

DOMESTIC ABUSE (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE STRUCTURE AND A SUMMARY OF THE ACT

Part 2 – Further and Final Matters

The schedule – details

Part 1 – rules of criminal procedure

Chapter 4 – victim safety and non-harassment

Consideration of non-harassment order

80. [Paragraph 9](#) of the schedule introduces a new section 234AZA into the 1995 Act. This new section provides for new rules in relation to how the court is to consider non-harassment orders when sentencing for a relevant offence.
81. Section 234A of the 1995 Act provides the existing rules relating to non-harassment orders available to the court following conviction. New section 234AZA(1) provides that section 234A continues to operate in cases of domestic abuse but subject to certain modifications.
82. New section 234AZA(2) provides certain definitions for the purpose of this section. This includes listing the relevant offences for the operation of the section as an offence under section 1(1) of this Act and an offence that is aggravated as described in section 1(1)(a) of the 2016 Act.
83. New section 234AZA(3) provides that a non-harassment order, in addition to making provision to protect the victim as defined in section 234A of the 1995 Act, can include provision in respect of children close to the domestic abuse offence i.e. children living with the perpetrator or the victim of domestic abuse or children to whom the aggravation at section 5 applies.
84. New section 234AZA(4)(a) provides that the court is always required to consider whether to make a non-harassment order. An application by the prosecutor is not required to initiate this process.
85. New section 234AZA(4)(b), as read with section 234AZA(5), provides that, after hearing the prosecutor as well as the person, the court must make a non-harassment order unless it concludes that there is no need for a victim, or the children covered by subsection (3), to be protected by such an order.
86. New section 234AZA(4)(c), as similarly read, provides that, if the court concludes that a non-harassment order is not required, it must explain why.
87. New section 234AZA(6) makes a number of consequential adaptations to section 234A which are necessary as a result of the prosecutor not being required to make an application in the circumstances.

*These notes relate to the Domestic Abuse (Scotland) Act
2018 (asp 5) which received Royal Assent on 9 March 2018*

88. New section 234AZA(7) preserves the position whereby a non-harassment order may be imposed as an alternative or in addition to some other disposal in the case (e.g. imprisonment or a Community Payback Order).