

DOMESTIC ABUSE (PROTECTION) (SCOTLAND) ACT 2021

EXPLANATORY NOTES

THE ACT

Part 1 – Domestic abuse protection notices and orders

Domestic abuse protection orders

Section 12 – Extension, variation or discharge of order

90. Section 12 makes provision to enable an application to be made to extend, vary or discharge a DAPO. By virtue of section 10(8) references in section 12 (and sections 13 and 14) also include reference to an interim DAPO.
91. Section 12(1) provides that the chief constable, person A and person B may apply to the sheriff to extend, vary or discharge a DAPO or interim DAPO. The effect of this is that person B may apply to extend, vary or discharge the order even where person B was not a party to the proceedings for the order under section 8.
92. Section 12(2) provides that the sheriff may permit any person referred to in section 12(1) to become party to proceedings relating to an application made by another person mentioned in that section. In practice, this enables the sheriff to permit person B to become party to proceedings in relation to an application made by either person A or the chief constable and to permit the chief constable to become party to proceedings in relation to an application made by person A or person B – person A will anyway be a party to proceedings in all cases by virtue of the fact that they are the subject of the order.
93. Section 12(3) provides that, before determining an application to extend, vary or discharge a DAPO or interim DAPO, the sheriff must give an opportunity to make representations on the application to the chief constable, person A and person B (whether or not the chief constable or person B is a party to proceedings).
94. Section 12(4)(a)(i) provides that in determining an application under section 12(1), the sheriff must take account of any views of which the sheriff is aware as to whether person B wishes the DAPO or interim DAPO to be extended, varied or discharged. In certain cases (those listed in section 12(5)), section 12(4)(a)(ii) also requires the sheriff to take into account any reasons of which the sheriff is aware for person B's views on whether the DAPO or interim DAPO should or should not be extended, varied or discharged. The cases listed in section 12(5) are the cases most susceptible to person B's expressed wishes having been influenced by coercive or controlling behaviour by person A (specifically cases where person B wishes for the order not to be extended, not to be varied so as to add a requirement or prohibition as proposed in the application, to be varied so as to remove a requirement or prohibition as proposed in the application, or to be discharged). This means that, for example, where the sheriff is aware that person B's views may indeed have been influenced by coercive and controlling behaviour by

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

person A then the sheriff must take that into account, along with person B's views, in determining the application.

95. Section 12(4)(b) requires the sheriff take into account any other views of person B in relation to the application for extension, variation or discharge of which the sheriff is aware.
96. Section 12(4)(a) and (b) both apply 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 (for example, as a result of representations by the chief constable).
97. Section 12(6) provides that, in determining an application to extend, vary or discharge a DAPO or interim DAPO, the sheriff must also take into account any representations made to them by the chief constable or by person A and the welfare of any child whose interests the sheriff considers to be relevant to the application.
98. As with the equivalent provision in section 8, section 12(6)(b) applies in all cases where there is a child whose interests the sheriff considers relevant to the application, with section 12(7) and (8) then imposing additional duties that only apply where the sheriff is considering an action in relation to an order which would relate directly to a child (see paragraph 67). Specifically, section 12(7) when read together with section 12(8) places a duty on the sheriff to take such steps as are reasonable in the circumstances to give a child an opportunity to express views where the sheriff is considering extending or discharging a DAPO or interim DAPO which contains provision relating directly to the child, or where the sheriff is considering varying a DAPO or interim DAPO by including, removing or altering provision that relates directly to the child. The sheriff is then required to take into account any views of the child of which the sheriff is aware, whether as a result of the steps taken to give an opportunity to express their views or otherwise.
99. Section 12(9) provides that in taking account of any such views of the child, the sheriff must take into account the child's age and understanding.
100. Section 12(10) provides that any reference to extending a DAPO or interim DAPO in sections 12, 13 and 14 includes a reference to extending the period for which a particular provision of the order has effect. For example, if some provisions in a DAPO as originally made have effect for a period of two months and others for a shorter period, an application could be made under section 12(1) for the provisions which were originally to have effect for less than two months to be extended so that they also have effect for two months.