

DOMESTIC ABUSE (SCOTLAND) ACT 2011

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared on behalf of Rhoda Grant MSP (who introduced the Bill for this Act into the Scottish Parliament) in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND TO THE ACT

3. The Act amends the law relating to civil protection orders where these are sought by victims of domestic abuse.
4. The Act introduces a new section into the Protection from Harassment Act 1997 (“the 1997 Act”) which provides that every individual has a right to be free from harassment and, accordingly, that a person must not engage in conduct which amounts to harassment of another. However, this new section only applies where the conduct in question amounts to domestic abuse. The victim of an actual or apprehended breach of the right under section 8A may pursue an action for harassment without having to show a course of conduct.
5. The Act also introduces a new offence criminalising the breach of an interdict with a power of arrest where domestic abuse is involved.

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

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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.

PARLIAMENTARY HISTORY

21. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, and the references to the Official Report and minutes of proceedings in relation to those proceedings. It also provides references to committee reports and other papers relating to the Bill.

PROCEEDINGS AND REPORTS	REFERENCE
INTRODUCTION	
Bill introduced (27 May 2010)	Bill (As Introduced) (SP Bill 45 (Session 3)): http://www.scottish.parliament.uk/S3_Bills/Domestic%20Abuse%20(Scotland)%20Bill/b45s3-introd.pdf
	Explanatory Notes (SP Bill 45–EN (Session 3)): http://www.scottish.parliament.uk/S3_Bills/Domestic%20Abuse%20(Scotland)%20Bill/b45s3-introd-en.pdf
	Policy Memorandum (SP Bill 45–PM (Session 3)): http://www.scottish.parliament.uk/S3_Bills/Domestic%20Abuse%20(Scotland)%20Bill/b45s3-introd-pm.pdf
	SPICe Briefing on Bill (As Introduced) (3 September 2010)
SPICe Briefing on Bill (As Introduced) (3 September 2010)	Briefing (SB 10-53): http://www.scottish.parliament.uk/SPICeResources/Research%20briefings%20and%20fact%20sheets/SB10-53.pdf
STAGE 1	
Justice Committee	
20th meeting, 2010 (15 June 2010)	Minutes of proceedings (item 4): http://archive.scottish.parliament.uk/s3/committees/justice/mop-10/jumop10-0615.htm
	22nd meeting, 2010 (29 June 2010)
22nd meeting, 2010 (29 June 2010)	Minutes of proceedings (item 6): http://archive.scottish.parliament.uk/s3/committees/justice/mop-10/jumop10-0629.htm

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PROCEEDINGS AND REPORTS	REFERENCE
26th meeting, 2010 (28 September 2010)	Minutes of proceedings (item 7): http://archive.scottish.parliament.uk/s3/committees/justice/mop-10/jumop10-0928.htm
27th meeting, 2010 (5 October 2010)	Official Report (cols. 3585 to 3614): http://archive.scottish.parliament.uk/s3/committees/justice/or-10/ju10-2701.htm
	Minutes of proceedings (items 1 and 2): http://archive.scottish.parliament.uk/s3/committees/justice/mop-10/jumop10-1005.htm
28th meeting, 2010 (26 October 2010)	Official Report (cols. 3622 to 3654): http://archive.scottish.parliament.uk/s3/committees/justice/or-10/ju10-2801.htm
	Minutes of proceedings (items 2 and 4): http://archive.scottish.parliament.uk/s3/committees/justice/mop-10/jumop10-1026.htm
29th meeting, 2010 (2 November 2010)	Official Report (cols. 3671 to 3712): http://archive.scottish.parliament.uk/s3/committees/justice/or-10/ju10-2901.htm
	Minutes of proceedings (items 4 and 5): http://archive.scottish.parliament.uk/s3/committees/justice/mop-10/jumop10-1102.htm
30th meeting, 2010 (9 November 2010)	Official Report (cols. 3724 to 3758): http://archive.scottish.parliament.uk/s3/committees/justice/or-10/ju10-3001.htm
	Minutes of proceedings (items 5 and 6): http://archive.scottish.parliament.uk/s3/committees/justice/mop-10/jumop10-1109.htm
32nd meeting, 2010 (23 November 2010)	Papers (item 4): http://archive.scottish.parliament.uk/s3/committees/justice/papers-10/jup10-32.pdf
	Minutes of proceedings (item 4): http://archive.scottish.parliament.uk/s3/committees/justice/mop-10/jumop10-1123.htm
34th meeting, 2010 (30 November 2010)	Correspondence (Papers for information): http://archive.scottish.parliament.uk/s3/committees/justice/papers-10/jup10-34.pdf
36th meeting, 2010 (14 December 2010)	Minutes of proceedings (item 5): http://archive.scottish.parliament.uk/s3/committees/justice/mop-10/jumop10-1214.htm
1st meeting, 2011 (11 January 2011)	Minutes of proceedings (item 1):

