

ABUSIVE BEHAVIOUR AND SEXUAL HARM (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 1 – Abusive Behaviour

Non-harassment orders

Section 5 – Making of non-harassment orders in criminal cases

27. Section 234A of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) provides that the prosecutor may apply to a court to impose a non-harassment order where a person is convicted of an offence involving harassment of a person. The court may, if it is satisfied on the balance of probabilities that it is necessary to do so to protect the victim from further harassment, make a non-harassment order.
28. **Section 5(2)** amends section 234A of the 1995 Act to empower a court to make a non-harassment order where a person has been found unfit to stand trial under section 53F by reason of a mental or physical condition and the court has determined that the person has done the act or made the omission constituting the offence, or where the accused is acquitted under section 51A of the 1995 Act because they were not criminally responsible for their actions at the time of the offence by reason of mental disorder.
29. **Sections 5(3) and 5(4)** make consequential amendments to section 234A to reflect the changes to the structure of section 234A(1) and to take account of the fact that the person upon whom a non-harassment order may be imposed will not necessarily have been convicted of a criminal offence.
30. **Section 5(5)** inserts new subsection 234A(2BA), which enables the prosecutor to put information to the court about previous instances on which the person against whom the order is sought has, in relation to the same victim, been found to have done acts constituting an offence, but has not been fit to stand trial, or has been acquitted of the offence on the basis of a lack of criminal responsibility.
31. **Section 5(6)** makes a consequential amendment to section 234A(2C) to reflect the fact that the person against whom a non-harassment order is sought may not have been convicted of a criminal offence.
32. **Section 5(7)** amends section 234A(3) to provide that non-harassment orders, including orders granted by virtue of the amendments in section 5, and any variations or revocations of those orders, are to be appealed as if they were a sentence. This means that the procedural safeguards of the 1995 Act will apply to such appeals.