



# Domestic Abuse (Protection) (Scotland) Act 2021

2021 asp 16

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**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 17th March 2021 and received Royal Assent on 5th May 2021**

An Act of the Scottish Parliament to make provision for domestic abuse protection notices and orders for the purpose of protecting a person from abusive behaviour by the person's partner or ex-partner; and to make provision for the termination of Scottish secure tenancies in cases involving behaviour by a tenant which is abusive of the tenant's partner or ex-partner.

## **PART 1** **S**

### DOMESTIC ABUSE PROTECTION NOTICES AND ORDERS

PROSPECTIVE

*Persons to whom, and behaviour to which, notices and orders may relate*

#### **1** **Persons to whom domestic abuse protection notices and orders may relate** **S**

- (1) A domestic abuse protection notice (see section 5) or domestic abuse protection order (see section 9) may be made—
- (a) in relation to a person (“person A”) who is aged 18 or over,
  - (b) for the purpose of protecting a person (“person B”)—
    - (i) aged 16 or over who is the partner or ex-partner of person A, and
    - (ii) with whom person A lives some or all of the time,from abusive behaviour by person A.
- (2) Person A and person B are partners if they are—
- (a) spouses or civil partners of each other, or
  - (b) in an intimate personal relationship with each other.

*Status: Point in time view as at 06/05/2021. This version of this Act contains provisions that are prospective.*

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- (3) Whether person A and person B are “ex-partners” is to be determined accordingly.
- (4) For the purposes of subsection (1)(b)(ii), the reference to person A living with person B is a reference to those persons living, at the same time, in any place where either person A or person B lives to any extent.
- (5) References in this Part to person A and person B are to be construed in accordance with this section.

## 2 Meaning of abusive behaviour **S**

- (1) In this Part, “abusive behaviour by person A” means behaviour by person A which is abusive of person B.
- (2) Behaviour by person A is abusive of person B if a reasonable person would consider the behaviour to be likely to cause person B to suffer physical or psychological harm.
- (3) Behaviour is behaviour of any kind, including (for example)—
  - (a) saying or otherwise communicating something as well as doing something,
  - (b) intentionally failing—
    - (i) to do something,
    - (ii) to say or otherwise communicate something.
- (4) Behaviour directed at a person is such behaviour however carried out, including (in particular)—
  - (a) by way of conduct towards property,
  - (b) through making use of a third party,
 as well as behaviour in a personal or direct manner.
- (5) In subsection (2), the reference to psychological harm includes fear, alarm and distress.
- (6) Behaviour may consist of a single incident or a course of conduct.

## 3 What constitutes abusive behaviour **S**

- (1) Subsections (2) to (4) elaborate on when behaviour by person A is abusive of person B.
- (2) Behaviour which is abusive of person B includes (in particular)—
  - (a) behaviour directed at person B that is violent, threatening or intimidating,
  - (b) behaviour directed at person B, at a child of person B or at another person that either—
    - (i) has as its purpose (or among its purposes) one or more of the relevant effects set out in subsection (3), or
    - (ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects set out in subsection (3).
- (3) The relevant effects are of—
  - (a) making person B dependent on, or subordinate to, person A,
  - (b) isolating person B from friends, relatives or other sources of support,
  - (c) controlling, regulating or monitoring person B's day-to-day activities,
  - (d) depriving person B of, or restricting person B's, freedom of action,
  - (e) frightening, humiliating, degrading or punishing person B.

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- (4) In subsection (2)(a), the reference to violent behaviour includes sexual violence as well as physical violence.

PROSPECTIVE

### *Domestic abuse protection notices*

#### **4 Making of domestic abuse protection notice** **S**

- (1) A senior constable may make a domestic abuse protection notice in relation to person A if the constable has reasonable grounds for believing that—
- (a) person A has engaged in behaviour which is abusive of person B,
  - (b) it is necessary for a domestic abuse protection order to be made for the purpose of protecting person B from abusive behaviour by person A, and
  - (c) there is a risk of person A engaging in further behaviour which is abusive of person B immediately and it is necessary to make the notice for the purpose of protecting person B from that behaviour.
- (2) In subsection (1)(c), “immediately” means in the period before the sheriff can make an interim domestic abuse protection order or a domestic abuse protection order.
- (3) It does not matter whether the abusive behaviour referred to in subsection (1)(a) took place in Scotland or elsewhere.
- (4) Before making a domestic abuse protection notice in relation to person A, the senior constable must—
- (a) take such steps as are reasonable in the circumstances—
    - (i) to establish whether person A has any views in relation to the notice which person A wishes to be taken into account, and if so, to obtain those views,
    - (ii) to establish whether person B has any views in relation to the notice which person B wishes to be taken into account, and if so, to obtain those views, and
  - (b) take into account—
    - (i) any views of which the senior constable becomes aware as a result of paragraph (a), and
    - (ii) the welfare of any child whose interests the senior constable considers to be relevant to the making of the notice.
- (5) A domestic abuse protection notice may be made without the consent of person B.

