

1. Email to the Cabinet Secretary for Social Justice, Housing & Local Government

From: Redacted@gov.scot>

Sent: 08 December 2022 15:42

To: Cabinet Secretary for Social Justice, Housing & Local Government Redacted@gov.scot>

Cc: Campbell J (Jeanette) (Special Adviser) Redacted@gov.scot>; Redacted@gov.scot>; Redacted@gov.scot>; Redacted@gov.scot>; Heather Wortley Redacted@gov.scot>; Redacted@gov.scot>; Graham Fisher Redacted@gov.scot>; Redacted@gov.scot>; Redacted@gov.scot>; Redacted@gov.scot>; Redacted@gov.scot>; Redacted@gov.scot>

Subject: Immediate: note on sex offenders and GRCs

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Please find attached a note for Ms Robison on sex offenders and the GRR bill.

Could you print and hand to Ms Robison for the Redacted [38(1)(b)] meeting.

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Registered Sex Offenders and Gender Recognition Certificates under the Gender Recognition Reform (Scotland) Bill

[Partial Release – all information within scope]

However, existing police powers under the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 and Sexual Offences Act 2003 could be used to take action where a Registered Sex Offender is seeking to obtain a GRC where a risk of sexual harm can be shown and if that case was accepted by an independent court. The conditions of a behavioural order could be sought in relation to some aspect of the application, or more likely the broader circumstances that might follow from the GRC.

These powers will allow the Chief Constable to apply to a sheriff for Sexual Harm Prevention Orders which can contain prohibitions or requirements which are necessary for the purpose of (a) protecting the public, or any particular members of the public, from sexual harm from the person against whom the order is made or (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm outside the UK from the person against whom the order is made. "Sexual harm" is defined in section 10 in terms of physical or psychological harm caused by the commission of a sexual offence listed in schedule 3 of the 2003 Act or an equivalent offence.

The extant orders in Scotland are SOPOs, (with SHPOs likely to be brought in during 2023).

[out of scope]

However, we do propose amendments to allow for an application to be paused to allow for an application for a Sexual Harm Prevention Order or a Sexual Offences Prevention Order where necessary. That would involve Police Scotland notifying the Registrar General that, based on the ongoing risk assessment and risk management under MAPPA, they intend to apply for a Prevention Order, and National Records of Scotland would then pause the application process and not issue a GRC pending the outcome of that process.

The RG would not be able to grant the application for a GRC for so long as the SOPO or SHPO (including the condition that prevents the offender obtaining a GRC) is applied for, which might occur after an appeal process, and then is subsequently in force. The offender could only re-apply as and when the duration of the SHPO has ended.

2. Briefing for stage 3 debate on the Gender Recognition Reform (Scotland) Bill

[Partial Release – all information within scope]

ANNEX D – CRIMINAL OFFENDING, PROTECTION FOR WITNESSES IN COURT

2. Sexual Harm Prevention Orders are designed to protect the public from sexual harm. Sexual Offences Prevention Orders are designed to protect the public from serious sexual harm. Both orders could allow a pathway for those subject to the notification requirements to have their application paused.

3. A Sexual Risk Order is a civil preventative order designed to protect the public from sexual harm and unlike SHPOs there is no need for a previous conviction or equivalent and could allow a pathway for those accused but not yet convicted to have their application paused.

3. First Minister's Questions Briefings, January 2023 – current

[Redacted] [30(b)(i)]