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Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XI

SENTENCING

[^{F1} 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

[^{F2}234A Non-harassment orders.

- (1) Where a person is convicted of an offence involving harassment of 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 further harassment, make a non-harassment order.
- (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 found to be 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.

^{F3}(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.
- (7) For the purposes of this section “harassment” shall be construed in accordance with section 8 of the Protection from Harassment Act 1997.]

Textual Amendments

F2 S. 234A inserted (16.6.1997) by 1997 c. 40, s. 11; S.I. 1997/1418, art. 2

F3 S. 234A(5) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(30), Sch. 3; S.I. 1997/1712, art. 3 Sch.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)

[^{F4}234B Drug treatment and testing order.

- (1) This section applies where a person of 16 years of age or more is convicted of an offence, other than one for which the sentence is fixed by law, committed on or after the date on which section 89 of the Crime and Disorder Act 1998 comes into force.
- (2) Subject to the provisions of this section, the court by or before which the offender is convicted may, if it is of the opinion that it is expedient to do so instead of sentencing him, make an order (a “drug treatment and testing order”) which shall—
- (a) have effect for a period specified in the order of not less than six months nor more than three years (“the treatment and testing period”); and
 - (b) include the requirements and provisions mentioned in section 234C of this Act.
- (3) A court shall not make a drug treatment and testing order unless it—
- (a) has been notified by the Secretary of State that arrangements for implementing such orders are available in the area of the local authority proposed to be specified in the order under section 234C(6) of this Act and the notice has not been withdrawn;
 - (b) has obtained a report by, and if necessary heard evidence from, an officer of the local authority in whose area the offender is resident about the offender and his circumstances; and
 - (c) is satisfied that—
 - (i) the offender is dependent on, or has a propensity to misuse, drugs;
 - (ii) his dependency or propensity is such as requires and is susceptible to treatment; and
 - (iii) he is a suitable person to be subject to such an order.

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- (4) For the purpose of determining for the purposes of subsection (3)(c) above whether the offender has any drug in his body, the court may by order require him to provide samples of such description as it may specify.
- (5) A drug treatment and testing order or an order under subsection (4) above shall not be made unless the offender expresses his willingness to comply with its requirements.
- (6) The Secretary of State may by order—
 - (a) amend paragraph (a) of subsection (2) above by substituting a different period for the minimum or the maximum period for the time being specified in that paragraph; and
 - (b) make such transitional provisions as appear to him necessary or expedient in connection with any such amendment.
- (7) The power to make an order under subsection (6) above shall be exercisable by statutory instrument; but no such order shall be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.
- (8) A drug treatment and testing order shall be as nearly as may be in the form prescribed by Act of Adjournal.]

Textual Amendments

F4 S. 234B inserted (30.9.1998) by 1998 c. 37, s. 89; S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

[^{F5}234C Requirements and provisions of drug treatment and testing orders.

- (1) A drug treatment and testing order shall include a requirement (“the treatment requirement”) that the offender shall submit, during the whole of the treatment and testing period, to treatment by or under the direction of a specified person having the necessary qualifications or experience (“the treatment provider”) with a view to the reduction or elimination of the offender’s dependency on or propensity to misuse drugs.
- (2) The required treatment for any particular period shall be—
 - (a) treatment as a resident in such institution or place as may be specified in the order; or
 - (b) treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified;but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a) or (b) above.
- (3) A court shall not make a drug treatment and testing order unless it is satisfied that arrangements have been made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is required to submit to treatment as a resident).
- (4) A drug treatment and testing order shall include a requirement (“the testing requirement”) that, for the purpose of ascertaining whether he has any drug in his body during the treatment and testing period, the offender shall provide during that period, at such times and in such circumstances as may (subject to the provisions of the order) be determined by the treatment provider, samples of such description as may be so determined.

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- (5) The testing requirement shall specify for each month the minimum number of occasions on which samples are to be provided.
- (6) A drug treatment and testing order shall specify the local authority in whose area the offender will reside when the order is in force and require that authority to appoint or assign an officer (a “supervising officer”) for the purposes of subsections (7) and (8) below.
- (7) A drug treatment and testing order shall—
 - (a) provide that, for the treatment and testing period, the offender shall be under the supervision of a supervising officer;
 - (b) require the offender to keep in touch with the supervising officer in accordance with such instructions as he may from time to time be given by that officer, and to notify him of any change of address; and
 - (c) provide that the results of the tests carried out on the samples provided by the offender in pursuance of the testing requirement shall be communicated to the supervising officer.
- (8) Supervision by the supervising officer shall be carried out to such extent only as may be necessary for the purpose of enabling him—
 - (a) to report on the offender’s progress to the appropriate court;
 - (b) to report to that court any failure by the offender to comply with the requirements of the order; and
 - (c) to determine whether the circumstances are such that he should apply to that court for the variation or revocation of the order.]