#### **5 Content and effect of notice** **S**

- (1) A domestic abuse protection notice is a notice which does one or more of the following—
- (a) requires person A to leave any place where person B lives (whether or not it is also a place where person A lives, and even if it is person A's only or main place of residence),
  - (b) requires person A to surrender keys to any such place,

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- (c) prohibits person A from entering any such place,
  - (d) prohibits person A from coming within such distance of any such place as is specified in the notice,
  - (e) prohibits person A from excluding person B from any such place,
  - (f) prohibits person A from approaching or contacting, or attempting to approach or contact, person B,
  - (g) prohibits person A from approaching or contacting, or attempting to approach or contact, any child usually residing with person B.
- (2) The notice may impose a requirement or prohibition mentioned in subsection (1) only if the senior constable who makes the notice considers it necessary for the purpose of protecting person B from abusive behaviour by person A.
- (3) The notice may also require person A—
- (a) at the time the notice is delivered to person A under section 6(4), to either—
    - (i) provide the constable delivering the notice with an address at which person A may be given notice of the hearing to be held in accordance with section 11(3), or
    - (ii) undertake to provide such an address to a constable by a specified time or to attend a specified police station at a specified time for the purpose of being given notice of the hearing, and
  - (b) to comply with any such undertaking.
- (4) The notice—
- (a) takes effect when it is given to person A in accordance with section 6(4) (except that the requirement mentioned in subsection (3) takes effect only if and when person A fails to provide an address in response to a request under section 6(5)),
  - (b) ceases to have effect in accordance with section 11(9).
- (5) In subsection (3)(a)(ii), “specified” means specified by the constable delivering the notice to person A under section 6(4).

## **6 Further requirements in relation to notice** S

- (1) A domestic abuse protection notice must be in writing.
- (2) A domestic abuse protection notice made in relation to person A must, in addition to stating each requirement and prohibition imposed by it, state that—
- (a) the senior constable who made the notice has reasonable grounds for believing that—
    - (i) person A has engaged in behaviour which is abusive of person B,
    - (ii) it is necessary for a domestic abuse protection order to be made for the purpose of protecting person B from abusive behaviour by person A, and
    - (iii) there is a risk of person A engaging in further behaviour which is abusive of person B immediately and it is necessary to make the notice for the purpose of protecting person B from that behaviour,
  - (b) person A commits an offence if person A without reasonable excuse—
    - (i) fails to do something which person A is required to do by the notice, or
    - (ii) does anything which person A is prohibited from doing by the notice,

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- (c) an application for a domestic abuse protection order under section 8(1)(a) will be made to the sheriff not later than the first court day after the day on which the notice is given to person A,
  - (d) a hearing will be held in accordance with section 11(3) in relation to the application not later than the first court day after the day on which the application is made,
  - (e) person A will be given notice of the hearing,
  - (f) the domestic abuse protection notice ceases to have effect—
    - (i) if the sheriff makes a domestic abuse protection order or an interim domestic abuse protection order at the hearing, when the sheriff makes the order,
    - (ii) otherwise, when the hearing ends,
  - (g) the domestic abuse protection order may impose such requirements and prohibitions as the sheriff considers necessary for the purpose of protecting person B from abusive behaviour by person A.
- (3) In subsection (2)(a)(iii), “immediately” has the meaning given by section 4(2).
- (4) The domestic abuse protection notice must be given to person A by being delivered personally by a constable.
- (5) On giving the notice, the constable must ask person A for an address at which person A may be given notice of the hearing to be held in accordance with section 11(3).

## 7 Offence of breaching notice **S**

- (1) A person commits an offence if the person without reasonable excuse—
- (a) fails to do something which the person is required to do by a domestic abuse protection notice, or
  - (b) does anything which the person is prohibited from doing by such a notice.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding level 3 on the standard scale (or both).

