
Status: This version of this cross heading contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Domestic Abuse (Scotland) Act 2018, Cross Heading: Consideration of non-harassment order. (See end of Document for details)

PROSPECTIVE

SCHEDULE
MODIFICATION OF ENACTMENTS

PART 1

RULES OF CRIMINAL PROCEDURE

CHAPTER 4

VICTIM SAFETY AND NON-HARASSMENT

Consideration of non-harassment order

- 9 (1) The 1995 Act is amended as follows.
(2) After section 234A there is inserted—

“234AZA Non-harassment orders: domestic abuse cases

- (1) Section 234A applies subject to this section if an offence referred to in subsection (1) of that section is one listed in subsection (2)(c).
- (2) For the purposes of this section—
- (a) “victim” has the same meaning as it has in section 234A,
 - (b) “child” has the same meaning as given by section 5(11) of the Domestic Abuse (Scotland) Act 2018,
 - (c) the list is—
 - (i) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
 - (ii) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.
- (3) A non-harassment order in the person's case may include provision for the order to apply in favour of any of the following, in addition to the victim—
- (a) in any circumstances, a child usually residing with the person or a child usually residing with the victim (or a child usually residing with both the person and the victim),
 - (b) where the offence is one under section 1(1) of the Domestic Abuse (Scotland) Act 2018, and is aggravated as described in section 5(1)(a) of that Act, a child to whom the aggravation relates,
- if the court is satisfied that it is appropriate for the child to be protected by the order.
- (4) The court must—

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- (a) without an application by the prosecutor, consider whether to make a non-harassment order in the person's case,
 - (b) after hearing the prosecutor as well as the person, make such an order unless of a negative conclusion on the question,
 - (c) if of a negative conclusion on the question, explain the basis for this.
- (5) Here, a negative conclusion on the question is the conclusion by the court that there is no need for—
 - (a) the victim, or
 - (b) the children (if any) in mind by virtue of subsection (3),to be protected by such an order.
- (6) In the operation of section 234A along with subsection (4)—
 - (a) subsection (1A) of that section is of no effect (and the reference in subsection (2) of that section to an application under subsection (1A) of that section is to be ignored),
 - (b) further—
 - (i) the references in subsections (2A), (2BA) and (2C) of that section to the person against whom the order is sought are to be read as being to the person in whose case the making of a non-harassment order is being considered,
 - (ii) the reference in subsection (2C) of that section to representations in response to the application is to be read as being to representations on the question of whether to make a non-harassment order,
 - (iii) the reference in subsection (6) of that section to the prosecutor at whose instance the order is made is to be read as being to the prosecutor in the case in which the non-harassment order is made.
- (7) For the avoidance of doubt, nothing in this section affects the ability to make a non-harassment order in the case instead of or in addition to dealing with the person in any other way.”

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