



# Domestic Abuse (Protection) (Scotland) Act 2021

2021 asp 16

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 17th March 2021 and received Royal Assent on 5th May 2021**

An Act of the Scottish Parliament to make provision for domestic abuse protection notices and orders for the purpose of protecting a person from abusive behaviour by the person's partner or ex-partner; and to make provision for the termination of Scottish secure tenancies in cases involving behaviour by a tenant which is abusive of the tenant's partner or ex-partner.

## PART 1

### DOMESTIC ABUSE PROTECTION NOTICES AND ORDERS

PROSPECTIVE

*Persons to whom, and behaviour to which, notices and orders may relate*

#### **1 Persons to whom domestic abuse protection notices and orders may relate**

- (1) A domestic abuse protection notice (see section 5) or domestic abuse protection order (see section 9) may be made—
  - (a) in relation to a person (“person A”) who is aged 18 or over,
  - (b) for the purpose of protecting a person (“person B”)—
    - (i) aged 16 or over who is the partner or ex-partner of person A, and
    - (ii) with whom person A lives some or all of the time,from abusive behaviour by person A.
- (2) Person A and person B are partners if they are—
  - (a) spouses or civil partners of each other, or
  - (b) in an intimate personal relationship with each other.
- (3) Whether person A and person B are “ex-partners” is to be determined accordingly.

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*Status: This version of this Act contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the*  
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- (4) For the purposes of subsection (1)(b)(ii), the reference to person A living with person B is a reference to those persons living, at the same time, in any place where either person A or person B lives to any extent.
- (5) References in this Part to person A and person B are to be construed in accordance with this section.

## **2 Meaning of abusive behaviour**

- (1) In this Part, “abusive behaviour by person A” means behaviour by person A which is abusive of person B.
- (2) Behaviour by person A is abusive of person B if a reasonable person would consider the behaviour to be likely to cause person B to suffer physical or psychological harm.
- (3) Behaviour is behaviour of any kind, including (for example)—
  - (a) saying or otherwise communicating something as well as doing something,
  - (b) intentionally failing—
    - (i) to do something,
    - (ii) to say or otherwise communicate something.
- (4) Behaviour directed at a person is such behaviour however carried out, including (in particular)—
  - (a) by way of conduct towards property,
  - (b) through making use of a third party,
 as well as behaviour in a personal or direct manner.
- (5) In subsection (2), the reference to psychological harm includes fear, alarm and distress.
- (6) Behaviour may consist of a single incident or a course of conduct.

## **3 What constitutes abusive behaviour**

- (1) Subsections (2) to (4) elaborate on when behaviour by person A is abusive of person B.
- (2) Behaviour which is abusive of person B includes (in particular)—
  - (a) behaviour directed at person B that is violent, threatening or intimidating,
  - (b) behaviour directed at person B, at a child of person B or at another person that either—
    - (i) has as its purpose (or among its purposes) one or more of the relevant effects set out in subsection (3), or
    - (ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects set out in subsection (3).
- (3) The relevant effects are of—
  - (a) making person B dependent on, or subordinate to, person A,
  - (b) isolating person B from friends, relatives or other sources of support,
  - (c) controlling, regulating or monitoring person B's day-to-day activities,
  - (d) depriving person B of, or restricting person B's, freedom of action,
  - (e) frightening, humiliating, degrading or punishing person B.

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- (4) In subsection (2)(a), the reference to violent behaviour includes sexual violence as well as physical violence.

PROSPECTIVE

*Domestic abuse protection notices*

**4 Making of domestic abuse protection notice**

- (1) A senior constable may make a domestic abuse protection notice in relation to person A if the constable has reasonable grounds for believing that—
- (a) person A has engaged in behaviour which is abusive of person B,
  - (b) it is necessary for a domestic abuse protection order to be made for the purpose of protecting person B from abusive behaviour by person A, and
  - (c) there is a risk of person A engaging in further behaviour which is abusive of person B immediately and it is necessary to make the notice for the purpose of protecting person B from that behaviour.
- (2) In subsection (1)(c), “immediately” means in the period before the sheriff can make an interim domestic abuse protection order or a domestic abuse protection order.
- (3) It does not matter whether the abusive behaviour referred to in subsection (1)(a) took place in Scotland or elsewhere.
- (4) Before making a domestic abuse protection notice in relation to person A, the senior constable must—
- (a) take such steps as are reasonable in the circumstances—
    - (i) to establish whether person A has any views in relation to the notice which person A wishes to be taken into account, and if so, to obtain those views,
    - (ii) to establish whether person B has any views in relation to the notice which person B wishes to be taken into account, and if so, to obtain those views, and
  - (b) take into account—
    - (i) any views of which the senior constable becomes aware as a result of paragraph (a), and
    - (ii) the welfare of any child whose interests the senior constable considers to be relevant to the making of the notice.
- (5) A domestic abuse protection notice may be made without the consent of person B.