PROSPECTIVE

### *Domestic abuse protection orders*

## 8 Making of domestic abuse protection order **S**

- (1) The chief constable—
- (a) must apply to the sheriff for a domestic abuse protection order in relation to a person to whom a domestic abuse protection notice is given,
  - (b) may apply to the sheriff for a domestic abuse protection order in relation to a person in any other case.
- (2) The sheriff may make the order—
- (a) only if the sheriff is satisfied that—
    - (i) person A has engaged in behaviour which is abusive of person B,

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- (ii) there is an immediate or imminent risk of person A engaging in further behaviour which is abusive of person B, and
- (iii) it is necessary to make the order for the purpose of protecting person B from abusive behaviour by person A,
- (b) without the consent of person B (but see subsection (7)).
- (3) It does not matter whether the abusive behaviour referred to in subsection (2)(a)(i) took place in Scotland or elsewhere.
- (4) The abusive behaviour referred to in subsection (2)(a)(iii) must include, but need not be limited to, the behaviour referred to in subsection (2)(a)(ii).
- (5) The sheriff may permit person B to be a party to the proceedings.
- (6) Before determining an application under subsection (1), the sheriff must give an opportunity to the chief constable, person A and person B (whether or not person B is a party to the proceedings) to make representations about the application.
- (7) When determining the application, the sheriff must—
  - (a) take into account—
    - (i) any views of person B of which the sheriff is aware as to whether or not person B wishes an order to be made, and
    - (ii) where person B does not wish an order to be made, any reasons for that view of which the sheriff is aware,
  - (b) take into account any other views of person B in relation to the application of which the sheriff is aware,
 (whether the sheriff is aware of those views, and any reasons for them, as a result of representations made to the sheriff by person B or otherwise).
- (8) When determining the application, the sheriff must also take into account—
  - (a) any representations made to the sheriff by the chief constable or person A,
  - (b) the welfare of any child whose interests the sheriff considers to be relevant to the application.
- (9) Subsection (10) applies where, on an application under subsection (1), the sheriff is considering making provision in an order which would relate directly to a child.
- (10) The sheriff must—
  - (a) take such steps as are reasonable in the circumstances to give the child an opportunity to express views in relation to the matter, and
  - (b) take into account any views of the child of which the sheriff is aware (whether as a result of paragraph (a) or otherwise).
- (11) In taking account of views of the child under subsection (10)(b), the sheriff must take into account the child's age and understanding.

## 9 **Content and effect of order** S

- (1) A domestic abuse protection order is an order requiring person A to do, or prohibiting person A from doing, a thing or things described in the order.
- (2) Those requirements and prohibitions may include (but are not limited to) any requirement or prohibition which could be imposed by a domestic abuse protection notice (see section 5(1)).

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- (3) The order may impose a requirement or prohibition only if the sheriff considers it necessary for the purpose of protecting person B from abusive behaviour by person A.
- (4) The sheriff has competence to make provision in a domestic abuse protection order having effect in relation to conduct at places outside the sheriff's sheriffdom as well as at places within the sheriff's sheriffdom.
- (5) A domestic abuse protection order—
  - (a) has effect for such period not exceeding two months as is specified in the order,
  - (b) may specify different periods for which different requirements or prohibitions have effect.

## 10 Interim domestic abuse protection order **S**

- (1) The sheriff may make an interim domestic abuse protection order (an “interim order”) pending determination of an application under section 8(1).
- (2) The sheriff may make an interim order only if the sheriff considers, on the balance of convenience, that it is just to do so.
- (3) In deciding whether it is, on the balance of convenience, just, the sheriff must have regard to all the circumstances, including any risk that, if an interim order is not made, person A will cause harm to person B.
- (4) An interim order may do anything which a domestic abuse protection order could do (see section 9(1) to (4)).
- (5) The sheriff may make an interim order—
  - (a) even if person A or person B has not been given such notice of the proceedings as is required by section 11(5) or rules of court,
  - (b) without giving person A or person B an opportunity to make representations about the interim order,
  - (c) without the consent of person B.
- (6) If the sheriff makes an interim order in the circumstances described in subsection (5)(a) or (b), the sheriff must hold a hearing in relation to the application under section 8(1) as soon as reasonably practicable.
- (7) An interim order—
  - (a) has effect for such period not exceeding three weeks as is specified in the order,
  - (b) ceases to have effect, if it has not already done so, on the determination of the application under section 8(1).
- (8) In sections 12 to 14, a reference to a domestic abuse protection order includes a reference to an interim order.

## 11 Hearing to be held where domestic abuse protection notice has been given **S**

- (1) This section applies in relation to an application made under section 8(1)(a) (following a domestic abuse protection notice being given to person A).
- (2) The application must be made not later than the first court day after the day on which the notice is given.



