

DOMESTIC ABUSE (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 3: Determination as to whether an interdict is a domestic abuse interdict

14. **Section 3** sets out the circumstances in which a court may make a determination that an interdict is a domestic abuse interdict and makes provision for various procedural matters.
15. **Section 3(1)** provides that a person may apply for a determination that an interdict (including an interim interdict) is a domestic abuse interdict either at the same time as applying for the interdict or afterwards.
16. **Section 3(2)** provides that the court may determine that an interdict is a domestic abuse interdict where the interdict is intended to protect the applicant against a person mentioned in paragraphs (a) to (d). Those persons are a spouse or civil partner (or cohabiting equivalent) of the applicant or a person in an intimate personal relationship with the applicant. Former relationships of the specified types are covered in addition to current relationships.
17. The phrase “intimate personal relationship” is intended to cover relationships between boyfriends and girlfriends (including same-sex relationships), although the relationship need not be sexual. Family relationships and other types of relationship (e.g. between friends or business partners or work colleagues) are not intended to be covered.
18. **Section 3(3)** provides that the person against whom the interdict is, or is to be, granted must be given an opportunity to make representations to the court before it decides whether the interdict is a domestic abuse interdict. In addition, where the interdict is determined to be a domestic abuse interdict, the determination does not come into effect until the relevant papers have been served on that person (section 3(4)). As already noted, the determination has to be in effect for the offence under section 2(2) to be committed.
19. **Section 3(5)** applies where an interdict which has been determined to be a domestic abuse interdict is varied. The court varying the interdict must consider whether the interdict as varied continues to be a domestic abuse interdict (that is, whether it still meets the test set out in section 3(2)). If the court finds that the interdict as varied does not meet that test, the determination that the interdict is a domestic abuse interdict must be recalled. The determination ceases to have effect at that point, meaning that the offence under section 2(2) can no longer be committed in relation to the interdict.