

ABUSIVE BEHAVIOUR AND SEXUAL HARM (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 2 – Sexual Harm

Chapter 4 – Sexual risk orders

Enforcement

Section 34 – Offence of breaching order

157. *Section 34* makes provision about breach of SROs.
158. Subsections (1) and (2) provide that breach of a SRO, without reasonable excuse, is a criminal offence, punishable by a term of imprisonment of up to 12 months or to a fine or both if the offence is tried summarily; or by imprisonment of up to five years or to a fine or both if tried on indictment.
159. Subsection (3) provides that a person convicted under section 34 cannot be sentenced to a community payback order, or dismissed with an admonition or discharged absolutely.
160. Subsection (4) makes jurisdictional provision in relation to breach of a prohibition on foreign travel; such cases may be tried in the sheriff court district where the person is being held in custody or in a sheriff court district determined by the Lord Advocate.

Section 35 – Application of notification requirements on breach of order

161. *Section 35* sets out the circumstances in which breach of a SRO or interim SRO renders a person subject to the notification requirements of Part 2 of the 2003 Act (sex offender notification requirements).
162. These circumstances will occur if a person is convicted of the section 34 offence, or is acquitted by reason of the special defence set out in section 51A of the 1995 Act (which provides a defence where a person is unable by reason of mental disorder to appreciate the nature or wrongfulness of their conduct), or if a court finds the person unfit to stand trial under section 53F of that Act (which provides that a person is unfit for trial if it is established on the balance of probabilities that the person is incapable, by reason of a mental or physical condition, of participating effectively in that trial). In relation to the third circumstance there must also be a finding that the person has done the act or made the omission constituting the section 34 offence.
163. The notification requirements will remain in place for the duration of the breached SRO. If the conviction is for breach of an interim SRO, the restrictions or requirements 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.