



# Abusive Behaviour and Sexual Harm (Scotland) Act 2016

2016 asp 22

## PART 2

### SEXUAL HARM

## CHAPTER 3

### SEXUAL HARM PREVENTION ORDERS

*Circumstances where sexual harm prevention order may be made*

#### **11 Making of order on dealing with person for offence**

- (1) This section applies where a person is—
  - (a) convicted of an offence listed in schedule 3 of the 2003 Act,
  - (b) acquitted of an offence listed in schedule 3 of the 2003 Act by reason of the special defence set out in section 51A of the 1995 Act, or
  - (c) found by a court, in respect of an offence listed in schedule 3 of the 2003 Act, to be unfit for trial under section 53F of the 1995 Act and the court determines that the person has done the act or made the omission constituting the offence.
- (2) The court dealing with the person may (in addition to dealing with the person in any other way) make a sexual harm prevention order (see section 16(1)) against the person.
- (3) A court may make a sexual harm prevention order under this section—
  - (a) at its own instance, or
  - (b) on the motion of the prosecutor.
- (4) A court may make a sexual harm prevention order only if it is satisfied that it is necessary to do so, for the purpose of—
  - (a) protecting the public, or any particular members of the public, from sexual harm from the person, or

---

*Status: This is the original version (as it was originally enacted).*

---

- (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the person outside the United Kingdom.
- (5) Before deciding whether to make a sexual harm prevention order under this section, a court must—
- (a) if subsection (6) applies, hold a hearing at which the person against whom the order would be made and the prosecutor may appear or be represented,
  - (b) if subsection (6) does not apply, either—
    - (i) hold a hearing at which the person against whom the order would be made and the prosecutor may appear or be represented, or
    - (ii) give an opportunity to make written representations to the person against whom the order would be made and the prosecutor.
- (6) This subsection applies if, not later than rules of court may provide, the person against whom the order would be made gives notice to the court of a wish for a hearing to be held.