

DOMESTIC ABUSE (PROTECTION) (SCOTLAND) ACT 2021

EXPLANATORY NOTES

THE ACT

Part 1 – Domestic abuse protection notices and orders

Persons to whom, and behaviour to which, notices and orders may relate

Section 3 – What constitutes abusive behaviour

19. Section 3 provides a description of what constitutes abusive behaviour. The description is non-exhaustive and it therefore remains possible in any individual case that person A's behaviour was abusive in some other way.
20. Section 3(2) provides that behaviour which is abusive of person B includes behaviour directed at person B which is violent, threatening or intimidating (for example, assault or threats). It also covers behaviour directed at person B or at any other person (in particular, a child of person B) which has as its purpose, or among its purposes, or would be considered by a reasonable person likely to have, one or more of the effects on person B that are listed in section 3(3).
21. Section 3(3) provides a list of effects on person B that are relevant in order to indicate behaviour is abusive in connection with DAPNs and DAPOs. This is intended to ensure that, for example, psychological abuse or coercive and controlling behaviour falls within the definition of abusive behaviour.
22. Section 3(3)(a) provides that behaviour which makes person B dependent on or subordinate to person A can be considered to have a relevant effect. This could include, for example, preventing person B from having access to money, forcing person B to leave their job, taking charge of household decision-making to the exclusion of person B or treating person B as a domestic slave.
23. Section 3(3)(b) provides that behaviour which has the effect of isolating person B from friends, relatives or other sources of support can be considered to have a relevant effect. This could include, for example, controlling person B's movements or access to their phone or other forms of communication, not allowing visits from or to person B's friends or family, or deliberately failing to pass on messages from friends or family.
24. Section 3(3)(c) provides that behaviour which has the effect of controlling, regulating or monitoring person B's day-to-day activities can be considered to have a relevant effect. This could include, for example, checking person B's phone, e-mail or social media use, controlling what clothes person B can or cannot wear, or placing unreasonable requirements on person B to, for example, prepare meals in a particular way at a particular time every day.
25. Section 3(3)(d) provides that behaviour which has the effect of depriving person B of, or restricting person B's, freedom of action is behaviour which can be considered

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

to have a relevant effect. This addresses behaviour which robs person B of their autonomy, for example, preventing person B from attending work or college, preventing person B from leaving the house alone, insisting on accompanying person B to medical appointments, or taking decisions for person B in relation to private, individual matters that a person would normally decide for themselves.

26. Section 3(3)(e) provides that behaviour which has the effect of frightening, humiliating, degrading or punishing person B is behaviour which has a relevant effect. This could include, for example, abusive name-calling, threats of self-harm, manipulating person B into doubting their sanity, controlling person B's access to the toilet or forcing person B to eat food off the floor.
27. Section 3(4) provides that references to violent behaviour includes sexual violence as well as physical violence. It should be noted that non-violent sexually abusive behaviour may be considered abusive under section 3(2)(b) and (3) where it is behaviour that is intended, or likely to have, one of the relevant effects on person B; for example, behaviour which has the effect of frightening, humiliating, degrading or punishing person B. Non-violent sexually abusive behaviour may also be considered threatening or intimidating in terms of section 3(2)(a).