Textual Amendments

F5 S. 234C inserted (30.9.1998) by 1998 c. 37, s. 90; S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

VALID FROM 27/06/2003

234CA Requirement for remote monitoring in drug treatment and testing order

- (1) A drug treatment and testing order may include a requirement that during such period as may be specified in the requirement, being a period not exceeding twelve months, the offender comply with such restrictions as to his movements as the court thinks fit; and paragraphs (a) and (b) of subsection (2) of section 245A of this Act (with the qualification of paragraph (a) which that subsection contains) shall apply in relation to any such requirement as they apply in relation to a restriction of liberty order.
- (2) The clerk of the court shall cause a copy of a drug treatment and testing order which includes such a requirement to be sent to the person who is to be responsible for monitoring the offender’s compliance with the requirement.
- (3) If, within the period last specified by virtue of subsection (1) above or (6)(d) below, it appears to the person so responsible that the offender has failed to comply with the requirement the person shall so inform the supervising officer appointed by virtue of section 234C(6) of this Act, who shall report the matter to the court.

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- (4) Section 245H shall apply in relation to proceedings under section 234G of this Act as respects a drug treatment and testing order which includes such a requirement as it applies in relation to proceedings under section 245F of this Act.
- (5) Sections 245A(6) and (8) to (11), 245B and 245C of this Act shall apply in relation to the imposition of, or as the case may be compliance with, requirements included by virtue of subsection (1) above in a drug treatment and testing order as those sections apply in relation to the making of, or as the case may be compliance with, a restriction of liberty order.
- (6) In relation to a drug testing order which includes such a requirement, section 234E of this Act shall apply with the following modifications—
 - (a) the persons who may make an application under subsection (1) of that section shall include the person responsible for monitoring the offender’s compliance with the requirement, but only in so far as the application relates to the requirement;
 - (b) the reference in subsection (2) of that section to the supervising officer shall be construed as a reference to either that officer or the person so responsible;
 - (c) where an application is made under subsection (1) of that section and relates to the requirement, the persons to be heard under subsection (3) of that section shall include the person so responsible;
 - (d) the ways of varying the order which are mentioned in subsection (3)(a) of that section shall include increasing or decreasing the period specified by virtue of subsection (1) above (or last specified by virtue of this paragraph) but not so as to increase that period above the maximum mentioned in subsection (1) above; and
 - (e) the reference in subsection (5) of that section—
 - (i) to the supervising officer shall be construed as a reference to either that officer or the person so responsible; and
 - (ii) to sections 234B(5) and 234D(1) shall be construed as including a reference to section 245A(6) and (11).
- (7) Where under section 234E or 234G(2)(b) of this Act the court varies such a requirement, the clerk of court shall cause a copy of the amended drug treatment and testing order to be sent—
 - (a) to the person responsible for monitoring the offender’s compliance with the requirement; and
 - (b) where the variation comprises a change in who is designated for the purposes of such monitoring, to the person who, immediately before the order was varied, was so responsible.

[^{F6}234D Procedural matters relating to drug treatment and testing orders.

- (1) Before making a drug treatment and testing order, a court shall explain to the offender in ordinary language—
 - (a) the effect of the order and of the requirements proposed to be included in it;
 - (b) the consequences which may follow under section 234G of this Act if he fails to comply with any of those requirements;
 - (c) that the court has power under section 234E of this Act to vary or revoke the order on the application of either the offender or the supervising officer; and

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- (d) that the order will be periodically reviewed at intervals provided for in the order.
- (2) Upon making a drug treatment and testing order the court shall—
 - (a) give, or send by registered post or the recorded delivery service, a copy of the order to the offender;
 - (b) send a copy of the order to the treatment provider;
 - (c) send a copy of the order to the chief social work officer of the local authority specified in the order in accordance with section 234C(6) of this Act; and
 - (d) where it is not the appropriate court, send a copy of the order (together with such documents and information relating to the case as are considered useful) to the clerk of the appropriate court.
- (3) Where a copy of a drug treatment and testing order has under subsection (2)(a) been sent by registered post or by the recorded delivery service, an acknowledgment or certificate of delivery of a letter containing a copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.]