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- (3) The sheriff must hold a hearing in relation to the application not later than the first court day after the day on which the application is made.
- (4) The hearing must be concluded on the day on which it begins.
- (5) The chief constable must—
  - (a) give person A notice of the hearing by—
    - (i) leaving it at an address given to a constable by person A (whether given in accordance with section 5(3) or 6(5) or otherwise in connection with the giving of notice under this subsection), or
    - (ii) giving it to person A on person A attending a police station in accordance with section 5(3) or otherwise delivering it to person A personally,
  - (b) give person B notice of the hearing by—
    - (i) leaving it at the address at which person B usually resides, or
    - (ii) delivering it to person B personally.
- (6) But the sheriff must hold the hearing even if notice is not given in accordance with subsection (5).
- (7) At the hearing, the sheriff may—
  - (a) determine the application (but see section 8(6)),
  - (b) make an interim domestic abuse protection order (an “interim order”), or
  - (c) continue the proceedings without determining the application or making an interim order.
- (8) The sheriff may not make an interim order or a domestic abuse protection order before the hearing is held.
- (9) The domestic abuse protection notice ceases to have effect—
  - (a) if the sheriff makes a domestic abuse protection order or an interim order at the hearing, when the sheriff makes the order,
  - (b) otherwise, when the hearing ends.

## **12      Extension, variation or discharge of order S**

- (1) The sheriff may, before the expiry of a domestic abuse protection order, extend, vary or discharge the order on the application of—
  - (a) the chief constable,
  - (b) person A,
  - (c) person B.
- (2) The sheriff may permit a person mentioned in subsection (1) to be a party to proceedings relating to an application made by another person mentioned in that subsection.
- (3) Before determining an application under subsection (1), the sheriff must give an opportunity to the chief constable, person A and person B (whether or not the chief constable or person B is a party to the proceedings) to make representations about the application.
- (4) When determining the application, the sheriff must—



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- (a) take into account—
    - (i) any views of person B of which the sheriff is aware as to whether or not person B wishes the order to be extended, varied or discharged, and
    - (ii) where person B's wishes are as mentioned in subsection (5), any reasons for that view of which the sheriff is aware,
  - (b) take into account any other views of person B in relation to the application of which the sheriff is aware,  
(whether the sheriff is aware of those views, and any reasons for them, as a result of representations made to the sheriff by person B or otherwise).
- (5) The wishes of person B referred to in subsection (4) are—
- (a) a wish for the order not to be extended,
  - (b) a wish for the order not to be varied so as to add a requirement or prohibition as proposed in the application,
  - (c) a wish for the order to be varied so as to remove a requirement or prohibition as proposed in the application,
  - (d) a wish for the order to be discharged.
- (6) When determining the application, the sheriff must also take into account—
- (a) any representations made to the sheriff by the chief constable or person A,
  - (b) the welfare of any child whose interests the sheriff considers to be relevant to the application.
- (7) Subsection (8) applies where, on an application under subsection (1), the sheriff is considering—
- (a) extending or discharging an order which includes provision which relates directly to a child, or
  - (b) varying an order to—
    - (i) include provision which would relate directly to a child, or
    - (ii) remove or alter provision which relates directly to a child.
- (8) The sheriff must—
- (a) take such steps as are reasonable in the circumstances to give the child an opportunity to express views in relation to the matter, and
  - (b) take into account any views of the child of which the sheriff is aware (whether as a result of paragraph (a) or otherwise).
- (9) In taking account of views of the child under subsection (8)(b), the sheriff must take into account the child's age and understanding.
- (10) In this section and sections 13 and 14, a reference to extending a domestic abuse protection order includes a reference to extending the period for which a particular provision of the order has effect.

### **13 Extension, variation or discharge of order: further provision** S

- (1) On an application under section 12(1) to extend a domestic abuse protection order, the sheriff—
- (a) may extend the order only if satisfied that it is necessary to do so,
  - (b) must—

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- (i) vary the order so as to remove any requirement or prohibition which the sheriff is satisfied is no longer necessary,
  - (ii) discharge the order if satisfied that the order is no longer necessary.
- (2) A domestic abuse protection order may—
- (a) be extended for—
    - (i) in the case of an order made under section 8(2), such period not exceeding one month as the sheriff may specify,
    - (ii) in the case of an interim domestic abuse protection order, such period as the sheriff may specify,
  - (b) be extended on more than one occasion.
- (3) But the maximum period for which the order may have effect, including any period for which it is extended, is—
- (a) in the case of an interim order, three weeks,
  - (b) otherwise, three months.
- (4) On an application under section 12(1) to vary a domestic abuse protection order, the sheriff—
- (a) may vary the order so as to add a requirement or prohibition only if satisfied that it is necessary to do so,
  - (b) must—
    - (i) vary the order so as to remove any requirement or prohibition which the sheriff is satisfied is no longer necessary,
    - (ii) discharge the order if satisfied that the order is no longer necessary.
- (5) On an application under section 12(1) to discharge a domestic abuse protection order, the sheriff must—
- (a) discharge the order if satisfied that the order is no longer necessary,
  - (b) if the sheriff does not discharge the order, vary the order so as to remove any requirement or prohibition which the sheriff is satisfied is no longer necessary.
- (6) The sheriff may extend, vary or discharge a domestic abuse protection order without the consent of person B (but see section 12(4)).
- (7) In this section, “necessary” means necessary for the purpose of protecting person B from abusive behaviour by person A.