**5 Content and effect of notice**

- (1) A domestic abuse protection notice is a notice which does one or more of the following—
- (a) requires person A to leave any place where person B lives (whether or not it is also a place where person A lives, and even if it is person A's only or main place of residence),
  - (b) requires person A to surrender keys to any such place,

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- (c) prohibits person A from entering any such place,
  - (d) prohibits person A from coming within such distance of any such place as is specified in the notice,
  - (e) prohibits person A from excluding person B from any such place,
  - (f) prohibits person A from approaching or contacting, or attempting to approach or contact, person B,
  - (g) prohibits person A from approaching or contacting, or attempting to approach or contact, any child usually residing with person B.
- (2) The notice may impose a requirement or prohibition mentioned in subsection (1) only if the senior constable who makes the notice considers it necessary for the purpose of protecting person B from abusive behaviour by person A.
- (3) The notice may also require person A—
- (a) at the time the notice is delivered to person A under section 6(4), to either—
    - (i) provide the constable delivering the notice with an address at which person A may be given notice of the hearing to be held in accordance with section 11(3), or
    - (ii) undertake to provide such an address to a constable by a specified time or to attend a specified police station at a specified time for the purpose of being given notice of the hearing, and
  - (b) to comply with any such undertaking.
- (4) The notice—
- (a) takes effect when it is given to person A in accordance with section 6(4) (except that the requirement mentioned in subsection (3) takes effect only if and when person A fails to provide an address in response to a request under section 6(5)),
  - (b) ceases to have effect in accordance with section 11(9).
- (5) In subsection (3)(a)(ii), “specified” means specified by the constable delivering the notice to person A under section 6(4).

## **6 Further requirements in relation to notice**

- (1) A domestic abuse protection notice must be in writing.
- (2) A domestic abuse protection notice made in relation to person A must, in addition to stating each requirement and prohibition imposed by it, state that—
- (a) the senior constable who made the notice has reasonable grounds for believing that—
    - (i) person A has engaged in behaviour which is abusive of person B,
    - (ii) it is necessary for a domestic abuse protection order to be made for the purpose of protecting person B from abusive behaviour by person A, and
    - (iii) there is a risk of person A engaging in further behaviour which is abusive of person B immediately and it is necessary to make the notice for the purpose of protecting person B from that behaviour,
  - (b) person A commits an offence if person A without reasonable excuse—
    - (i) fails to do something which person A is required to do by the notice, or
    - (ii) does anything which person A is prohibited from doing by the notice,

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- (c) an application for a domestic abuse protection order under section 8(1)(a) will be made to the sheriff not later than the first court day after the day on which the notice is given to person A,
  - (d) a hearing will be held in accordance with section 11(3) in relation to the application not later than the first court day after the day on which the application is made,
  - (e) person A will be given notice of the hearing,
  - (f) the domestic abuse protection notice ceases to have effect—
    - (i) if the sheriff makes a domestic abuse protection order or an interim domestic abuse protection order at the hearing, when the sheriff makes the order,
    - (ii) otherwise, when the hearing ends,
  - (g) the domestic abuse protection order may impose such requirements and prohibitions as the sheriff considers necessary for the purpose of protecting person B from abusive behaviour by person A.
- (3) In subsection (2)(a)(iii), “immediately” has the meaning given by section 4(2).
- (4) The domestic abuse protection notice must be given to person A by being delivered personally by a constable.
- (5) On giving the notice, the constable must ask person A for an address at which person A may be given notice of the hearing to be held in accordance with section 11(3).

## **7 Offence of breaching notice**

- (1) A person commits an offence if the person without reasonable excuse—
- (a) fails to do something which the person is required to do by a domestic abuse protection notice, or
  - (b) does anything which the person is prohibited from doing by such a notice.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding level 3 on the standard scale (or both).

PROSPECTIVE

## *Domestic abuse protection orders*

## **8 Making of domestic abuse protection order**

- (1) The chief constable—
- (a) must apply to the sheriff for a domestic abuse protection order in relation to a person to whom a domestic abuse protection notice is given,
  - (b) may apply to the sheriff for a domestic abuse protection order in relation to a person in any other case.
- (2) The sheriff may make the order—
- (a) only if the sheriff is satisfied that—
    - (i) person A has engaged in behaviour which is abusive of person B,