



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XI

#### SENTENCING

#### **[<sup>F1</sup>234AZA] Non-harassment orders: domestic abuse cases**

- (1) Section 234A applies subject to this section if an offence referred to in subsection (1) of that section is one listed in subsection (2)(c).
- (2) For the purposes of this section—
  - (a) “victim” has the same meaning as it has in section 234A,
  - (b) “child” has the same meaning as given by section 5(11) of the Domestic Abuse (Scotland) Act 2018,
  - (c) the list is—
    - (i) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
    - (ii) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.
- (3) A non-harassment order in the person's case may include provision for the order to apply in favour of any of the following, in addition to the victim—
  - (a) in any circumstances, a child usually residing with the person or a child usually residing with the victim (or a child usually residing with both the person and the victim),
  - (b) where the offence is one under section 1(1) of the Domestic Abuse (Scotland) Act 2018, and is aggravated as described in section 5(1)(a) of that Act, a child to whom the aggravation relates,if the court is satisfied that it is appropriate for the child to be protected by the order.
- (4) The court must—
  - (a) without an application by the prosecutor, consider [<sup>F2</sup>the question of] whether to make a non-harassment order in the person's case,

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- (b) after hearing the prosecutor as well as the person, make such an order unless of a negative conclusion on the question,
  - (c) if of a negative conclusion on the question, explain the basis for this.
- (5) Here, a negative conclusion on the question is the conclusion by the court that there is no need for—
- (a) the victim, or
  - (b) the children (if any) in mind by virtue of subsection (3),
- to be protected by such an order.
- (6) In the operation of section 234A along with subsection (4)—
- (a) subsection (1A) of that section is of no effect (and the reference in subsection (2) of that section to an application under subsection (1A) of that section is to be ignored),
  - (b) further—
    - (i) the references in subsections (2A), (2BA) and (2C) of that section to the person against whom the order is sought are to be read as being to the person in whose case the making of a non-harassment order is being considered,
    - (ii) the reference in subsection (2C) of that section to representations in response to the application is to be read as being to representations on the question of whether to make a non-harassment order,
    - (iii) the reference in subsection (6) of that section to the prosecutor at whose instance the order is made is to be read as being to the prosecutor in the case in which the non-harassment order is made.
- (7) For the avoidance of doubt, nothing in this section affects the ability to make a non-harassment order in the case instead of or in addition to dealing with the person in any other way.]

#### Textual Amendments

- F1** S. 234AZA inserted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), **sch. para. 9(2)**; S.S.I. 2018/387, reg. 2 (with reg. 7)
- F2** Words in s. 234AZA(4)(a) inserted (11.10.2019) by [Management of Offenders \(Scotland\) Act 2019 \(asp 14\)](#), s. 63(2), **sch. 1 para. 3(2)**; S.S.I. 2019/309, reg. 2, sch.

**Changes to legislation:**

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**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. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- 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. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- s. 288AB288AC inserted by [2024 asp 1 s. 32\(3\)](#)
- 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.)