

DOMESTIC ABUSE (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Harassment amounting to domestic abuse

6. **Section 1(2)** of the Act inserts a new section into the 1997 Act (section 8A). By virtue of inserted section 8A(2), this new section only applies wherever the conduct which has led to the pursuer bringing the action of harassment to court amounts to domestic abuse. Section 1(1) of the Act provides that section 8 of the 1997 Act is subject to the provisions in new section 8A.
7. Inserted section 8A(1) repeats the general principle, found in section 8 of the 1997 Act, that an individual has a right to be free from harassment. It differs from section 8, however, in that it removes the reference to a course of conduct and provides instead that a person must not engage in conduct which amounts to harassment.
8. Inserted section 8A(3) provides that subsections (2) to (7) of section 8 of the 1997 Act apply whenever an action of harassment arises in connection with section 8A(1) – subject, in the case of subsections (2) to (4), to the modifications set out in paragraphs (a) to (c) of section 8A(3). In particular, subsection (3)(b) provides an altered definition of conduct to be used when this new section is engaged – conduct includes speech and presence in any place or area and may involve behaviour on one or more than one occasion.
9. **Section 1(3)** of the Act ensures that breach of a non-harassment order granted under new section 8A is a criminal offence. Sections 1(4) and (5) ensure that other enactments applying to actions and remedies under section 8 of the 1997 Act are applied in the same way to those under section 8A.