



# Domestic Abuse (Protection) (Scotland) Act 2021

2021 asp 16

## PART 1

### DOMESTIC ABUSE PROTECTION NOTICES AND ORDERS

PROSPECTIVE

#### *Domestic abuse protection orders*

#### **8 Making of domestic abuse protection order**

- (1) The chief constable—
  - (a) must apply to the sheriff for a domestic abuse protection order in relation to a person to whom a domestic abuse protection notice is given,
  - (b) may apply to the sheriff for a domestic abuse protection order in relation to a person in any other case.
- (2) The sheriff may make the order—
  - (a) only if the sheriff is satisfied that—
    - (i) person A has engaged in behaviour which is abusive of person B,
    - (ii) there is an immediate or imminent risk of person A engaging in further behaviour which is abusive of person B, and
    - (iii) it is necessary to make the order for the purpose of protecting person B from abusive behaviour by person A,
  - (b) without the consent of person B (but see subsection (7)).
- (3) It does not matter whether the abusive behaviour referred to in subsection (2)(a)(i) took place in Scotland or elsewhere.
- (4) The abusive behaviour referred to in subsection (2)(a)(iii) must include, but need not be limited to, the behaviour referred to in subsection (2)(a)(ii).
- (5) The sheriff may permit person B to be a party to the proceedings.

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- (6) Before determining an application under subsection (1), the sheriff must give an opportunity to the chief constable, person A and person B (whether or not person B is a party to the proceedings) to make representations about the application.
- (7) When determining the application, the sheriff must—
- (a) take into account—
    - (i) any views of person B of which the sheriff is aware as to whether or not person B wishes an order to be made, and
    - (ii) where person B does not wish an order to be made, any reasons for that view of which the sheriff is aware,
  - (b) take into account any other views of person B in relation to the application of which the sheriff is aware,
- (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).
- (8) When determining the application, the sheriff must also take into account—
- (a) any representations made to the sheriff by the chief constable or person A,
  - (b) the welfare of any child whose interests the sheriff considers to be relevant to the application.
- (9) Subsection (10) applies where, on an application under subsection (1), the sheriff is considering making provision in an order which would relate directly to a child.
- (10) The sheriff must—
- (a) take such steps as are reasonable in the circumstances to give the child an opportunity to express views in relation to the matter, and
  - (b) take into account any views of the child of which the sheriff is aware (whether as a result of paragraph (a) or otherwise).
- (11) In taking account of views of the child under subsection (10)(b), the sheriff must take into account the child's age and understanding.

## **9 Content and effect of order**

- (1) A domestic abuse protection order is an order requiring person A to do, or prohibiting person A from doing, a thing or things described in the order.
- (2) Those requirements and prohibitions may include (but are not limited to) any requirement or prohibition which could be imposed by a domestic abuse protection notice (see section 5(1)).
- (3) The order may impose a requirement or prohibition only if the sheriff considers it necessary for the purpose of protecting person B from abusive behaviour by person A.
- (4) The sheriff has competence to make provision in a domestic abuse protection order having effect in relation to conduct at places outside the sheriff's sheriffdom as well as at places within the sheriff's sheriffdom.
- (5) A domestic abuse protection order—
  - (a) has effect for such period not exceeding two months as is specified in the order,
  - (b) may specify different periods for which different requirements or prohibitions have effect.

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## **10 Interim domestic abuse protection order**

- (1) The sheriff may make an interim domestic abuse protection order (an “interim order”) pending determination of an application under section 8(1).
- (2) The sheriff may make an interim order only if the sheriff considers, on the balance of convenience, that it is just to do so.
- (3) In deciding whether it is, on the balance of convenience, just, the sheriff must have regard to all the circumstances, including any risk that, if an interim order is not made, person A will cause harm to person B.
- (4) An interim order may do anything which a domestic abuse protection order could do (see section 9(1) to (4)).
- (5) The sheriff may make an interim order—
  - (a) even if person A or person B has not been given such notice of the proceedings as is required by section 11(5) or rules of court,
  - (b) without giving person A or person B an opportunity to make representations about the interim order,
  - (c) without the consent of person B.
- (6) If the sheriff makes an interim order in the circumstances described in subsection (5)(a) or (b), the sheriff must hold a hearing in relation to the application under section 8(1) as soon as reasonably practicable.
- (7) An interim order—
  - (a) has effect for such period not exceeding three weeks as is specified in the order,
  - (b) ceases to have effect, if it has not already done so, on the determination of the application under section 8(1).
- (8) In sections 12 to 14, a reference to a domestic abuse protection order includes a reference to an interim order.