Textual Amendments

F6 S. 234D inserted (30.9.1998) by 1998 c. 37, s. 91; S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

[^{F7}234E Amendment of drug treatment and testing order.

- (1) Where a drug treatment and testing order is in force either the offender or the supervising officer may apply to the appropriate court for variation or revocation of the order.
- (2) Where an application is made under subsection (1) above by the supervising officer, the court shall issue a citation requiring the offender to appear before the court.
- (3) On an application made under subsection (1) above and after hearing both the offender and the supervising officer, the court may by order, if it appears to it in the interests of justice to do so—
 - (a) vary the order by—
 - (i) amending or deleting any of its requirements or provisions;
 - (ii) inserting further requirements or provisions; or
 - (iii) subject to subsection (4) below, increasing or decreasing the treatment and testing period; or
 - (b) revoke the order.
- (4) The power conferred by subsection (3)(a)(iii) above shall not be exercised so as to increase the treatment and testing period above the maximum for the time being specified in section 234B(2)(a) of this Act, or to decrease it below the minimum so specified.
- (5) Where the court, on the application of the supervising officer, proposes to vary (otherwise than by deleting a requirement or provision) a drug treatment and testing order, sections 234B(5) and 234D(1) of this Act shall apply to the variation of such an order as they apply to the making of such an order.

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- (6) If an offender fails to appear before the court after having been cited in accordance with subsection (2) above, the court may issue a warrant for his arrest.]

Textual Amendments

F7 S. 234E inserted (30.9.1998) by 1998 c. 37, s. 92; S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

[^{F8}234F Periodic review of drug treatment and testing order.

- (1) A drug treatment and testing order shall—
- (a) provide for the order to be reviewed periodically at intervals of not less than one month;
 - (b) provide for each review of the order to be made, subject to subsection (5) below, at a hearing held for the purpose by the appropriate court (a “review hearing”);
 - (c) require the offender to attend each review hearing;
 - (d) provide for the supervising officer to make to the court, before each review, a report in writing on the offender’s progress under the order; and
 - (e) provide for each such report to include the test results communicated to the supervising officer under section 234C(7)(c) of this Act and the views of the treatment provider as to the treatment and testing of the offender.
- (2) At a review hearing the court, after considering the supervising officer’s report, may amend any requirement or provision of the order.
- (3) The court—
- (a) shall not amend the treatment or testing requirement unless the offender expresses his willingness to comply with the requirement as amended;
 - (b) shall not amend any provision of the order so as reduce the treatment and testing period below the minimum specified in section 234B(2)(a) of this Act or to increase it above the maximum so specified; and
 - (c) except with the consent of the offender, shall not amend any requirement or provision of the order while an appeal against the order is pending.
- (4) If the offender fails to express his willingness to comply with the treatment or testing requirement as proposed to be amended by the court, the court may revoke the order.
- (5) If at a review hearing the court, after considering the supervising officer’s report, is of the opinion that the offender’s progress under the order is satisfactory, the court may so amend the order as to provide for each subsequent review to be made without a hearing.
- (6) A review without a hearing shall take place in chambers without the parties being present.
- (7) If at a review without a hearing the court, after considering the supervising officer’s report, is of the opinion that the offender’s progress is no longer satisfactory, the court may issue a warrant for the arrest of the offender or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a citation requiring the offender to appear before that court as such time as may be specified in the citation.
- (8) Where an offender fails to attend—

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- (a) a review hearing in accordance with a requirement contained in a drug treatment and testing order; or
 - (b) a court at the time specified in a citation under subsection (7) above, the court may issue a warrant for his arrest.
- (9) Where an offender attends the court at a time specified by a citation issued under subsection (7) above—
- (a) the court may exercise the powers conferred by this section as if the court were conducting a review hearing; and
 - (b) so amend the order as to provide for each subsequent review to be made at a review hearing.]

Textual Amendments

F8 S. 234F inserted (30.9.1998) by 1998 c. 37, s. 92, S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

[^{F9}234G Breach of drug treatment testing order.

- (1) If at any time when a drug treatment and testing order is in force it appears to the appropriate court that the offender has failed to comply with any requirement of the order, the court may issue a citation requiring the offender to appear before the court at such time as may be specified in the citation or, if it appears to the court to be appropriate, it may issue a warrant for the arrest of the offender.
- (2) If it is proved to the satisfaction of the appropriate court that the offender has failed without reasonable excuse to comply with any requirement of the order, the court may by order—
 - (a) without prejudice to the continuation in force of the order, impose a fine not exceeding level 3 on the standard scale;
 - (b) vary the order; or
 - (c) revoke the order.
- (3) For the purposes of subsection (2) above, the evidence of one witness shall be sufficient evidence.
- (4) A fine imposed under this section in respect of a failure to comply with the requirements of a drug treatment and testing order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction or a penalty imposed on a person summarily convicted.]

