

Delegated Powers and Law Reform Committee
Tuesday, 24 March 2026
Meeting 12, 2026 (Session 6)

Instrument Responses

Victims, Witnesses, and Justice Reform (Scotland) Act 2025 (Commencement No. 2 and Saving Provisions) Regulations 2026 (SSI 2026/120 (C.12))

On 12 March 2026, the Scottish Government was asked:

This question concerns the saving provision.

Regulations 3 and 4 of the instrument make saving provision in respect of the amendments made by sections 107 and 108 of the 2025 Act to section 234AZA of the Criminal Procedure (Scotland) Act 1995.

Section 234A of the 1995 Act sets out circumstances in which the court may, on an application by the prosecutor, make a non-harassment order. Section 234A applies subject to section 234AZA in relation to certain offences. In the circumstances set out in section 234AZA, the court must (of its own initiative) consider making a non-harassment order.

Sections 107 and 108 of the 2025 Act are being commenced by the instrument. They extend section 234AZA of the 1995 Act to cover additional types of offence, and to provide that, when the court is considering whether to make a non-harassment order in a case where the offence was a specified domestic abuse offence, the court must have regard to any prior bail conditions preventing contact with the victim.

Returning to section 234A, it applies in three situations: where a person is (a) convicted of an offence involving misconduct towards a victim, (b) acquitted of such an offence by reason of the special defence in section 51A (criminal responsibility of persons with mental disorder), or (c) found to be unfit for trial but to have done the act constituting the offence. However, the saving provision in regulations 3 and 4 applies only to situation (a), to offences for which an accused person was convicted.

1. Can confirmation be provided that there is no need for the saving provision also to cover situations (b) and (c)?
2. Please advise whether any corrective action is proposed, and if so, what action and when.

On 17 March 2026, the Scottish Government responded:

1. While we agree that it may have been preferable for the saving provision to have covered these situations, we are not concerned about the practical consequences of not doing so. Acquittals by reason of mental disorder and findings of unfitness to stand trial are very rare. Other than in extremely serious cases, criminal proceedings are rarely taken against individuals with such severe mental disorder given that powers are available under mental health legislation, including in relation to compulsory detention and treatment where necessary (see Parts 5 to 7 of the Mental Health (Care and

Treatment) (Scotland) Act 2003). In the very unlikely event that a case arises in which the absence of a saving provision in these situations would be a live issue, we also think it is very unlikely that the court in its decision-making would arrive at an outcome for the individual which would be less favourable in this respect than it would have been if they had no mental disorder and had been convicted of the relevant offence.

2. In these circumstances, the Scottish Government does not propose to take any corrective action.