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

- (1) This section applies in relation to an application made under section 8(1)(a) (following a domestic abuse protection notice being given to person A).
- (2) The application must be made not later than the first court day after the day on which the notice is given.
- (3) The sheriff must hold a hearing in relation to the application not later than the first court day after the day on which the application is made.
- (4) The hearing must be concluded on the day on which it begins.
- (5) The chief constable must—
  - (a) give person A notice of the hearing by—
    - (i) leaving it at an address given to a constable by person A (whether given in accordance with section 5(3) or 6(5) or otherwise in connection with the giving of notice under this subsection), or

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- (ii) giving it to person A on person A attending a police station in accordance with section 5(3) or otherwise delivering it to person A personally,
- (b) give person B notice of the hearing by—
  - (i) leaving it at the address at which person B usually resides, or
  - (ii) delivering it to person B personally.
- (6) But the sheriff must hold the hearing even if notice is not given in accordance with subsection (5).
- (7) At the hearing, the sheriff may—
  - (a) determine the application (but see section 8(6)),
  - (b) make an interim domestic abuse protection order (an “interim order”), or
  - (c) continue the proceedings without determining the application or making an interim order.
- (8) The sheriff may not make an interim order or a domestic abuse protection order before the hearing is held.
- (9) The domestic abuse protection notice ceases to have effect—
  - (a) if the sheriff makes a domestic abuse protection order or an interim order at the hearing, when the sheriff makes the order,
  - (b) otherwise, when the hearing ends.

## **12 Extension, variation or discharge of order**

- (1) The sheriff may, before the expiry of a domestic abuse protection order, extend, vary or discharge the order on the application of—
  - (a) the chief constable,
  - (b) person A,
  - (c) person B.
- (2) The sheriff may permit a person mentioned in subsection (1) to be a party to proceedings relating to an application made by another person mentioned in that subsection.
- (3) Before determining an application under subsection (1), the sheriff must give an opportunity to the chief constable, person A and person B (whether or not the chief constable or person B is a party to the proceedings) to make representations about the application.
- (4) When determining the application, the sheriff must—
  - (a) take into account—
    - (i) any views of person B of which the sheriff is aware as to whether or not person B wishes the order to be extended, varied or discharged, and
    - (ii) where person B's wishes are as mentioned in subsection (5), any reasons for that view of which the sheriff is aware,
  - (b) take into account any other views of person B in relation to the application of which the sheriff is aware,
 (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).

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- (5) The wishes of person B referred to in subsection (4) are—
  - (a) a wish for the order not to be extended,
  - (b) a wish for the order not to be varied so as to add a requirement or prohibition as proposed in the application,
  - (c) a wish for the order to be varied so as to remove a requirement or prohibition as proposed in the application,
  - (d) a wish for the order to be discharged.
- (6) When determining the application, the sheriff must also take into account—
  - (a) any representations made to the sheriff by the chief constable or person A,
  - (b) the welfare of any child whose interests the sheriff considers to be relevant to the application.
- (7) Subsection (8) applies where, on an application under subsection (1), the sheriff is considering—
  - (a) extending or discharging an order which includes provision which relates directly to a child, or
  - (b) varying an order to—
    - (i) include provision which would relate directly to a child, or
    - (ii) remove or alter provision which relates directly to a child.
- (8) The sheriff must—
  - (a) take such steps as are reasonable in the circumstances to give the child an opportunity to express views in relation to the matter, and
  - (b) take into account any views of the child of which the sheriff is aware (whether as a result of paragraph (a) or otherwise).
- (9) In taking account of views of the child under subsection (8)(b), the sheriff must take into account the child's age and understanding.
- (10) In this section and sections 13 and 14, a reference to extending a domestic abuse protection order includes a reference to extending the period for which a particular provision of the order has effect.

