

DOMESTIC ABUSE (PROTECTION) (SCOTLAND) ACT 2021

EXPLANATORY NOTES

THE ACT

Part 1 – Domestic abuse protection notices and orders

Domestic abuse protection orders

Section 16 – Effect of making of appeal on decision appealed against

121. Section 16 concerns appeals against decisions made in DAPO proceedings.
122. Section 16(1) and (2) make clear that, for the purposes of section 110 of the Courts Reform (Scotland) Act 2014 (“the 2014 Act”), decisions to make or refuse to make a DAPO and decisions to extend, vary or discharge, or refuse to extend, vary or discharge a DAPO are decisions constituting final judgments in civil proceedings. This means that these decisions are appealable under section 110(1) of the 2014 Act and that an appeal may be taken without the need for permission. Appeals against other decisions (for example, an appeal against a decision to make or refuse to make an interim DAPO), while possible, will require the permission of a sheriff (section 110(2) of the 2014 Act).
123. Subsections (3) to (5) provide that, in all appeals relating to DAPOs and interim DAPOs under section 110 of the 2014 Act, the original decision appealed against continues in effect until the determination of the appeal unless the decision is suspended by the Sheriff Appeal Court. In the case of an appeal which is remitted to the Court of Session under section 112 of the 2014 Act, the power to suspend the original decision may be exercised by either the Sheriff Appeal Court or the Court of Session.
124. Subsections (6) and (7) set out a similar position in relation to appeals to the Court of Session made under section 113 of the 2014 Act against a decision of the Sheriff Appeal Court in an appeal under section 110 of the 2014 Act. Again, all appeals relating to DAPOs and interim DAPOs are covered. The decision appealed against continues in effect until the appeal is disposed of, unless suspended by the Sheriff Appeal Court, or the Court of Session. Subsection (8) provides that, where the decision appealed against under section 113 is a decision to remit the case back to the sheriff, the sheriff may not take any further action in the case until the appeal is disposed of. This avoids the possibility of proceedings with potentially different outcomes taking place simultaneously.