

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 6 – Non-Custodial Punishments

Section 49 – Power of arrest where breach of non-harassment order

249. **Section 49** amends the Criminal Procedure (Scotland) Act 1995 and the Protection from Harassment Act 1997 to provide for a statutory power of arrest, by the police, for breach of a non-harassment order.
250. The police already have powers at common law to arrest without warrant if necessary in the interests of justice, and the new statutory power of arrest given by section 34 is to be exercised without prejudice to other common law and statutory powers of arrest. Section 49 makes provision for a constable to arrest without warrant a person reasonably suspected of breaching a non-harassment order. The power may be exercised where the non-harassment order is imposed in criminal proceedings following conviction for an offence involving harassment or where it has been granted in civil proceedings following an application to the court.
251. Section 8 of the Protection from Harassment Act 1997 defines a non-harassment order (NHO) as an order which the court may grant in an action for harassment to protect a person from further harassment. The NHO prohibits the defender from specified conduct in relation to the pursuer for a specified period of time. It is for the court to determine any specified conduct or time period to be included in the order. The court may also make a NHO following conviction for an offence involving harassment. Section 9 of the 1997 Act makes provision for the penalties to be imposed following a breach of the order, and designates a breach of an order as a criminal offence.
252. Section 234A of the Criminal Procedure (Scotland) Act 1995 makes provision that where a person has been convicted of a criminal offence, the prosecutor may apply to the court for a non-harassment order requiring the offender to refrain from such conduct, in relation to the victim, as may be specified by the court in the order. It permits the court to impose a non-harassment order, the procedure to be followed before such an order may be imposed and the penalties that may be imposed for a breach of such an order.
253. **Section 49(1)** amends section 234A of the 1995 Act by inserting two new subsections. The new subsection (4A) makes provision for a police constable to arrest without warrant a person the constable reasonably believes is breaching a non-harassment order. The new subsection (4B) specifies that the new power of arrest created by subsection (4A) is without prejudice to any other power of arrest.
254. **Section 49(2)** amends section 9 of the 1997 Act by inserting two new subsections. New subsection (3) makes provision for a police constable to arrest without warrant a person the constable reasonably believes is breaching a non-harassment order. New subsection (4) specifies that the new power of arrest created by subsection (3) is without prejudice to any other power of arrest.