
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 206

**HIGH COURT OF JUSTICIARY
SHERIFF COURT
DISTRICT COURTS**

**Act of Adjournal (Criminal Procedure Rules
Amendment No. 2) (Sexual Offences Act 2003) 2004**

Made - - - - *30th April 2004*

Coming into force - - *1st May 2004*

The Lord Justice General, the Lord Justice Clerk and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred on them by section 305 of the Criminal Procedure (Scotland) Act 1995(1), and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 2) (Sexual Offences Act 2003) 2004 and shall come into force on 1st May 2004.

(2) This Act of Adjournal shall be inserted in the Books of Adjournal.

Amendment of the Act of Adjournal (Criminal Procedure Rules) 1996

2.—(1) The Act of Adjournal (Criminal Procedure Rules) 1996(2) shall be amended in accordance with the following sub-paragraphs.

(2) For rule 20.3A (sexual offences to which Part 1 of the Sex Offenders Act 1997 applies) there shall be substituted the following:—

“Sexual offences to which Part 2 of the Sexual Offences Act 2003 applies

20.3A.—(1) A certificate under section 92(2) of the Sexual Offences Act 2003(3) (certificate that an accused has been convicted of, found not guilty by reason of insanity of, or found to be under a disability and to have done the act charged against him in respect of, an offence listed in Schedule 3 to that Act) shall be in Form 20.3A A.

(1) 1995 c. 46.

(2) S.I. 1996/513, last amended by S.S.I. 2004/195.

(3) 2003 c. 42.

(2) Subject to paragraph (3), when a certificate such as is mentioned in paragraph (1) is prepared, the accused shall be given a copy of it by the clerk of the court, together with a notice in Form 20.3A B.

(3) If the certificate is not prepared immediately after the statement in open court but is to be prepared subsequently, the clerk of the court shall forthwith give the accused the notice required by paragraph (2) and shall in due course send a copy of the certificate to the accused.

(4) The clerk of the court shall retain a copy of the notice given to the accused and shall record on that copy the fact that notice has been so given.

(5) The record made under paragraph (4) shall be sufficient evidence of the fact recorded; and a certificate of posting sufficient evidence of the sending of a copy under paragraph (3).”.

(3) After Chapter 45 (Fur Farming (Prohibition) (Scotland) Act 2002) there shall be inserted the following:–

“CHAPTER 46

PARENTAL DIRECTIONS UNDER THE SEXUAL OFFENCES ACT 2003

Young offenders: parental directions

46.1. Where a court makes a direction under section 89(1) of the Sexual Offences Act 2003 (young offenders: parental directions) in respect of an individual having parental responsibilities in relation to a young offender, the clerk of the court shall—

- (a) intimate the making of the direction; and
- (b) deliver or send by post a copy of the notice in Form 20.3A-B (notice of requirement to notify police under Part 2 of the Sexual Offences Act 2003),

to that individual and to the chief constable of the police force within the area of which the young offender resides.

Applications to vary, renew or discharge parental directions

46.2. An application under section 90(1) of the Sexual Offences Act 2003 (parental directions: variations, renewals and discharges) shall be made by petition in Form 46.2.”.

(4) In the appendix–

- (a) for Form 20.3A-A and Form 20.3A-B respectively, there shall be substituted the forms set out in Schedule 1 to this Act of Adjournal;
- (b) at the end there shall be inserted the form set out in Schedule 2 to this Act of Adjournal.

Edinburgh
30th April 2004

Cullen of Whitekirk
Lord Justice General I.P.D.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE 1

Rule 20.3A(1)

FORM 20.3A-A Form of certificate under section 92(2) of the Sexual Offences Act 2003 of conviction or of finding CERTIFICATE UNDER SECTION 92(2) OF THE SEXUAL OFFENCES ACT 2003 OF CONVICTION [*or* FINDING]

..... Court Date,

Case No.

Name:
Address:
Date of birth:
Date of conviction [<i>or</i> finding]:
Date of sentence if different:
Offence(s) and sentence(s):

I hereby certify, under section 92(2) of the Sexual Offences Act 2003, that the above named accused was on the above date convicted of [*or* found not guilty by reason of insanity of] [*or* found to be under a disability and to have done the act(s) charged against him in respect of] the above offence[s]; that the offence is a sexual offence [*or* offences are sexual offences] to which Part 2 of that Act applies; and that the court so stated in open court on that date.

.....

CLERK OF COURT

FORM 20.3A-B Form of notice of requirement to notify police under Part 2 of the Sexual Offences Act 2003

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Rule 20.3A(2)

(This notice contains a summary of the notification requirements you must comply with. It is not a complete statement of the law. If you need further explanation or advice you should consult a solicitor.)

