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STATUTORY INSTRUMENTS

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**1997 No. 1526 (S.119)**

**HIGH COURT OF JUSTICIARY, SCOTLAND  
SHERIFF COURT, SCOTLAND  
SUMMARY JURISDICTION, SCOTLAND**

**Act of Adjournal (Criminal Procedure Rules  
Amendment No.2) (Non-harassment order) 1997**

*Made* - - - - *12th June 1997*  
*Coming into force* - - *16th June 1997*

The Lord Justice General, the Lord Justice Clerk and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred on them by sections 198 and 305 of the Criminal Procedure (Scotland) Act 1995 (1) and of all other powers enabling them in that behalf, do hereby enact and declare:

**Citation and commencement**

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No.2)(Non-harassment order) 1997 and shall come into force on 16th June 1997.

(2) This Act of Adjournal shall be inserted in the Books of Adjournal.

**Form of non-harassment order.**

2.—(1) The Criminal Procedure Rules 1996 (2) shall be amended as follows.

(2) In Chapter 20 (sentencing), after rule 20.10 insert—

**“Form and notification of non-harassment order**

**20.10A.**—(1) A non-harassment order made under section 234A of the Act of 1995 shall be in Form 20.10A.

(2) A non-harassment order mentioned in paragraph (1) above shall be intimated by the clerk of the court by which it is made to any person, other than the offender, who is named in the order.

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(1) 1995 c. 46.

(2) S.I.1996/513, as amended by S.I. 1996/2147 and S.I. 1997/63.

### **Variation or revocation of non-harassment order**

**20.10B.**—(1) This rule applies to an application under section 234(6) of the Act of 1995 (application for variation or revocation of non-harassment order).

(2) In this rule—

“the offender” means the offender subject to the order to which the application relates; and

“the prosecutor” means the prosecutor at whose instance the order was made.

(3) The application shall—

(a) identify the proceedings in which the order was made;

(b) state the reasons for which the applicant seeks the variation or revocation of the order;

(c) be, as nearly as may be, in Form 20.10B.

(4) The applicant shall serve a copy of the application on—

(a) the clerk of the court which made the order;

(b) any person, other than the offender, who is named in the order; and

(c) where the applicant is—

(i) the offender, the prosecutor; and

(ii) the prosecutor, the offender,

but the application may proceed notwithstanding that, having taken reasonable steps to do so, the applicant has been unable to effect service of it on the offender or any person such as is mentioned in subparagraph (b) above.

(5) Where the offender is the applicant, the prosecutor shall, within fourteen days of the receipt of the copy of the application, notify the clerk of court in writing whether he intends to oppose the application.

(6) Where the prosecutor is the applicant, the offender shall, within fourteen days of receipt of the copy of the application, notify the clerk of court in writing whether he intends to oppose the application.

(7) Where a person notifies the clerk of court under paragraph (5) or (6) above that he does not intend to oppose the application, or fails to make any notification, the court shall proceed to dispose of the application and may do so in the absence of the applicant.

(8) Where a person notifies the clerk of court under paragraph (5) or (6) above that he does intend to oppose the application, the clerk of court shall arrange a hearing before the court at which the prosecutor and the offender may appear or be represented.

(9) The clerk of court shall give notice in writing of the decision of the court on the application to—

(a) the applicant;

(b) any person served with a copy of the application under sub-paragraph (b) or (c) of paragraph (4) above.”.

(3) In the appendix, after Form 20.10 – B, insert forms 20.10A and 20.10B in the Schedule to this Act of Adjournal.

Edinburgh,  
12th June 1997

*Rodger of Earlsferry*  
Lord Justice General, I.P.D.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE

### Rule 20.10A

### FORM 20.10A

#### Form of non-harassment order made under section 234A of the Criminal Procedure (Scotland) Act 1995

NON HARASSMENT ORDER

Under section 234A of the Criminal Procedure (Scotland) Act 1995

COURT:

DATE:

OFFENDER:

Address:

Date of birth:

THE COURT, having convicted the offender of (*specify offence or offences*), being [an offence] [offences] involving harassment, within the meaning of section 8 of the Protection from Harassment Act 1997((3) of a person;

AND being satisfied, on the balance of probabilities, that it is appropriate to make an order to protect that person from further harassment;

ORDERS that [for a period of (*specify period*) from the date of this order][until further order] the offender shall (*specify conduct from which offender is to refrain*).

(Signed)

CLERK OF COURT.

### Rule 20.10B

### FORM 20.10B

#### Form of application under section 234A(6) of the Criminal Procedure (Scotland) Act 1995

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD

JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF

OF (*name of sheriffdom*) AT (*place*)]

[or UNTO THE JUSTICES in the DISTRICT COURT

OF (*name of district*) AT (*place*)]

APPLICATION

by

Her Majesty's Advocate [*or*

[A.B.] (*address*) [*or* Prisoner in the Prison of (*place*)]

APPLICANT

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(3) 1997 c. 40.

HUMBLY SHEWETH:

1. That a non-harassment order was made against [A.B.] on *(date)* in the High Court of Justiciary sitting [*or* in the sheriff court *or* in the district court] at *(place)* on *(date)* in terms of the non-harassment order annexed hereto,

2. That the applicant applies to the court in terms of section 234A(6) of the Act of 1995 to revoke [*or vary*] the non-harassment order for the following reasons:–

*(here state reasons).*

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [OR THE COURT]:

(a) to [revoke the non-harassment order][vary the non-harassment order by *(here state terms of variation of order sought)*].

(b) or to do otherwise as to your Lordship[s] [OR to the court] shall seem proper.

IN RESPECT WHEREOF

*(Signed)*

Advocate Depute [*or* Procurator Fiscal]

On behalf of Her Majesty's Advocate [*or*]

[Solicitor for [A.B.]

*(Address and telephone number of solicitor)*].

**Note:**

You must notify the clerk of Court within 14 days of the receipt of this application whether or not you intend to oppose it. Failure so to notify will result in the court disposing of the matter in your absence.

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**EXPLANATORY NOTE**

*(This note is not part of the Act of Adjournal)*

This Act of Adjournal amends the Criminal Procedure Rules 1996 by prescribing the form in which orders under section 234A of the Criminal Procedure (Scotland) Act 1995 are to be made and procedure and form for variation or revocation of such orders.