### **13 Extension, variation or discharge of order: further provision**

- (1) On an application under section 12(1) to extend a domestic abuse protection order, the sheriff—
  - (a) may extend the order only if satisfied that it is necessary to do so,
  - (b) must—
    - (i) vary the order so as to remove any requirement or prohibition which the sheriff is satisfied is no longer necessary,
    - (ii) discharge the order if satisfied that the order is no longer necessary.
- (2) A domestic abuse protection order may—
  - (a) be extended for—
    - (i) in the case of an order made under section 8(2), such period not exceeding one month as the sheriff may specify,
    - (ii) in the case of an interim domestic abuse protection order, such period as the sheriff may specify,
  - (b) be extended on more than one occasion.

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- (3) But the maximum period for which the order may have effect, including any period for which it is extended, is—
  - (a) in the case of an interim order, three weeks,
  - (b) otherwise, three months.
- (4) On an application under section 12(1) to vary a domestic abuse protection order, the sheriff—
  - (a) may vary the order so as to add a requirement or prohibition only if satisfied that it is necessary to do so,
  - (b) must—
    - (i) vary the order so as to remove any requirement or prohibition which the sheriff is satisfied is no longer necessary,
    - (ii) discharge the order if satisfied that the order is no longer necessary.
- (5) On an application under section 12(1) to discharge a domestic abuse protection order, the sheriff must—
  - (a) discharge the order if satisfied that the order is no longer necessary,
  - (b) if the sheriff does not discharge the order, vary the order so as to remove any requirement or prohibition which the sheriff is satisfied is no longer necessary.
- (6) The sheriff may extend, vary or discharge a domestic abuse protection order without the consent of person B (but see section 12(4)).
- (7) In this section, “necessary” means necessary for the purpose of protecting person B from abusive behaviour by person A.

#### **14 Interim extension or variation of order**

- (1) The sheriff may, on an application under section 12(1) to extend or vary a domestic abuse protection order, extend or (as the case may be) vary the order on an interim basis pending determination of the application.
- (2) The sheriff may extend or vary the order under subsection (1) only if the sheriff considers, on the balance of convenience, that it is just to do so.
- (3) In deciding whether it is, on the balance of convenience, just, the sheriff must have regard to all the circumstances including any risk that—
  - (a) if the order is not extended or (as the case may be) varied on an interim basis, person A will cause harm to person B,
  - (b) in the case of an application to vary an order, if the order is varied on an interim basis, person A will cause harm to person B before the application is determined.
- (4) The sheriff may extend or vary the order on an interim basis—
  - (a) even if the chief constable, person A or person B has not been given such notice of the proceedings as is required by rules of court,
  - (b) without giving the chief constable, person A or person B the opportunity to make representations about the interim extension or (as the case may be) variation of the order,
  - (c) without the consent of person B.

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- (5) If the sheriff extends or varies the order on an interim basis in the circumstances described in subsection (4)(a) or (b), the sheriff must hold a hearing in relation to the application under section 12(1) as soon as reasonably practicable.
- (6) The extension or variation of an order on an interim basis—
  - (a) has effect for such period as is specified by the sheriff (but see also section 13(3)),
  - (b) ceases to have effect, if it has not already done so, on the determination of the application under section 12(1).

## **15 Jurisdiction and competence**

- (1) The sheriff to whom an application under section 8(1) or 12(1) is to be made is to be determined in accordance with this section.
- (2) An application under—
  - (a) section 8(1) may be made to a sheriff in whose sheriffdom person A or person B is ordinarily resident,
  - (b) section 12(1) may be made to a sheriff of the same sheriffdom as the sheriff who considered the application for a domestic abuse protection order which resulted (whether or not after appeal) in the making of the domestic abuse protection order or interim domestic abuse protection order to which the application under section 12(1) relates.
- (3) Subsections (4) to (6) apply with respect to proceedings relating to an application made in accordance with this section.
- (4) A sheriff before whom the proceedings are brought may make an order transferring the proceedings to a sheriff of another sheriffdom if satisfied that it would be more appropriate for the proceedings to be dealt with by a sheriff of the other sheriffdom.
- (5) A sheriff may make an order under subsection (4)—
  - (a) on the application of a party to the proceedings, or
  - (b) on the sheriff's own initiative.
- (6) Where an order is made under subsection (4), a sheriff of the sheriffdom to which the proceedings are to be transferred has jurisdiction and competence to consider and determine the proceedings.
- (7) This section does not affect any power that a sheriff has to decline jurisdiction in any case.
- (8) In schedule 1 of the Courts Reform (Scotland) Act 2014 (civil proceedings, etc. in relation to which summary sheriff has competence), in paragraph 2, after subparagraph (f) insert—
  - “(g) a domestic abuse protection order under section 8(2) of the Domestic Abuse (Protection) (Scotland) Act 2021,
  - (h) an interim domestic abuse protection order under section 10(1) of that Act.”.



