



# Protection from Abuse (Scotland) Act 2001 2001 asp 14

## 1 Attachment of power of arrest to interdict

(1) A person who is applying for, or who has obtained, an interdict for the purpose of protection against abuse may apply to the court for a power of arrest to be attached to the interdict under this Act.

[<sup>F1</sup>(1A) In the case of an interdict which is—

- (a) a matrimonial interdict (as defined by section 14(2) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59)) which is ancillary to—
  - (i) an exclusion order within the meaning of section 4(1) of that Act; or
  - (ii) an interim order under section 4(6) of that Act; or
- (b) a relevant interdict (as defined by section 113(2) of the Civil Partnership Act 2004 (c. 33)) which is ancillary to—
  - (i) an exclusion order within the meaning of section 104(1) of that Act; or
  - (ii) an interim order under section 104(6) of that Act,

the court must, on an application under subsection (1), attach a power of arrest to the interdict.]

(2) [<sup>F2</sup>In the case of any other interdict, ] the court must, on such application, attach a power of arrest to the interdict if satisfied that—

- (a) the interdicted person has been given an opportunity to be heard by, or represented before, the court;
- <sup>F3</sup>(b) .....
- (c) attaching the power of arrest is necessary to protect the applicant from a risk of abuse in breach of the interdict.

(3) The court, on attaching a power of arrest, must specify a date of expiry for the power, being a date not later than three years after the date when the power is attached.

### Textual Amendments

**F1** S. 1(1A) inserted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), ss. **32(2)**, 46(2); S.S.I. 2006/212, art. 2 (with art. 4)

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- F2** Words in s. 1(2) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 32(3), 46(2)**; S.S.I. 2006/212, art. 2 (with art. 4)
- F3** S. 1(2)(b) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 3**; S.S.I. 2006/212, art. 2

## 2 Duration, extension and recall

- (1) A power of arrest comes into effect only when it has been served on the interdicted person along with such documents as may be prescribed.
- (2) A power of arrest ceases to have effect—
  - (a) on the date of expiry specified by the court;
  - (b) when it is recalled by the court; or
  - (c) when the interdict to which the power is attached is varied or recalled, whichever is the earliest.
- (3) The duration of a power of arrest must, on the application of the person who obtained it, be extended by the court, if satisfied that—
  - (a) the interdicted person has been given an opportunity to be heard by, or represented before, the court; and
  - (b) the extension is necessary to protect the applicant from a risk of abuse in breach of the interdict.
- (4) The court, on extending the duration of a power of arrest, must specify a new date of expiry for the power, being a date not later than three years after the date when the extension is granted.
- (5) Where the duration of a power of arrest has been extended—
  - (a) the extension comes into effect only when it has been served on the interdicted person along with such documents as may be prescribed; and
  - (b) subsection (2) applies as if the date referred to in paragraph (a) of that subsection were the new date of expiry specified by the court in granting the extension.
- (6) Subsections (3), (4) and (5) apply to further extensions as they apply to an initial extension.
- (7) A power of arrest must be recalled by the court if —
  - (a) the person who obtained it applies for recall; or
  - (b) the interdicted person applies for recall and the court is satisfied that—
    - (i) the person who obtained the power has been given an opportunity to be heard by, or represented before, the court; and
    - (ii) the power is no longer necessary to protect that person from a risk of abuse in breach of the interdict.

## 3 Notification to police

- (1) As soon as possible after—
  - (a) a power of arrest has been served;
  - (b) an extension of the duration of a power of arrest has been served;
  - (c) a recall of a power of arrest has been granted; or

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(d) the relevant interdict has been varied or recalled,  
the person who has obtained such power, extension, variation or recall, or such other person as may be prescribed, must deliver such documents as may be prescribed to the chief constable of [<sup>F4</sup>the Police Service of Scotland.]

(2) In this section “relevant interdict” means the interdict to which the power of arrest is or was attached.

#### Textual Amendments

**F4** Words in s. 3(1) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 18](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

## 4 Powers and duties of police

(1) Where a power of arrest attached to an interdict has effect a constable may arrest the interdicted person without warrant if the constable—

- (a) has reasonable cause for suspecting that person of being in breach of the interdict; and
- (b) considers that there would, if that person were not arrested, be a risk of abuse or further abuse by that person in breach of the interdict.

