

DOMESTIC ABUSE (PROTECTION) (SCOTLAND) ACT 2021

EXPLANATORY NOTES

THE ACT

Part 1 – Domestic abuse protection notices and orders

Domestic abuse protection notices

Section 4 – Making of domestic abuse protection notice

28. Section 4 sets out the test for making a DAPN and the process by which a senior constable can make a DAPN. A definition of a “senior constable” is provided at section 21. A senior constable is a constable holding the rank of inspector or above.
29. Section 4(1) sets out the conditions which must be met for a senior constable to make a DAPN.
30. Section 4(1)(a) provides that the senior constable must have reasonable grounds for believing that person A has engaged in behaviour that is abusive of person B. A definition of abusive behaviour is contained at sections 2 and 3.
31. Section 4(1)(b) provides that the senior constable must have reasonable grounds for believing that it is necessary for a DAPO to be made for the purpose of protecting person B from abusive behaviour by person A. Only a sheriff can make a DAPO but this part of the test reflects the fact that a DAPN can only exist as a precursor to an application for a DAPO under section 8(1).
32. Section 4(1)(c) provides that the senior constable must also have reasonable grounds for believing that there is a risk of person A engaging in further abusive behaviour towards person B immediately and it is necessary to make a DAPN to protect person B from that abusive behaviour.
33. Section 4(2) makes clear for the purposes of section 4(1)(c), “immediately” means in the period before the sheriff can make an interim DAPO or a full DAPO.
34. Section 4(3) provides that, in determining whether person A has been abusive towards person B, it does not matter whether the abusive behaviour occurred in Scotland or elsewhere.
35. Section 4(4) sets out the steps which the senior constable must take and factors which the senior constable must take into account before making a DAPN.
36. Section 4(4)(a) provides that they must take such steps as are reasonable in the circumstances to establish whether person A and person B have any views in relation to the notice which they wish to be taken into account, and if so, to obtain those views. It does not need to be the senior constable who personally obtains the views from person A and person B but could, for example, be a constable who attends an incident involving person A and person B.

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

37. Section 4(4)(b) provides the senior constable must take into account any views of which the senior constable is aware as a result of the duty contained in section 4(4)(a) and the welfare of any child whose interests the senior constable considers to be relevant to the making of a DAPN. In the majority of cases, this is likely to be a child who normally resides with person B.
38. Section 4(5) provides, for the avoidance of doubt, that the senior constable does not require to obtain the consent of person B before making a DAPN.