

# **ABUSIVE BEHAVIOUR AND SEXUAL HARM (SCOTLAND) ACT 2016**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON PARTS**

#### **Part 2 – Sexual Harm**

##### ***Chapter 5 – Equivalent orders elsewhere in United Kingdom***

##### ***Section 37 – Breach of orders equivalent to orders in Chapters 3 and 4: offence***

165. Subsection (1) makes it an offence in Scotland to contravene a SHPO, interim SHPO, SRO or interim SRO made in England and Wales. It also makes it an offence in Scotland to contravene a SOPO, interim SOPO, RSHO, interim RSHO or FTO made elsewhere in the UK. Such orders can continue to be made in Northern Ireland, and although such orders can no longer be made in England and Wales some such orders remain in effect. Finally, it also makes it an offence to contravene two old forms of England and Wales order – a restraining order made under section 5A of the Sex Offenders Act 1997 and a sex offender order made under section 2 of the Crime and Disorder Act 1998. Again, although such orders can no longer be made some such orders remain in effect.
166. Subsection (2) specifies that a person convicted of such an offence on summary conviction will be liable to a term of imprisonment of up to 12 months or to a fine, or both; a person convicted on indictment will be liable to a term of imprisonment of up to five years or to a fine or both.
167. Subsection (3) provides that a person convicted under subsection (1) cannot be dealt with by a community payback order, or dismissed with an admonition or discharged absolutely.
168. Subsection (4) provides that the prohibitions imposed by the equivalent order from elsewhere in the UK apply throughout the United Kingdom (unless expressly confined to particular localities).

##### ***Section 38 – Breach of certain equivalent orders: application of notification requirements***

169. Section 38 sets out the circumstances in which breach of an SRO or interim SRO made in England and Wales or a RSHO or interim RSHO in Northern Ireland will render the person subject to the notification requirements of Part 2 of the 2003 Act (sex offender notification requirements). The circumstances are similar to those described in section 35, that is, where there is a conviction or an alternative court disposal relating to the person's mental or physical fitness to stand trial or ability to understand the nature or wrongfulness of their conduct. The conviction or other disposals may relate to the section 37 offence in Scotland (subsection (1)) or the equivalent offences in England and Wales or Northern Ireland (subsection (2)). The notification requirements will remain in place for the duration of the breached order. If the conviction is for breach

*These notes relate to the Abusive Behaviour and Sexual Harm (Scotland)  
Act 2016 (asp 22) which received Royal Assent on 28 April 2016*

of an interim order, the restrictions will remain in place for the duration of the interim order or, if a full order is subsequently made, for the duration of the full order.