



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XI

SENTENCING

[^{F1} Non-harassment orders]

[^{F1}234A Non-harassment orders.

[^{F2}(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.]

(2) On an application under subsection [^{F3}(1A)] above the court may, if it is satisfied on a balance of probabilities that it is appropriate to do so in order to protect the victim from [^{F4}harassment (or further harassment)], make a non-harassment order.

[The court may, for the purpose of subsection (2) above, have regard to any information
^{F5}(2A) given to it for that purpose by the prosecutor—

- (a) about any other offence involving misconduct towards the victim—
 - (i) of which the [^{F6}person against whom the order is sought] has been convicted, or

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(ii) as regards which the [F7 person against whom the order is sought] has accepted (or has been deemed to have accepted) a fixed penalty or compensation offer under section 302(1) or 302A(1) or as regards which a work order has been made under section 303ZA(6),

(b) in particular, by way of—

- (i) an extract of the conviction along with a copy of the complaint or indictment containing the charge to which the conviction relates, or
- (ii) a note of the terms of the charge to which the fixed penalty offer, compensation offer or work order relates.

(2B) But the court may do so only if the court may, under section 101 or 101A (in a solemn case) or section 166 or 166A (in a summary case), have regard to the conviction or the offer or order.

[The court may, for the purpose of subsection (2) above, have regard to any information F8(2BA) 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.]

(2C) The court must give the [F9 person against whom the order is sought] an opportunity to make representations in response to the application.]

[F10(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.]

(4) Any person who is F11 . . . in breach of a non-harassment order shall be guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both such imprisonment and such fine; and
- (b) on summary conviction, to imprisonment for a period not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both such imprisonment and such fine.

F12(4A)

F12(4B)

F13(5)

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- (6) The person against whom a non-harassment order is made, or the prosecutor at whose instance the order is made, may apply to the court which made the order for its revocation or variation and, in relation to any such application the court concerned may, if it is satisfied on a balance of probabilities that it is appropriate to do so, revoke the order or vary it in such manner as it thinks fit, but not so as to increase the period for which the order is to run.

[^{F14}(7) For the purposes of this section—

“harassment” and “conduct” are to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40),

“misconduct” includes conduct that causes alarm or distress.]]

Textual Amendments

- F1** S. 234A inserted (16.6.1997) by 1997 c. 40, s. 11; S.I. 1997/1418, art. 2
- F2** S. 234A(1)-(1B) substituted for s. 234A(1) (24.4.2017) by *Abusive Behaviour and Sexual Harm (Scotland) Act 2016* (asp 22), ss. 5(2), 45(2)(3) (with s. 44); S.S.I. 2017/93, reg. 2 (with reg. 4)
- F3** Word in s. 234A(2) substituted (24.4.2017) by *Abusive Behaviour and Sexual Harm (Scotland) Act 2016* (asp 22), ss. 5(3), 45(2)(3) (with s. 44); S.S.I. 2017/93, reg. 2 (with reg. 4)
- F4** Words in s. 234A(2) substituted (28.3.2011) by *Criminal Justice and Licensing (Scotland) Act 2010* (asp 13), ss. 15(b), 206(1); S.S.I. 2011/178, art. 2, sch.
- F5** Ss. 234A(2A)-(2C) inserted (28.3.2011) by *Criminal Justice and Licensing (Scotland) Act 2010* (asp 13), ss. 15(c), 206(1); S.S.I. 2011/178, art. 2, sch.
- F6** Words in s. 234A(2A)(a)(i) substituted (24.4.2017) by *Abusive Behaviour and Sexual Harm (Scotland) Act 2016* (asp 22), ss. 5(4)(a), 45(2)(3) (with s. 44); S.S.I. 2017/93, reg. 2 (with reg. 4)
- F7** Words in s. 234A(2A)(a)(ii) substituted (24.4.2017) by *Abusive Behaviour and Sexual Harm (Scotland) Act 2016* (asp 22), ss. 5(4)(b), 45(2)(3) (with s. 44); S.S.I. 2017/93, reg. 2 (with reg. 4)
- F8** S. 234A(2BA) inserted (24.4.2017) by *Abusive Behaviour and Sexual Harm (Scotland) Act 2016* (asp 22), ss. 5(5), 45(2)(3) (with s. 44); S.S.I. 2017/93, reg. 2 (with reg. 4)
- F9** Words in s. 234A(2C) substituted (24.4.2017) by *Abusive Behaviour and Sexual Harm (Scotland) Act 2016* (asp 22), ss. 5(6), 45(2)(3) (with s. 44); S.S.I. 2017/93, reg. 2 (with reg. 4)
- F10** S. 234A(3)(3A) substituted for s. 234A(3) (24.4.2017) by *Abusive Behaviour and Sexual Harm (Scotland) Act 2016* (asp 22), ss. 5(7), 45(2)(3) (with s. 44); S.S.I. 2017/93, reg. 2 (with reg. 4)
- F11** Words in s. 234A(4) repealed (27.6.2003) by *Criminal Justice (Scotland) Act 2003* (asp 7), ss. 49(1)(a), 89; S.S.I. 2003/288, art. 2, Sch.
- F12** S. 234A(4A)(4B) repealed (25.1.2018) by *Criminal Justice (Scotland) Act 2016* (asp 1), s. 117(2), sch. 2 para. 3(1); S.S.I. 2017/345, art. 3, sch.
- F13** S. 234A(5) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(30), Sch. 3; S.I. 1997/1712, art. 3 Sch. (subject to arts. 4, 5)
- F14** S. 234A(7) substituted (28.3.2011) by *Criminal Justice and Licensing (Scotland) Act 2010* (asp 13), ss. 15(d), 206(1); S.S.I. 2011/178, art. 2, sch.

