



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XI

SENTENCING

[^{F1} Non-harassment orders]

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

- (1) Where a person is convicted of an offence involving [^{F2}misconduct towards] a person (“the victim”), the prosecutor may apply to the court to make a non-harassment order against the offender requiring him to refrain from such conduct in relation to the victim as may be specified in the order for such period (which includes an indeterminate period) as may be so specified, in addition to any other disposal which may be made in relation to the offence.
- (2) On an application under subsection (1) 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 [^{F3}harassment (or further harassment)], make a non-harassment order.

[The court may, for the purpose of subsection (2) above, have regard to any information ^{F4}(2A) given to it for that purpose by the prosecutor—

- (a) about any other offence involving misconduct towards the victim—
 - (i) of which the offender has been convicted, or
 - (ii) as regards which the offender 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.

Status: Point in time view as at 28/03/2011. This version of this provision has been superseded.

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 22 May 2024. 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. (See end of Document for details)

- (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.
- (2C) The court must give the offender an opportunity to make representations in response to the application.]
- (3) A non-harassment order made by a criminal court shall be taken to be a sentence for the purposes of any appeal and, for the purposes of this subsection “order” includes any variation or revocation of such an order made under subsection (6) below.
- (4) Any person who is ^{F5} . . . 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.
- [A constable may arrest without warrant any person he reasonably believes is ^{F6}(4A) 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.]
- ^{F7}(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.
- [^{F8}(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** Words in s. 234A(1) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 15(a), 206(1); S.S.I. 2011/178, art. 2, sch.
- F3** 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.
- F4** 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.
- F5** 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.
- F6** 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.
- F7** 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)

Status: Point in time view as at 28/03/2011. This version of this provision has been superseded.

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 22 May 2024. 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. (See end of Document for details)

F8 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.

Status:

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