



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XI **U.K.**

#### SENTENCING

#### *[<sup>F1</sup> Non-harassment orders]*

#### Textual Amendments

**F1** S. 234A and cross-heading inserted (16.6.1997) by 1997 c. 40, s. 11; S.I. 1997/1418, art. 2

#### **[<sup>F2</sup>234A Non-harassment orders. **S****

**[<sup>F3</sup>(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 [<sup>F4</sup>(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 [<sup>F5</sup>harassment (or further harassment)], make a non-harassment order.

*Status: Point in time view as at 24/04/2017.*

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[ The court may, for the purpose of subsection (2) above, have regard to any information <sup>F6</sup>(2A) given to it for that purpose by the prosecutor—

- (a) about any other offence involving misconduct towards the victim—
  - (i) of which the [<sup>F7</sup>person against whom the order is sought] has been convicted, or
  - (ii) as regards which the [<sup>F8</sup>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 <sup>F9</sup>(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 [<sup>F10</sup>person against whom the order is sought] an opportunity to make representations in response to the application.]

[<sup>F11</sup>(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 <sup>F12</sup>. . . 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

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- (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.

<sup>F13</sup>(4A) [ A constable may arrest without warrant any person he reasonably believes is committing or has committed an offence under subsection (4) above.

(4B) Subsection (4A) above is without prejudice to any power of arrest conferred by law apart from that subsection.]

<sup>F14</sup>(5) .....

- (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.

[<sup>F15</sup>(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

- F2** S. 234A inserted (16.6.1997) by 1997 c. 40, s. 11; S.I. 1997/1418, art. 2
- F3** 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)
- F4** 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)
- F5** 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.
- F6** 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.
- F7** 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)
- F8** 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)
- F9** 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)
- F10** 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)
- F11** 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)
- F12** 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.
- F13** S. 234A(4A)(4B) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 49(1)(b), 89; S.S.I. 2003/288, art. 2, Sch.
- F14** 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)
- F15** 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.

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