

DOMESTIC ABUSE (PROTECTION) (SCOTLAND) ACT 2021

EXPLANATORY NOTES

THE ACT

Part 1 – Domestic abuse protection notices and orders

Domestic abuse protection orders

Section 10 – Interim domestic abuse protection order

75. Section 10 makes provision for a sheriff to make an interim DAPO where an application for a DAPO has been made under section 8(1). An interim DAPO may be made regardless of whether a DAPN has been given.
76. Section 10(2) provides that a sheriff may make an interim DAPO if the sheriff considers that, on the balance of convenience, it is just to do so. In deciding where the balance of convenience lies, the sheriff will balance the competing interests of those affected with a view to reaching a decision which causes the least harm to the persons affected in the interim period.
77. Section 10(3) provides that, in deciding whether to make an interim DAPO, the sheriff must have regard to all the circumstances, including any risk that person A will cause harm to person B if an interim order is not made pending determination of the application for a full order.
78. Section 10(4) provides that an interim DAPO can include any prohibition or requirement that could be included in a DAPO.
79. Section 10(5) provides that the sheriff may make an interim order notwithstanding that person A or person B have not been given notice of proceedings as is required by section 11(5) (which applies when a DAPN has been given) or by rules of court, or been given an opportunity to make representations about the interim order. Read with section 8(6), the effect of this is that, where person A or person B have not been given an opportunity to make representations, the sheriff may make an interim DAPO to protect person B but not a final order. Section 10(5) also makes clear that, as is the case with the making of a full DAPO (see section 8(2)(b)), the consent of person B is not required for an interim DAPO to be made.
80. Section 10(6) provides that where a sheriff makes an interim order in the circumstances described in section 10(5)(a) or (b), they must hold a hearing in relation to the application for a DAPO as soon as is reasonably practicable.
81. Section 10(7) provides for the period of time for which an interim DAPO has effect. Section 10(7)(a) provides that an interim DAPO has effect for such a period as is specified in the order, and that this period must not exceed 3 weeks. It is implicit in the wording of section 9(5)(a) that the duration of an interim order does not count towards the maximum duration of a DAPO as the reference to a DAPO in section 9(5) does not

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

include a reference to an interim DAPO and section 9(5)(a) does not require the court to take account of the time for which any interim DAPO may have been in effect in determining how long a DAPO may have effect for. Section 10(7)(b) provides that an interim order ceases to have effect, if it has not already done so, when the application for a DAPO under section 8(1) has been determined.