

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 - Sentencing

Section 15 – Non-harassment orders

71. Section 234A of the Criminal Procedure (Scotland) Act 1995 (“the Act”), enables a prosecutor to apply for a non-harassment order against a person convicted of an offence involving harassment towards a victim. This section makes changes to the Act to make it less onerous for prosecutors to apply for an order.
72. Subsection (a) changes the test in section 234A(1) of the Act so that an order may be applied for where a person is convicted of an offence involving misconduct towards a victim. Misconduct is defined (as per the substituted definition at subsection (d)) as including “conduct that causes alarm or distress”. This is a lower threshold than the existing reference to ‘harassment’ of the victim and will remove the need for the accused to have been convicted of an offence which in itself involved conduct on more than one occasion. It will allow criminal non-harassment orders to be considered in a greater number of cases.
73. Subsection (b) makes an associated change so that an order can be made to prevent harassment rather than merely any ‘further harassment’ therefore giving the court powers to protect victims at an earlier stage.
74. Subsection (c) inserts new subsections (2A), (2B) and (2C) into section 234A. New subsection (2A)(a) allows the court to have regard to information on other offences which involved misconduct towards the victim which the offender has been convicted of or has accepted a fixed penalty or compensation offer or work order for under sections 302(1), 302A(1) and 303ZA(6) of the 1995 Act.
75. New subsection (2A)(b) sets out the way in which the information can be given to the court and will allow the court to see the relevant details of previous convictions (rather than simply a list of previous convictions as they currently do) when deliberating on an application for a non-harassment order. This is to enable a court to have fuller details of the past offending behaviour of a person.
76. New subsection (2B) limits the court’s right to have regard to this information in accordance with the existing rules on previous convictions, offers or orders set out in sections 101, 101A (solemn proceedings) and 166 and 166A (summary proceedings) of the 1995 Act. New subsection (2C) requires the court to give the offender the opportunity to respond to the application for a non-harassment order.
77. Subsection (d) substitutes a new subsection (7) relating to definitions.