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PROCEEDINGS AND REPORTS	REFERENCE
	http://archive.scottish.parliament.uk/s3/committees/justice/mop-11/jumop11-0111.htm
Stage 1 Report on the Domestic Abuse (Scotland) Bill (Justice Committee 1st Report, 2011 (Session 3) (SP Paper 556))	Report:
	http://archive.scottish.parliament.uk/s3/committees/justice/reports-11/jur11-01.htm
	Written submissions:
	http://archive.scottish.parliament.uk/s3/committees/justice/inquiries/DomesticAbuse/submissions.htm
Finance Committee	
20th meeting, 2010 (21 September 2010)	Written submissions (item 2):
	http://archive.scottish.parliament.uk/s3/committees/finance/papers-10/fip10-20.pdf
	Official Reports (cols.2501 to 2505)
	http://archive.scottish.parliament.uk/s3/committees/finance/or-10/fi10-2001.htm
	Minutes of proceedings (item 2):
	http://archive.scottish.parliament.uk/s3/committees/finance/mop-10/fimop10-0921.htm
Report on the Financial Memorandum of the Domestic Abuse (Scotland) Bill	Report:
	http://archive.scottish.parliament.uk/s3/committees/finance/reports-10/fir10-Domabuse.htm
Subordinate Legislation Committee	
Report on Domestic Abuse (Scotland) Bill (Subordinate Legislation Committee 54th Report, 2010 (Session 3) (SP Paper 511))	Report:
	http://archive.scottish.parliament.uk/s3/committees/subleg/reports-10/sur10-54.htm
Consideration by the Parliament	
Stage 1 debate (19 January 2011)	Official Report (cols. 32301 to 32324 and col. 32367):
	http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7132&mode=pdf
	Minutes of proceedings (item 2):
	http://www.scottish.parliament.uk/parliamentarybusiness/23745.aspx
AFTER STAGE 1	
Justice Committee (4th meeting, 2011) (1 February 2011)	Correspondence (Papers for information):
	http://archive.scottish.parliament.uk/s3/committees/justice/papers-11/jup11-04.pdf
STAGE 2	

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PROCEEDINGS AND REPORTS	REFERENCE
Justice Committee (5th meeting, 2011) (8 February 2011)	Marshaled List of Amendments for Stage 2 (SP Bill 45–ML (Session 3)):
	http://www.scottish.parliament.uk/S3_Bills/Domestic%20Abuse%20(Scotland)%20Bill/b45s3-stage2-ml.pdf
	Groupings of Amendments for Stage 2 (SP Bill 45–G (Session 3)):
	http://www.scottish.parliament.uk/S3_Bills/Domestic%20Abuse%20(Scotland)%20Bill/b45s3-stage2-g.pdf
	Official Report (cols. 4172 to 4192)
	http://archive.scottish.parliament.uk/s3/committees/justice/or-11/ju11-0501.htm
	Minutes of proceedings (item 3):
http://archive.scottish.parliament.uk/s3/committees/justice/mop-11/jumop11-0208.htm	
Bill (As Amended at Stage 2) published (9 February 2011)	Bill (As Amended at Stage 2) (SP Bill 45A (Session 3)):
	http://www.scottish.parliament.uk/S3_Bills/Domestic%20Abuse%20(Scotland)%20Bill/b45as3-stage2.pdf
	Revised Explanatory Notes (SP Bill 45A–EN (Session 3)):
	http://www.scottish.parliament.uk/S3_Bills/Domestic%20Abuse%20(Scotland)%20Bill/b45as3-stage2-en-rev.pdf
SPICE Briefing on Bill As Amended at Stage 2 (24 February 2011):	Revised Financial Memorandum (SP Bill 45A–FM (Session 3)):
	http://www.scottish.parliament.uk/S3_Bills/Domestic%20Abuse%20(Scotland)%20Bill/b45as3-stage2-fm.pdf
Briefing (SB 11-17):	http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S3/SB_11-17.pdf
AFTER STAGE 2	
Report on Domestic Abuse (Scotland) Bill As Amended at Stage 2 (Subordinate Legislation Committee 17th Report, 2011 (Session 3) (SP Paper 601))	Report:
	http://archive.scottish.parliament.uk/s3/committees/subleg/reports-11/sur11-17.htm
STAGE 3	
Consideration by the Parliament (16 March 2011)	Marshaled List of Amendments selected for Stage 3 (SP Bill 45A–ML (Session 3)):
	http://www.scottish.parliament.uk/S3_Bills/Domestic%20Abuse%20(Scotland)%20Bill/b45as3-stage3-ml.pdf

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	Groupings of Amendments for Stage 3 (SP Bill 45A–G (Session 3)):
	http://www.scottish.parliament.uk/S3_Bills/Domestic%20Abuse%20(Scotland)%20Bill/b45as3-stage3-g.pdf
	Official Report (cols. 34474 to 34501 and col. 34528):
	http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7130&mode=pdf
	Minutes of Proceedings (items 13 and 14):
	http://www.scottish.parliament.uk/parliamentarybusiness/25031.aspx
Bill (As Passed) published (17 March 2011)	Bill (As Passed) (SP Bill 45B (Session 3)):
	http://www.scottish.parliament.uk/S3_Bills/Domestic%20Abuse%20(Scotland)%20Bill/b45bs3-aspassed.pdf
ROYAL ASSENT	
Royal Assent received 20 April 2011	Domestic Abuse (Scotland) Act 2011 (asp 13):
	http://www.legislation.gov.uk/asp/2011/13/contents