#### **14 Interim extension or variation of order S**

- (1) The sheriff may, on an application under section 12(1) to extend or vary a domestic abuse protection order, extend or (as the case may be) vary the order on an interim basis pending determination of the application.
- (2) The sheriff may extend or vary the order under subsection (1) only if the sheriff considers, on the balance of convenience, that it is just to do so.
- (3) In deciding whether it is, on the balance of convenience, just, the sheriff must have regard to all the circumstances including any risk that—
  - (a) if the order is not extended or (as the case may be) varied on an interim basis, person A will cause harm to person B,

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- (b) in the case of an application to vary an order, if the order is varied on an interim basis, person A will cause harm to person B before the application is determined.
- (4) The sheriff may extend or vary the order on an interim basis—
  - (a) even if the chief constable, person A or person B has not been given such notice of the proceedings as is required by rules of court,
  - (b) without giving the chief constable, person A or person B the opportunity to make representations about the interim extension or (as the case may be) variation of the order,
  - (c) without the consent of person B.
- (5) If the sheriff extends or varies the order on an interim basis in the circumstances described in subsection (4)(a) or (b), the sheriff must hold a hearing in relation to the application under section 12(1) as soon as reasonably practicable.
- (6) The extension or variation of an order on an interim basis—
  - (a) has effect for such period as is specified by the sheriff (but see also section 13(3)),
  - (b) ceases to have effect, if it has not already done so, on the determination of the application under section 12(1).

## 15 Jurisdiction and competence **S**

- (1) The sheriff to whom an application under section 8(1) or 12(1) is to be made is to be determined in accordance with this section.
- (2) An application under—
  - (a) section 8(1) may be made to a sheriff in whose sheriffdom person A or person B is ordinarily resident,
  - (b) section 12(1) may be made to a sheriff of the same sheriffdom as the sheriff who considered the application for a domestic abuse protection order which resulted (whether or not after appeal) in the making of the domestic abuse protection order or interim domestic abuse protection order to which the application under section 12(1) relates.
- (3) Subsections (4) to (6) apply with respect to proceedings relating to an application made in accordance with this section.
- (4) A sheriff before whom the proceedings are brought may make an order transferring the proceedings to a sheriff of another sheriffdom if satisfied that it would be more appropriate for the proceedings to be dealt with by a sheriff of the other sheriffdom.
- (5) A sheriff may make an order under subsection (4)—
  - (a) on the application of a party to the proceedings, or
  - (b) on the sheriff's own initiative.
- (6) Where an order is made under subsection (4), a sheriff of the sheriffdom to which the proceedings are to be transferred has jurisdiction and competence to consider and determine the proceedings.
- (7) This section does not affect any power that a sheriff has to decline jurisdiction in any case.

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- (8) In schedule 1 of the Courts Reform (Scotland) Act 2014 (civil proceedings, etc. in relation to which summary sheriff has competence), in paragraph 2, after subparagraph (f) insert—
- “(g) a domestic abuse protection order under section 8(2) of the Domestic Abuse (Protection) (Scotland) Act 2021,
- (h) an interim domestic abuse protection order under section 10(1) of that Act.”.

