

DOMESTIC ABUSE (PROTECTION) (SCOTLAND) ACT 2021

EXPLANATORY NOTES

THE ACT

Part 1 – Domestic abuse protection notices and orders

Domestic abuse protection orders

Section 13 – Extension, variation or discharge of order: further provision

101. Section 13 makes provision regarding the sheriff’s powers to extend, vary or discharge a DAPO or interim DAPO following the making of an application under section 12(1).
102. Section 13(1) provides that when a sheriff is considering an application to extend a DAPO or interim DAPO, they may extend the order only if it is necessary to do so and must vary the order to remove any requirement or prohibition that is no longer necessary, and must discharge the order if satisfied that it is no longer necessary. Section 13(7) provides a definition of “necessary.”
103. Sections 13(2) and 13(3) make provision regarding the length of time for which a DAPO or interim DAPO can be extended. They provide that a DAPO can be extended for a period not exceeding one month (though this does not apply to an interim DAPO) and that the maximum period for which the order may have effect, including any period for which it is extended, is 3 months for a DAPO, and 3 weeks for an interim DAPO.
104. Section 13(4) provides that where an application is made under section 12(1) to vary the terms of a DAPO or interim DAPO, the sheriff may vary the order so as to add a prohibition or requirement if satisfied that it is necessary to do so (“necessary” is defined at section 13(7)) and must vary the order to remove any requirement or prohibition which the sheriff is satisfied is no longer necessary and must discharge the order if satisfied that it is no longer necessary.
105. Section 13(5) provides that where an application is made under section 12(1) to discharge a DAPO or interim DAPO, the sheriff must discharge the order if satisfied that it is no longer necessary, and, if the sheriff does not discharge the order they must vary the order so as to remove any requirement or prohibition which the sheriff is satisfied is no longer necessary.
106. Section 13(6) provides that the sheriff may extend, vary or discharge a DAPO or interim DAPO without person B’s consent, though there is a requirement at section 12(4) for the sheriff to take into account the views of person B (including, in certain cases, any reasons for those views of which the sheriff is aware) (see paragraph 94 above).
107. Section 13(7) provides that, for the purpose of section 13, “necessary” means necessary for the purpose of protecting person B from abuse by person A.