(2) A person who is arrested under subsection (1) must be <sup>F5</sup>... detained until—

- <sup>F6</sup>(a) .....
- (b) brought before a court under section 5.

<sup>F7</sup>(3) .....

<sup>F7</sup>(4) .....

<sup>F7</sup>(5) .....

(6) When a person has been arrested under this section the facts and circumstances giving rise to the arrest must be reported to the procurator fiscal as soon as is practicable.

#### Textual Amendments

**F5** Words in s. 4(2) omitted (25.1.2018) by virtue of [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, [sch. para. 3\(2\)\(a\)\(i\)](#)

**F6** S. 4(2)(a) omitted (25.1.2018) by virtue of [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, [sch. para. 3\(2\)\(a\)\(ii\)](#)

**F7** S. 4(3)-(5) repealed (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, [sch. para. 3\(2\)\(b\)](#)

## 5 Court appearance

(1) [<sup>F8</sup>Where a person is detained under section 4(2), the] person must wherever practicable be brought before the sheriff sitting as a court of summary criminal jurisdiction for the district in which the person was arrested not later than in the course

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of the first day after the arrest, such day not being a Saturday, a Sunday or a court holiday for that court.

- (2) Nothing in subsection (1) prevents the detained person from being brought before the sheriff on a Saturday, a Sunday or a court holiday if the sheriff is sitting on such a day for the disposal of criminal business.
- [<sup>F9</sup>(2A) Subsections (3) to (5) apply where, on being brought before the sheriff under this section, the detained person is not accused on petition or charged on complaint with an offence in respect of the facts and circumstances giving rise to the arrest.]
- (3) When the detained person is brought before the sheriff under this section the procurator fiscal must present to the court a petition—
- (a) giving particulars of the detained person;
  - (b) stating the facts and circumstances which gave rise to the arrest;
  - (c) giving any information known to the procurator fiscal about the circumstances which gave rise to the interdict and the attachment of the power of arrest;
  - (d) giving any other information known to the procurator fiscal and relevant to an assessment of the risk of abuse or further abuse in breach of the interdict; and
  - (e) requesting the court to consider whether, on the information presented, a further period of detention is justified.
- (4) If it appears to the sheriff, after affording the detained person the opportunity to make representations, that—
- (a) the information presented to the court discloses a prima facie breach of the interdict by that person; and
  - (b) there would, if further detention were not ordered, be a substantial risk of abuse or further abuse by that person in breach of the interdict,
- the sheriff may order that person to be detained for a further period not exceeding 2 days.
- (5) If the sheriff does not order further detention the detained person must, unless in custody in respect of any other matter, be released from custody.

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**Textual Amendments**

- F8** Words in s. 5(1) substituted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, **sch. para. 3(3)(a)**
- F9** S. 5(2A) inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), reg. 1, **sch. para. 3(3)(b)**

<sup>F10</sup>**6**      **Amendment of the Matrimonial Homes (Family Protection) (Scotland) Act 1981**

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**Textual Amendments**

- F10** S. 6 repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), s. 46(2), **Sch. 3**; S.S.I. 2006/212, art. 2

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## **7 Interpretation**

In this Act, unless the context otherwise requires—

“abuse” includes violence, harassment, threatening conduct, and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress;

“conduct” includes—

- (a) speech; and
- (b) presence in a specified place or area;

“court” means the Court of Session or a sheriff;

“documents” includes documents in electronic form;

“interdict” includes interim interdict;

“interdicted person” means—

- (a) in section 1, the person against whom the power of arrest is sought (being the person or one of the persons prohibited by the interdict mentioned in subsection (1) of that section); and
- (b) in sections 2 and 4, the person against whom the power of arrest has been granted;

“parental responsibilities and rights” has the same meaning as in the Children (Scotland) Act 1995 (c.36);

“person” means natural person;

“power of arrest” means a power of arrest under this Act; and

“prescribed” means prescribed by rules of court.

## **8 Short title and commencement**

- (1) This Act may be cited as the Protection from Abuse (Scotland) Act 2001.
- (2) This Act comes into force at the end of the period of three months beginning with the date of Royal Assent.

**Changes to legislation:**

There are currently no known outstanding effects for the Protection from Abuse (Scotland) Act 2001.