



# Domestic Abuse (Protection) (Scotland) Act 2021

2021 asp 16

## PART 1

### DOMESTIC ABUSE PROTECTION NOTICES AND ORDERS

#### *Domestic abuse protection orders*

PROSPECTIVE

#### **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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*Status: This version of this provision is prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Domestic Abuse (Protection) (Scotland) Act 2021, Section 8. (See end of Document for details)*

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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.

**Status:**

This version of this provision is prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Domestic Abuse (Protection) (Scotland) Act 2021, Section 8.