11 An offence under section 3 of that Act (intercourse with a child under 16 by a person in a position of trust).
- 20 12 An offence under section 5 of that Act (unlawful intercourse with a girl under 16).
- 13 An offence under section 6 of that Act (indecent behaviour towards girl between 12 and 16).
- 14 An offence under section 7 of that Act (procuring).
- 15 An offence under section 8 of that Act (abduction of girl under 18 for purposes of unlawful intercourse).
- 25 16 An offence under section 9 of that Act (permitting girl to use premises for intercourse).
- 17 An offence under section 10 of that Act (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16).
- 18 An offence under section 13(5) of that Act (homosexual offences).
- 30 19 An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (c.44) (abuse of position of trust).
- 20 An offence under section 22 of the Criminal Justice (Scotland) Act 2003 (asp 7) (traffic in prostitution).
- 21 An offence under section 311(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (non-consensual sexual acts).
- 35 22 An offence under section 313(1) of that Act (persons providing care services: sexual offences).

PART 2

GENERAL AND SUPPLEMENTARY

A reference in Part 1 of this schedule to an offence includes—

- (a) a reference to an attempt, conspiracy or incitement to commit the offence; and
- (b) except in paragraphs 1 to 7 of that Part, a reference to aiding, abetting, counselling or procuring the commission of that offence.

Protection of Children and Prevention of Sexual Offences (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make it an offence to meet a child following certain preliminary contact and to make other provision for the purposes of protecting children from harm of a sexual nature; and to make further provision about the prevention of sexual offences.

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On: 29 October 2004
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