Textual Amendments

F9 S. 234G inserted (30.9.1998) by 1998 c. 37, s. 93; S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

[^{F10}234H Disposal on revocation of drugs treatment and testing order.

- (1) Where the court revokes a drugs treatment and testing order under section 234E(3)(b), 234F(4) or 234G(2)(c) of this Act, it may dispose of the offender in any way which would have been competent at the time when the order was made.

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- (2) In disposing of an offender under subsection (1) above, the court shall have regard to the time for which the order has been in operation.
- (3) Where the court revokes a drug treatment and testing order as mentioned in subsection (1) above and the offender is subject to—
 - (a) a probation order, by virtue of section 234J of this Act; or
 - (b) a restriction of liberty order, by virtue of section 245D of this Act; or
 - (c) a restriction of liberty order and a probation order, by virtue of the said section 245D,the court shall, before disposing of the offender under subsection (1) above—
 - (i) where he is subject to a probation order, discharge that order;
 - (ii) where he is subject to a restriction of liberty order, revoke that order; and
 - (iii) where he is subject to both such orders, discharge the probation order and revoke the restriction of liberty order.]

Textual Amendments

F10 S. 234H inserted (30.9.1998) by 1998 c. 37, s. 93; S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

[^{F11}234J Concurrent drug treatment and testing and probation orders.

- (1) Notwithstanding sections 228(1) and 234B(2) of this Act, where the court considers it expedient that the offender should be subject to a drug treatment and testing order and to a probation order, it may make both such orders in respect of the offender.
- (2) In deciding whether it is expedient for it to exercise the power conferred by subsection (1) above, the court shall have regard to the circumstances, including the nature of the offence and the character of the offender and to the report submitted to it under section 234B(3)(b) of this Act.
- (3) Where the court makes both a drug treatment and testing order and a probation order by virtue of subsection (1) above, the clerk of the court shall send a copy of each of the orders to the following—
 - (a) the treatment provider within the meaning of section 234C(1);
 - (b) the officer of the local authority who is appointed or assigned to be the supervising officer under section 234C(6) of this Act; and
 - (c) if he would not otherwise receive a copy of the order, the officer of the local authority who is to supervise the probationer.
- (4) Where the offender by an act or omission fails to comply with a requirement of an order made by virtue of subsection (1) above—
 - (a) if the failure relates to a requirement contained in a probation order and is dealt with under section 232(2)(c) of this Act, the court may, in addition, exercise the power conferred by section 234G(2)(b) of this Act in relation to the drug treatment and testing order; and
 - (b) if the failure relates to a requirement contained in a drug treatment and testing order and is dealt with under section 234G(2)(b) of this Act, the court may, in addition, exercise the power conferred by section 232(2)(c) of this Act in relation to the probation order.

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- (5) Where an offender by an act or omission fails to comply with both a requirement contained in a drug treatment and testing order and in a probation order to which he is subject by virtue of subsection (1) above, he may, without prejudice to subsection (4) above, be dealt with as respects that act or omission either under section 232(2) of this Act or under section 234G(2) of this Act but he shall not be liable to be otherwise dealt with in respect of that act or omission.]

Textual Amendments

F11 S. 234J inserted "after s. 234H" (30.9.1998) by virtue of 1998 c. 37, s. 94(1); S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

[^{F12}234K Drug treatment and testing orders: interpretation.

In sections 234B to 234J of this Act—

“the appropriate court” means—

- (a) where the drug treatment and testing order has been made by the High Court, that court;
- (b) in any other case, the court having jurisdiction in the area of the local authority for the time being specified in the order under section 234C(6) of this Act, being a sheriff or district court according to whether the order has been made by a sheriff or district court, but in a case where an order has been made by a district court and there is no district court in that area, the sheriff court; and

“local authority” means a council constituted under section 2 of the ^{M1}Local Government etc. (Scotland) Act 1994 and any reference to the area of such an authority is a reference to the local government area within the meaning of that Act for which it is so constituted.]

Textual Amendments

F12 S. 234K inserted (30.9.1998) by 1998 c. 37, s. 95(1); S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)

Marginal Citations

M1 1994 c.39.

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