Changes to legislation:

Criminal Procedure (Scotland) Act 1995, Section 234A is up to date with all changes known to be in force on or before 07 September 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to :

- 136(3) applied by S.I. 2019/1145 reg. 34(4)(a)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by 2010 asp 13 Sch. 7 para. 26
- s. 13(1B)(1C) inserted by 2006 asp 10 s. 82(2)
- s. 13(2)(aa) inserted by 2006 asp 10 s. 82(3)(b)
- s. 13(3A) inserted by 2006 asp 10 s. 82(4)
- s. 13(5)(ba) inserted by 2006 asp 10 s. 82(5)(a)
- s. 13(6)(a)(iii) and word inserted by 2006 asp 10 s. 82(6)(b)
- s. 13(8) inserted by 2006 asp 10 s. 82(7)
- s. 18GA inserted by 2019 c. 3 Sch. 2 para. 8
- s. 22(5A) inserted by 2007 asp 6 s. 7(2)(g)
- s. 73A inserted by 2004 asp 3 s. 2(3)
- s. 167(7D)(7E) inserted by 2007 asp 17 sch. 4 para. 1(3)
- s. 167(7D) words substituted by 2010 asp 13 Sch. 3 para. 16(2)
- s. 167(7E) words substituted by 2010 asp 13 Sch. 3 para. 16(3)
- s. 194ZA repealed by 2014 asp 18 sch. 3 para. 25
- s. 200A inserted by 2016 asp 1 s. 85
- s. 205A added by 1997 c. 48 s. 1(1) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by 2003 asp 7, s. 19(3); S.S.I. 2003/288, art. 2, Sch.)
- s. 209(7B) inserted by 2019 asp 14 Sch. 1 para. 1(2)
- s. 227A(2)(j) inserted by 2019 asp 14 Sch. 1 para. 2(2)
- s. 227G(2)(b)(viii) and word inserted by 2019 asp 14 Sch. 1 para. 2(3)(a)(iii)
- s. 227G(4A) inserted by 2019 asp 14 Sch. 1 para. 2(3)(c)
- s. 227ZE(A1) inserted by 2019 asp 14 Sch. 1 para. 2(4)(a)
- s. 227ZG(2)(aa) inserted by 2019 asp 14 Sch. 1 para. 5(2)(b)
- s. 227ZH(2)(aa) inserted by 2019 asp 14 Sch. 1 para. 5(3)(b)
- s. 245A(6)(a)(ia) inserted by 2019 asp 14 Sch. 1 para. 5(4)(b)
- s. 245E(4A)(a)(ia) inserted by 2019 asp 14 Sch. 1 para. 5(5)(a)(ii)
- s. 245DA inserted by 2019 asp 14 Sch. 1 para. 4(2)
- s. 249(4A)-(4D) inserted by 2014 asp 1 s. 24
- s. 253A-253E and cross-heading inserted by 2014 asp 1 s. 25
- s. 253A(2) applied by 2002 c. 29, s. 97A(9) (as inserted) by 2015 c. 9 s. 15(2)
- s. 271B(4A) inserted by 2019 asp 8 s. 2(2)(a)
- s. 271B(7) inserted by 2019 asp 8 s. 2(2)(b)
- s. 271D(3A)-(3C) inserted by 2019 asp 8 s. 4(2)
- s. 271D(4A) inserted by 2019 asp 8 s. 6(4)
- s. 271D(6A) inserted by 2019 asp 8 s. 5(8)
- s. 271F(2)(aa) inserted by 2019 asp 8 s. 10(4)
- s. 271I(1ZA)-(1ZD) inserted by 2019 asp 8 s. 5(2)
- s. 271I(4A) inserted by 2019 asp 8 s. 5(4)
- s. 271AA inserted by 2019 asp 8 s. 6(2)
- s. 271BZA-271BZC inserted by 2019 asp 8 s. 1(2)
- s. 271BZD inserted by 2019 asp 8 s. 3(2)

- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to [legislation.gov.uk](#). 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by 2003 asp 7, s. 19(3); S.S.I. 2003/288, art. 2, Sch.)