## **16 Effect of making of appeal on decision appealed against** S

- (1) A decision of a sheriff mentioned in subsection (2) is, for the purposes of section 110 of the Courts Reform (Scotland) Act 2014 (the “2014 Act”), a decision constituting final judgment in civil proceedings.
- (2) The decisions referred to in subsection (1) are—
- (a) a decision to make, or refuse to make, a domestic abuse protection order,
- (b) a decision to extend, vary or discharge, or refuse to extend, vary or discharge, a domestic abuse protection order.
- (3) Subsection (5) applies where a decision mentioned in subsection (4) is appealed against under section 110 of the 2014 Act.
- (4) The decisions referred to in subsection (3) are—
- (a) a decision mentioned in subsection (2),
- (b) a decision to make, or refuse to make, an interim domestic abuse protection order,
- (c) a decision to extend, vary or discharge, or refuse to extend, vary or discharge, an interim domestic abuse protection order,
- (d) a decision to extend or vary, or refuse to extend or vary, on an interim basis a domestic abuse protection order or an interim domestic abuse protection order.
- (5) The decision appealed against continues in effect until the appeal is disposed of, unless suspended by—
- (a) the Sheriff Appeal Court, or
- (b) where the appeal is remitted to the Court of Session under section 112 of the 2014 Act—
- (i) the Sheriff Appeal Court, or
- (ii) the Court of Session.
- (6) Subsection (7) applies where a decision of the Sheriff Appeal Court in an appeal under section 110 of the 2014 Act against a decision mentioned in subsection (4) is appealed against under section 113 of that Act.
- (7) The decision appealed against continues in effect until the appeal is disposed of, unless suspended by—
- (a) the Sheriff Appeal Court, or
- (b) the Court of Session.
- (8) But where the decision appealed against under section 113 of the 2014 Act 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 under that section is disposed of.

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## **17 Offence of breaching order** **S**

- (1) A person commits an offence if the person without reasonable excuse—
  - (a) fails to do something which the person is required to do by a domestic abuse protection order or an interim domestic abuse protection order, or
  - (b) does anything which the person is prohibited from doing by such an order.
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).

## **18 Applications under sections 8(1) and 12(1): power to specify additional applicants** **S**

- (1) The Scottish Ministers may by regulations make provision enabling a person mentioned in subsection (2) to make, in circumstances specified in the regulations, an application—
  - (a) under section 8(1)(b), for a domestic abuse protection order,
  - (b) under section 12(1), for a domestic abuse protection order to be extended, varied or discharged.
- (2) The persons referred to in subsection (1) are—
  - (a) a local authority,
  - (b) a local authority landlord,
  - (c) a registered social landlord,
  - (d) any other person who the Scottish Ministers consider appropriate.
- (3) Before making regulations under subsection (1), the Scottish Ministers must—
  - (a) consult—
    - (i) each person to which the regulations relate, or
    - (ii) to the extent that the regulations enable all persons of a particular type to make an application as mentioned in subsection (1), such persons as appear to the Scottish Ministers to represent the interests of that type of person, and
  - (b) consult such other persons as the Scottish Ministers consider appropriate.
- (4) Regulations under subsection (1) may—
  - (a) modify any enactment (including this Act),
  - (b) make incidental, supplementary, consequential, transitional, transitory or saving provision,
  - (c) make different provision for different purposes.
- (5) Regulations under subsection (1) are subject to the affirmative procedure.
- (6) In this section—

“local authority landlord” has the meaning given by section 11(3) of the Housing (Scotland) Act 2001,

“registered social landlord” means a body registered in the register maintained under section 20(1) of the Housing (Scotland) Act 2010.

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*Changes to legislation: There are currently no known outstanding effects for the Domestic Abuse (Protection) (Scotland) Act 2021. (See end of Document for details)*

PROSPECTIVE

*Relationship with orders regulating contact and residence*

**19 Relationship of notice or order with order regulating contact or residence** **S**

For the avoidance of doubt—

- (a) nothing in a court order which regulates contact with, or the residence of, a child limits the requirements or prohibitions that may be imposed by a notice or order under this Part, and
- (b) accordingly, it is not a defence to a charge of committing an offence under section 7(1) or 17(1) that person A was doing something which person A was entitled to do by virtue of such a court order.

PROSPECTIVE

*Reporting*

**20 Reporting on operation of Part** **S**

- (1) The Scottish Ministers must as soon as practicable after the end of the reporting period lay before the Scottish Parliament a report setting out, in relation to that period—
  - (a) the numbers of domestic abuse protection notices, domestic abuse protection orders and interim domestic abuse protection orders made,
  - (b) the number of extensions of domestic abuse protection orders,
  - (c) in respect of the offence in section 7(1)—
    - (i) the number of cases for which criminal proceedings were undertaken, and
    - (ii) the number of convictions in criminal proceedings,
  - (d) in respect of the offence in section 17(1)—
    - (i) the number of cases for which criminal proceedings were undertaken, and
    - (ii) the number of convictions in criminal proceedings, and
  - (e) information about the experience of persons who were, in respect of domestic abuse protection notices, domestic abuse protection orders or interim domestic abuse protection orders, person B.
- (2) The report may include any other information that the Scottish Ministers consider appropriate about—
  - (a) the operation of this Part during the reporting period, or
  - (b) the experience of any persons affected by its operation during the reporting period (such as, for example, children to whom provision in domestic abuse protection orders related directly).
- (3) The reporting period is the period of 3 years beginning with the day on which this Part comes into force.

