

DOMESTIC ABUSE (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Harassment amounting to domestic abuse

6. [Section 1\(2\)](#) of the Act inserts a new section into the 1997 Act (section 8A). By virtue of inserted section 8A(2), this new section only applies wherever the conduct which has led to the pursuer bringing the action of harassment to court amounts to domestic abuse. Section 1(1) of the Act provides that section 8 of the 1997 Act is subject to the provisions in new section 8A.
7. Inserted section 8A(1) repeats the general principle, found in section 8 of the 1997 Act, that an individual has a right to be free from harassment. It differs from section 8, however, in that it removes the reference to a course of conduct and provides instead that a person must not engage in conduct which amounts to harassment.
8. Inserted section 8A(3) provides that subsections (2) to (7) of section 8 of the 1997 Act apply whenever an action of harassment arises in connection with section 8A(1) – subject, in the case of subsections (2) to (4), to the modifications set out in paragraphs (a) to (c) of section 8A(3). In particular, subsection (3)(b) provides an altered definition of conduct to be used when this new section is engaged – conduct includes speech and presence in any place or area and may involve behaviour on one or more than one occasion.
9. [Section 1\(3\)](#) of the Act ensures that breach of a non-harassment order granted under new section 8A is a criminal offence. Sections 1(4) and (5) ensure that other enactments applying to actions and remedies under section 8 of the 1997 Act are applied in the same way to those under section 8A.

Section 2: Breach of domestic abuse interdict with power of arrest

10. [Section 2\(2\)](#) of the Act makes it a criminal offence to breach an interdict to which section 2 applies.
11. [Section 2\(1\)](#) provides that section 2 applies where an interdict (including an interim interdict) made on or after the coming into force of section 2 (that is, on or after 20 July 2011) has been determined to be a domestic abuse interdict under section 3 of the Act. In addition, the interdict must have a power of arrest attached under the Protection from Abuse (Scotland) Act 2001. Both the determination and the power of arrest must be in effect at the time the interdict is breached in order for the offence to be committed.
12. [Section 2\(3\)](#) provides that the offence under section 2(2) is punishable:
 - on conviction on indictment, by imprisonment for a term not exceeding five years or by a fine, or by both such imprisonment and such fine; and
 - on summary conviction, by imprisonment for a period not exceeding twelve months or by a fine not exceeding the statutory maximum, or by both such imprisonment and such fine.

13. Where a person is convicted for breach of a domestic abuse interdict in respect of any conduct, that same conduct cannot also be punished as a contempt of court, and vice versa.

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.

Section 4: Ancillary provision

20. **Section 4** confers on the Scottish Ministers a power to make by order any incidental, supplementary, consequential, transitional, transitory or saving provision which they consider appropriate for the purpose of, in consequence of, or for giving full effect to any provision in the Act. Such an order may modify any enactment. Subsection (3) provides that all orders under this section are subject to affirmative Parliamentary procedure.