

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

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON PARTS**

#### **Part 2 – Sexual Harm**

#### *Chapter 3 – Sexual harm prevention orders*

#### **Circumstances where sexual harm prevention order may be made**

#### *Section 12 – Making of order against qualifying offender on application to sheriff*

78. **Section 12** provides that a court may make a SHPO when an application for such an order is made to it by the chief constable of the Police Service of Scotland in respect of a person.
79. Subsection (2) sets out the tests for making a SHPO on application. The sheriff must be satisfied that the person in respect of whom the order is sought is a qualifying offender (see subsection (5) and sections 13 to 15) and that the person's behaviour since the person first became a qualifying offender makes it necessary to make the prohibitions or requirements in the order for the purpose of protecting persons generally, or particular persons, from sexual harm or protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the person outside the UK.
80. Subsection (3) provides that before deciding whether to make a SHPO on application the court must, if the person against whom the order would be granted requests it (by virtue of subsection (4)), hold a hearing at which both the person and the chief constable are entitled to make representations to the court. If the person does not request a hearing the court is nevertheless obliged either to hold a hearing or provide an opportunity for the person and the chief constable to make written representations.
81. Subsection (5) defines certain terms for the purposes of section 12.