Case No.

You have been convicted of [or found not guilty by reason of insanity of] [or found to be under a disability and to have done the act charged against you in respect of] a sexual offence covered by the Sexual Offences Act 2003. The details are set out in the certificate of conviction [or finding] which is attached to this notice [or will be sent to you].

This means that you are now required by law to:

- **Notify the police** within the next 3 days (or, if you are in custody, within 3 days after your release) of your name and any other names you use or have used, your date of birth, your home address (i.e. your sole or main residence in the UK or, if you have no such residence, the address or location of any place in the UK where you can regularly be found and, if there is more than one place, your choice of one of these places), and your national insurance number.
- **Notify the police** of any change to your name or home address, or that you have been released from custody, within 3 days after the date of the change, or your release.
- **Notify the police** of any address in the UK where you reside or stay for 7 days or longer. This means either 7 days at a time or a total of 7 days in any 12 month period.
- **Notify the police** of your details every 12 months even if there is no change to those details.
- **Notify the police** 7 days in advance of the date of leaving the United Kingdom of any plans to travel abroad for a period of 3 days or longer.

Please note: if you are already subject to the notification requirements because of a previous conviction, or finding for a relevant offence then it is not necessary to make another initial notification. However, you will have to comply with all other notification requirements (including the requirement to notify the police within 3 days of any release from custody or detention).

You must give this notice by going to a designated police station in the police area in which your home is situated and giving it in person. If you do not know the designated police station in the police area your home is situated in, or which police stations are in that area, then ask at any police station.

These requirements apply to you from [date of conviction or finding] and shall continue to apply for 5 years [or for 7 years][or for 10 years][or for the duration of your probation order][or indefinitely].

If you fail to comply with these requirements without reasonable excuse, or give the police false information, you could be fined, or sent to prison for up to 5 years, or both.

SCHEDULE 2

Rule 46.2

FORM 46.2 Form of petition under section 90(1) of the Sexual Offences Act 2003

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

[or UNTO THE HONOURABLE THE SHERIFF OF (name of sheriff/don)

[or UNTO THE JUSTICES in the DISTRICT COURT OF (name of district)

AT (place)

PETITION

of

[A.B.] *(address)*

PETITIONER

HUMBLY SHEWETH:

1. That the petitioner is *(name)* and resides at *(address)*.
2. That on *(date)* the court in the case of Her Majesty's Advocate *[or Procurator Fiscal]* against [C.D.], residing at *(specify address)* made a direction under section 89(1) of the Sexual Offences Act 2003 directing that any obligations imposed on young offender [C.D.] under sections 83 to 86 of the Sexual Offences Act 2003 were to be treated instead as obligations on [E.F.] as an individual having parental responsibilities in relation to [C.D.].
3. That the petitioner under section 90(1) of the Act of 2003, seeks to renew *[or discharge]* *[or vary]* the direction for the following reasons:—

(here state reasons)

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

- (1) to appoint intimation of this petition to be made to *(specify)*;
- (2) to appoint parties to be heard thereon on the earliest practicable date thereafter; and
- (3) thereafter, on being duly satisfied, to make an order under section 90(1) to renew *[or discharge]* *[or vary]* the parental direction *[by]* *(here state the terms of the variation of direction sought)* and to do further and otherwise as to your *[Lordship/s]* *[or to the court]* shall seem proper.

ACCORDING TO JUSTICE, etc.

(Signed)

Advocate Depute *[or Procurator Fiscal]*

On behalf of Her Majesty's Advocate *[or]*

[Solicitor for [A.B.]]

(address and telephone number of solicitor)

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EXPLANATORY NOTE

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

This Act of Adjournal amends the Criminal Procedure Rules 1996 (S.I. 1996/513) (“the 1996 Rules”).

Paragraph 2(2) substitutes rule 20.3A of the 1996 Rules with a new rule to take account of new provisions regarding certification of sexual offences under the Sexual Offences Act 2003 (“the 2003 Act”).

Paragraph 2(3) inserts a new rule 46.1 to provide for the intimation of a parental direction under section 89(1) of the 2003 Act to the individual affected and to the chief constable of police for the area in which the young offender resides. It also inserts a new rule 46.2 setting out the procedure for applications under section 90(1) of the 2003 Act for the renewal, discharge or variation of a parental direction.

Paragraph 2(4) substitutes two existing forms in the appendix to the 1996 Rules and inserts an entirely new form.

Schedule 1 sets out the two substitute forms. The first form is a certificate under the 2003 Act of a conviction or finding. The second form is a notice of the notification requirements under Part 2 of the 2003 Act.

Schedule 2 sets out a form of petition by which to apply for the renewal, discharge or variation of a parental direction.