



# Abusive Behaviour and Sexual Harm (Scotland) Act 2016

2016 asp 22

## PART 1

### ABUSIVE BEHAVIOUR

#### *Non-harassment orders*

#### **5 Making of non-harassment orders in criminal cases**

(1) Section 234A of the 1995 Act is amended as follows.

(2) For subsection (1), substitute—

“(1) This section applies where a person is—

- (a) convicted of an offence involving misconduct towards another person (“the victim”),
- (b) acquitted of such an offence by reason of the special defence set out in section 51A, or
- (c) found by a court to be unfit for trial under section 53F in respect of such an offence and the court determines that the person has done the act or made the omission constituting the offence.

(1A) The prosecutor may apply to the court to make (instead of or in addition to dealing with the person in any other way) a non-harassment order against the person.

(1B) A non-harassment order is an order requiring the person to refrain, for such period (including an indeterminate period) as may be specified in the order, from such conduct in relation to the victim as may be specified in the order.”.

(3) In subsection (2), for “(1)” substitute “(1A)”.

(4) In subsection (2A)(a)—

- (a) in sub-paragraph (i), for “offender” substitute “person against whom the order is sought”,

- (b) in sub-paragraph (ii), for “offender” substitute “person against whom the order is sought”.
- (5) After subsection (2B), insert—
- “(2BA) The court may, for the purpose of subsection (2) above, have regard to any information given to it for that purpose by the prosecutor about any other offence involving misconduct towards the victim—
- (a) in respect of which the person against whom the order is sought was acquitted by reason of the special defence set out in section 51A, or
  - (b) in respect of which the person against whom the order is sought was found by a court to be unfit for trial under section 53F and the court determined that the person had done the act or made the omission constituting the offence.”.
- (6) In subsection (2C), for “offender” substitute “person against whom the order is sought”.
- (7) For subsection (3), substitute—
- “(3) A non-harassment order made by a criminal court may be appealed against—
- (a) if the order was made in a case falling within subsection (1)(a) above, as if the order were a sentence,
  - (b) if the order was made in a case falling within subsection (1)(b) or (c) above, as if the person had been convicted of the offence concerned and the order were a sentence passed on the person for the offence.
- (3A) A variation or revocation of a non-harassment order made under subsection (6) below may be appealed against—
- (a) if the order was made in a case falling within subsection (1)(a) above, as if the variation or revocation were a sentence,
  - (b) if the order was made in a case falling within subsection (1)(b) or (c) above, as if the person had been convicted of the offence concerned and the variation or revocation were a sentence passed on the person for the offence.”.