

# **DOMESTIC ABUSE (PROTECTION) (SCOTLAND) ACT 2021**

---

## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 1 – Domestic abuse protection notices and orders**

##### **Domestic abuse protection orders**

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

82. Section 11 makes provision with regard to the hearing which must take place where the chief constable applies to the sheriff for a DAPO under section 8(1)(a) after a senior constable has made a DAPN against person A.
83. Section 11(2) provides that, where the police make a DAPN, they must make an application under section 8(1)(a) to a sheriff for a DAPO not later than the first court day after the day on which the DAPN is given to person A as set out in section 6(4). “Court day” is defined at section 21. It is any day which is not a Saturday or Sunday or a court holiday.
84. Section 11(3) requires the sheriff to hold a hearing in relation to the application no later than the first court day after the day on which the application is made and section 11(4) requires that the hearing must be concluded on the day on which it begins. The sheriff is still entitled to continue proceedings on the application as set out at section 11(7) but, when considered alongside section 11(9)(b), section 11(4) provides a clear point at which a DAPN will cease to have effect.
85. Section 11(5)(a) places a duty on the chief constable to give person A notice of the hearing either by (i) leaving it at the address which person A has provided to the police 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 by delivering it to person A in person. Section 11(5)(b) places a duty on the chief constable to give person B notice of the hearing by leaving it the address at which person B usually resides, or by delivering it to person B in person.
86. Section 11(6) provides that the sheriff must hold the hearing even if the requirement at section 11(5) is not met. In such a case, the sheriff could make an interim order by virtue of section 10(5), but could only make a full order if the requirement for persons A and B to be given an opportunity to make representations at section 8(6) is met, for example, where they have made representations after having been notified of the hearing otherwise than in accordance with section 11(5).
87. Section 11(7) sets out the options available to the sheriff at that hearing. The sheriff can determine the application, providing the requirement to give an opportunity to person A, person B and the chief constable to make representations has been met, can make an

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

interim DAPO or can continue proceedings, setting a date for a further hearing, without determining the application or making an interim DAPO.

88. Section 11(8) provides that the sheriff may not make an interim DAPO or a DAPO before the hearing is held.
89. Section 11(9) provides that a DAPN ceases to have effect if the sheriff makes a DAPO or interim DAPO at the hearing or otherwise, when the hearing ends. Because the hearing must come to an end on the day it begins and by virtue of section 11(2) and (3), the DAPN will cease to have effect no later than the second court day after the day on which it is given to person A.