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### *Interpretative provision*

## **21 Interpretation of Part S**

In this Part—

- “chief constable” means the chief constable of the Police Service of Scotland,
- “child” means a person who is under the age of 18,
- “constable” means a constable within the meaning of section 99(1) of the Police and Fire Reform (Scotland) Act 2012,
- “court day” means, in relation to an application for a domestic abuse protection order, a day which is not—
  - (a) a Saturday or Sunday, or
  - (b) a day which, by virtue of an order made under section 28(1) of the Courts Reform (Scotland) Act 2014, is a court holiday in the sheriff court in which the sheriff to whom the application is made is sitting,
- “domestic abuse protection notice” means a notice made under section 4(1),
- “domestic abuse protection order” means an order made under section 8(2),
- “interim domestic abuse protection order” means an order made under section 10(1),
- “person A” and “person B” are to be construed in accordance with section 1(5),
- “senior constable” means a constable holding the rank of inspector or above.

PROSPECTIVE

## **PART 2 S**

### TERMINATION OF SCOTTISH SECURE TENANCIES IN CASES INVOLVING ABUSIVE BEHAVIOUR

## **22 Additional ground for ending tenant's interest in house S**

- (1) The Housing (Scotland) Act 2001 is amended as follows.
- (2) In section 14 (proceedings for possession)—
  - (a) in subsection (1)—
    - (i) the words from “recovery” to the end become paragraph (a),
    - (ii) after that paragraph insert—
      - “(b) where subsection (1A) applies, termination of a tenant's interest in the tenancy.”,
  - (b) after subsection (1) insert—
    - “(1A) This subsection applies where—
      - (a) the tenancy is a joint tenancy, and
      - (b) the proceedings are raised against the tenant on the ground set out in paragraph 15A of schedule 2.
    - (1B) In this section and section 16, “the tenant”, in relation to proceedings under subsection (1)(b), means person T (within the meaning of paragraph 15A of schedule 2).”



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- (c) in subsection (2B)—
  - (i) the words “for recovery of possession” are repealed,
  - (ii) after “paragraph 2” insert “ or 15A ”,
  - (iii) at the end insert “ or, as the case may be, terminating a tenant's interest in the tenancy. ”,
- (d) in subsection (4), for “proceedings for recovery of possession”, in both places where it occurs, substitute “ the proceedings ”,
- (e) after subsection (5B) insert—

“(5C) Where a landlord raises proceedings under subsection (1) which include the ground set out in paragraph 15A of schedule 2, the landlord must, as soon as reasonably practicable after raising the proceedings, give the tenant and any qualifying occupier advice and assistance in relation to the finding of alternative accommodation in the event that an order is made under section 16(2) or (3ZA).

(5D) The landlord must, in exercising the function conferred by subsection (5C), have regard to any guidance issued by the Scottish Ministers about the exercise of that function.

(5E) Before publishing any guidance under subsection (5D), the Scottish Ministers must consult such persons as they consider appropriate.”.

(3) In section 16 (powers of court in possession proceedings)—

- (a) in subsection (1), for “7 and 15” substitute “ 7, 15 and 15A ”,
- (b) in subsection (2)—
  - (i) in the opening words, for “14” substitute “ 14(1)(a) ”,
  - (ii) after paragraph (c) insert—
    - “(d) that—
      - (i) the landlord has a ground for recovery of possession set out in paragraph 15A of that schedule and so specified,
      - (ii) the tenant is the sole tenant, and
      - (iii) it is reasonable to make the order,
- (e) whether or not paragraph (d) applies, that—
  - (i) the landlord has a ground for recovery of possession set out in paragraph 15A of that schedule and so specified,
  - (ii) the tenant is the sole tenant,
  - (iii) the tenant has been convicted of an offence—
    - (A) in respect of the abusive behaviour referred to in sub-paragraph (1) of that paragraph, and
    - (B) which is punishable by imprisonment, and
  - (iv) the landlord served the notice under section 14(2) before the day which is 12 months after—