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## **16 Effect of making of appeal on decision appealed against**

- (1) A decision of a sheriff mentioned in subsection (2) is, for the purposes of section 110 of the Courts Reform (Scotland) Act 2014 (the “2014 Act”), a decision constituting final judgment in civil proceedings.
- (2) The decisions referred to in subsection (1) are—
  - (a) a decision to make, or refuse to make, a domestic abuse protection order,
  - (b) a decision to extend, vary or discharge, or refuse to extend, vary or discharge, a domestic abuse protection order.
- (3) Subsection (5) applies where a decision mentioned in subsection (4) is appealed against under section 110 of the 2014 Act.
- (4) The decisions referred to in subsection (3) are—
  - (a) a decision mentioned in subsection (2),
  - (b) a decision to make, or refuse to make, an interim domestic abuse protection order,
  - (c) a decision to extend, vary or discharge, or refuse to extend, vary or discharge, an interim domestic abuse protection order,
  - (d) a decision to extend or vary, or refuse to extend or vary, on an interim basis a domestic abuse protection order or an interim domestic abuse protection order.
- (5) The decision appealed against continues in effect until the appeal is disposed of, unless suspended by—
  - (a) the Sheriff Appeal Court, or
  - (b) where the appeal is remitted to the Court of Session under section 112 of the 2014 Act—
    - (i) the Sheriff Appeal Court, or
    - (ii) the Court of Session.
- (6) Subsection (7) applies where a decision of the Sheriff Appeal Court in an appeal under section 110 of the 2014 Act against a decision mentioned in subsection (4) is appealed against under section 113 of that Act.
- (7) The decision appealed against continues in effect until the appeal is disposed of, unless suspended by—
  - (a) the Sheriff Appeal Court, or
  - (b) the Court of Session.
- (8) But where the decision appealed against under section 113 of the 2014 Act is a decision to remit the case back to the sheriff, the sheriff may not take any further action in the case until the appeal under that section is disposed of.

## **17 Offence of breaching order**

- (1) A person commits an offence if the person without reasonable excuse—
  - (a) fails to do something which the person is required to do by a domestic abuse protection order or an interim domestic abuse protection order, or
  - (b) does anything which the person is prohibited from doing by such an order.
- (2) A person who commits an offence under subsection (1) is liable—



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- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).

## **18 Applications under sections 8(1) and 12(1): power to specify additional applicants**

- (1) The Scottish Ministers may by regulations make provision enabling a person mentioned in subsection (2) to make, in circumstances specified in the regulations, an application—
  - (a) under section 8(1)(b), for a domestic abuse protection order,
  - (b) under section 12(1), for a domestic abuse protection order to be extended, varied or discharged.
- (2) The persons referred to in subsection (1) are—
  - (a) a local authority,
  - (b) a local authority landlord,
  - (c) a registered social landlord,
  - (d) any other person who the Scottish Ministers consider appropriate.
- (3) Before making regulations under subsection (1), the Scottish Ministers must—
  - (a) consult—
    - (i) each person to which the regulations relate, or
    - (ii) to the extent that the regulations enable all persons of a particular type to make an application as mentioned in subsection (1), such persons as appear to the Scottish Ministers to represent the interests of that type of person, and
  - (b) consult such other persons as the Scottish Ministers consider appropriate.
- (4) Regulations under subsection (1) may—
  - (a) modify any enactment (including this Act),
  - (b) make incidental, supplementary, consequential, transitional, transitory or saving provision,
  - (c) make different provision for different purposes.
- (5) Regulations under subsection (1) are subject to the affirmative procedure.
- (6) In this section—
  - “local authority landlord” has the meaning given by section 11(3) of the Housing (Scotland) Act 2001,
  - “registered social landlord” means a body registered in the register maintained under section 20(1) of the Housing (Scotland) Act 2010.

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