

*These notes relate to the Domestic Abuse (Protection) (Scotland)
Act 2021 (asp 16) which received Royal Assent on 5 May 2021*

DOMESTIC ABUSE (PROTECTION) (SCOTLAND) ACT 2021

EXPLANATORY NOTES

THE ACT

Part 1 – Domestic abuse protection notices and orders

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

Section 1 – Persons to whom domestic abuse protection notices and orders may relate

6. Section 1 describes who can be protected by the operation of domestic abuse protection notices (DAPNs) and domestic abuse protection orders (DAPOs) as well as describing the persons against whom such notices and orders may be made. The person who is protected is person B and the person against whom the DAPN or DAPO is imposed is person A.
7. Section 1(1)(a) provides that person A must be at least 18 years old.
8. Section 1(1)(b) provides that person B must be at least 16 years old. In addition, person B must be the partner or ex-partner of person A and person A must live with person B some or all of the time. The DAPN or DAPO must be for the purpose of protecting person B from abusive behaviour by person A.
9. Section 1(2) provides a definition of partner. Person A and person B are partners if they are each other's spouse or civil partner or in an intimate personal relationship with each other. Former relationships of the specified types are covered in addition to current relationships.
10. The phrase "intimate personal relationship" is intended to cover relationships between boyfriends and girlfriends (including same-sex and non-binary relationships), although the relationship need not be sexual. Other family relationships and other types of relationship (e.g. between friends or business partners or work colleagues) are not covered.
11. Section 1(4) provides that the reference to person A living with person B at section 1(1)(b)(ii) is a reference to those persons living together at the same time in any place where either person A or person B live, to any extent. As such, it applies regardless of whether the place where they are living together is the principal home of person A, person B, or both or neither of those persons.

Section 2 – Meaning of abusive behaviour

12. Section 2 provides the meaning of abusive behaviour by person A towards person B.
13. Section 2(2) provides that behaviour by person A is abusive of person B if a reasonable person would consider the behaviour is likely to cause person B to suffer physical or

psychological harm. References to psychological harm include fear, alarm or distress by virtue of section 2(5).

14. Under section 2(2), there is no requirement for person B to actually suffer physical or psychological harm.
15. Section 2(3) provides that “behaviour” includes things said or otherwise communicated as well as things done. It also encompasses an intentional failure to do, say or otherwise communicate something (e.g. a failure to pass on times and dates of appointments or social occasions, or a failure to feed a family pet).
16. Section 2(4)(a) provides that behaviour directed at a person includes behaviour directed towards property. It is not a requirement that the property must belong to person B. It could, for instance, be shared property or property belonging to a third party, such as person B’s parents. Property includes pets or other animals (for example agricultural livestock) whether belonging to person B or others.
17. Section 2(4)(b) provides that behaviour directed at person B includes behaviour carried out with or through a third party. This might include, for example, getting another person to spy on or report on the activities of person B. The third party’s involvement could possibly be unwitting or unwilling, as they may be entirely unaware that their behaviour was helping person A to abuse person B or may have been coerced into participating in the abuse of person B.
18. Section 2(6) provides that for the purpose of Part 1, “behaviour” may consist of a single incident or a course of conduct, and so in determining whether behaviour is abusive, where behaviour consists of a course of conduct, regard is to be had, not only to whether individual incidents of behaviour are likely, on their own, to cause person B to suffer physical or psychological harm, but whether the course of conduct as a whole is likely to do so.

Section 3 – What constitutes abusive behaviour

19. Section 3 provides a description of what constitutes abusive behaviour. The description is non-exhaustive and it therefore remains possible in any individual case that person A’s behaviour was abusive in some other way.
20. Section 3(2) provides that behaviour which is abusive of person B includes behaviour directed at person B which is violent, threatening or intimidating (for example, assault or threats). It also covers behaviour directed at person B or at any other person (in particular, a child of person B) which has as its purpose, or among its purposes, or would be considered by a reasonable person likely to have, one or more of the effects on person B that are listed in section 3(3).
21. Section 3(3) provides a list of effects on person B that are relevant in order to indicate behaviour is abusive in connection with DAPNs and DAPOs. This is intended to ensure that, for example, psychological abuse or coercive and controlling behaviour falls within the definition of abusive behaviour.
22. Section 3(3)(a) provides that behaviour which makes person B dependent on or subordinate to person A can be considered to have a relevant effect. This could include, for example, preventing person B from having access to money, forcing person B to leave their job, taking charge of household decision-making to the exclusion of person B or treating person B as a domestic slave.
23. Section 3(3)(b) provides that behaviour which has the effect of isolating person B from friends, relatives or other sources of support can be considered to have a relevant effect. This could include, for example, controlling person B’s movements or access to their phone or other forms of communication, not allowing visits from or to person B’s friends or family, or deliberately failing to pass on messages from friends or family.

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24. Section 3(3)(c) provides that behaviour which has the effect of controlling, regulating or monitoring person B's day-to-day activities can be considered to have a relevant effect. This could include, for example, checking person B's phone, e-mail or social media use, controlling what clothes person B can or cannot wear, or placing unreasonable requirements on person B to, for example, prepare meals in a particular way at a particular time every day.
25. Section 3(3)(d) provides that behaviour which has the effect of depriving person B of, or restricting person B's, freedom of action is behaviour which can be considered to have a relevant effect. This addresses behaviour which robs person B of their autonomy, for example, preventing person B from attending work or college, preventing person B from leaving the house alone, insisting on accompanying person B to medical appointments, or taking decisions for person B in relation to private, individual matters that a person would normally decide for themselves.
26. Section 3(3)(e) provides that behaviour which has the effect of frightening, humiliating, degrading or punishing person B is behaviour which has a relevant effect. This could include, for example, abusive name-calling, threats of self-harm, manipulating person B into doubting their sanity, controlling person B's access to the toilet or forcing person B to eat food off the floor.
27. Section 3(4) provides that references to violent behaviour includes sexual violence as well as physical violence. It should be noted that non-violent sexually abusive behaviour may be considered abusive under section 3(2)(b) and (3) where it is behaviour that is intended, or likely to have, one of the relevant effects on person B; for example, behaviour which has the effect of frightening, humiliating, degrading or punishing person B. Non-violent sexually abusive behaviour may also be considered threatening or intimidating in terms of section 3(2)(a).