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- (A) the day on which the tenant was convicted of the offence, or
      - (B) where that conviction was appealed, the day on which the appeal was dismissed or abandoned.”,
- (c) after subsection (3) insert—
  - “(3ZA) Subject to subsection (1), in proceedings under section 14(1)(b) the court must make an order for termination of the tenant's interest in the tenancy if it appears to the court—
    - (a) that—
      - (i) the landlord has a ground for termination of the tenant's interest in the tenancy set out in paragraph 15A of that schedule and specified in the notice required by section 14, and
      - (ii) it is reasonable to make the order,
    - (b) whether or not paragraph (a) applies, that—
      - (i) the landlord has a ground for termination of the tenant's interest in the tenancy set out in paragraph 15A of that schedule and so specified,
      - (ii) the tenant has been convicted of an offence—
        - (A) in respect of the abusive behaviour referred to in sub-paragraph (1) of that paragraph, and
        - (B) which is punishable by imprisonment, and
      - (iii) the landlord served the notice under section 14(2) before the day which is 12 months after—
        - (A) the day on which the tenant was convicted of the offence, or
        - (B) where that conviction was appealed, the day on which the appeal was dismissed or abandoned.
  - (3ZB) For the purposes of subsections (2)(d)(iii) and (3ZA)(a)(ii), the court is to have regard, in particular, to any risk that the tenant will engage in further behaviour of the kind mentioned in paragraph 15A of schedule 2.”,
- (d) in subsection (3A), for “Subsection (2) does” substitute “ Subsections (2) and (3ZA) do ”,
- (e) after subsection (5B) insert—
  - “(5C) An order under subsection (3ZA) has the effect of bringing to an end the tenant's interest in the tenancy on the date specified in the order.”,
- (f) after subsection (6) insert—
  - “(7) The landlord must, no later than 28 days after the date of termination of a tenancy which is terminated on the ground set out in paragraph 15A of schedule 2 (or on grounds including that ground), offer a tenancy of the house (beginning as soon as reasonably practicable) to person P.

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- (8) But the landlord need not comply with the duty imposed by subsection (7) if it is impossible or inappropriate to do so because of circumstances relating to person P.
- (9) The landlord must have regard to any guidance issued by the Scottish Ministers about subsections (7) and (8).
- (10) The references in subsections (7) and (8) to person P are to the person who, in relation to the house, is person P within the meaning of paragraph 15A of schedule 2.”.
- (4) In schedule 2 (Scottish secure tenancy: grounds for recovery of possession of house), after paragraph 15 insert—
- “15A (1) A person (“person T”) who is the tenant or one of the joint tenants has engaged in behaviour which is abusive of a person (“person P”) who is a partner or ex-partner of person T, and the conditions in sub-paragraph (2) are met.
- (2) The conditions are—
- (a) person T is the sole tenant, or person T and person P are joint tenants (whether or not with others),
  - (b) the house is person P's only or principal home,
  - (c) person P wishes to continue living in the house,
  - (d) the landlord wishes—
    - (i) where person T is the sole tenant, to recover possession of the house from person T for the purpose of entering into a tenancy with person P instead,
    - (ii) where person T is a joint tenant, to bring person T's interest in the tenancy to an end.
- (3) In sub-paragraph (1)—
- (a) “partner or ex-partner of person T” means—
    - (i) the spouse or civil partner of person T,
    - (ii) a former spouse or former civil partner of person T,
    - (iii) a person with whom person T has, in the period of 12 months ending with the date on which the proceedings are raised under section 14(1), lived in the house as if a spouse of person T for a period of, or more than one period amounting in total to, at least 6 months,
  - (b) the reference to behaviour by person T which is abusive of person P is to be construed in accordance with sections 2 and 3 of the Domestic Abuse (Protection) (Scotland) Act 2021, as if the references in those sections to—
    - (i) person A were references to person T,
    - (ii) person B were references to person P.”.
- (5) The title of section 14 becomes “ **Proceedings for recovery of possession or termination of joint tenant's interest** ”.

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- (6) The title of section 16 becomes “ **Powers of court in proceedings for recovery of possession or termination of joint tenant's interest** ”.
- (7) The heading of schedule 2 becomes “SCOTTISH SECURE TENANCY: GROUNDS FOR RECOVERY OF POSSESSION OR TERMINATION OF JOINT TENANT'S INTEREST”.
- (8) The heading of Part 1 of schedule 2 becomes “GROUNDS ON WHICH COURT MAY ORDER RECOVERY OF POSSESSION OR TERMINATION OF JOINT TENANT'S INTEREST”.

## PART 3 **S**

### FINAL PROVISIONS

#### 23 Ancillary provision **S**

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under subsection (1) may—
  - (a) modify any enactment (including this Act),
  - (b) make different provision for different purposes.
- (3) Regulations under subsection (1)—
  - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
  - (b) otherwise, are subject to the negative procedure.

#### 24 Commencement **S**

- (1) Section 21 and this Part come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
  - (a) include transitional, transitory or saving provision,
  - (b) make different provision for different purposes.

#### 25 Short title **S**

The short title of this Act is the Domestic Abuse (Protection) (Scotland) Act 2021.

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Domestic Abuse (Protection) (Scotland) Act 2021.