

# Domestic Abuse (Scotland) Act 2011

## 2011 asp 13

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 16th March 2011 and received Royal Assent on 20th April 2011**

An Act of the Scottish Parliament to amend the Protection from Harassment Act 1997 by making provision in relation to harassment amounting to domestic abuse; to make breach of an interdict relating to domestic abuse with a power of arrest attached an offence; and for connected purposes.

### *Harassment amounting to domestic abuse*

#### **1 Harassment amounting to domestic abuse**

(1) In section 8 (harassment) of the Protection from Harassment Act 1997 (c.40), after subsection (1) insert—

“(1A) Subsection (1) is subject to section 8A.”

(2) After that section insert—

#### **“8A Harassment amounting to domestic abuse**

(1) Every individual has a right to be free from harassment and, accordingly, a person must not engage in conduct which amounts to harassment of another and—

- (a) is intended to amount to harassment of that person; or
- (b) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person.

(2) Subsection (1) only applies where the conduct referred to amounts to domestic abuse.

(3) Subsections (2) to (7) of section 8 apply in relation to subsection (1) as they apply in relation to subsection (1) of that section but with the following modifications—

- (a) in subsections (2) and (4), the words “course of” are omitted;
- (b) for subsection (3) there is substituted—

“(3) For the purposes of this section—

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*Changes to legislation: There are currently no known outstanding effects for the Domestic Abuse (Scotland) Act 2011. (See end of Document for details)*

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“conduct”—

- (a) may involve behaviour on one or more than one occasion; and
- (b) includes—
  - (i) speech; and
  - (ii) presence in any place or area; and

“harassment” of a person includes causing the person alarm or distress.”; and

- (c) in subsection (4)(b), for “pursued” substitute “engaged in”.

- (3) In section 9(1) (breach of non-harassment order) of that Act, after “section 8” insert “or section 8A”.
- (4) In section 18B(1) (actions of harassment) of the Prescription and Limitation (Scotland) Act 1973 (c.52), after “section 8” insert “or section 8A”.
- (5) In section 2(1)(b)(ii) (transmission of deceased's rights to executor) of the Damages (Scotland) Act 2011 (asp 7), after “section 8” insert “or section 8A”.

*Breach of domestic abuse interdict with power of arrest*

**2 Breach of domestic abuse interdict with power of arrest**

- (1) This section applies where—
  - (a) on or after the date on which this section comes into force, an interdict is granted against a person,
  - (b) a determination has been made under section 3(1) that the interdict is a domestic abuse interdict,
  - (c) that determination is in effect,
  - (d) a power of arrest is attached to the interdict under section 1(1A) or (2) of the Protection from Abuse (Scotland) Act 2001 (asp 14), and
  - (e) that power of arrest is in effect.
- (2) A person who breaches an interdict to which this section applies is guilty of an offence.
- (3) A person guilty of an offence under subsection (2) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both,
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.
- (4) Following conviction, a breach of an interdict to which this section applies is not punishable other than in accordance with subsection (3).
- (5) Where a person is convicted of an offence under this section in respect of any conduct, that conduct is not punishable as a contempt of court.
- (6) A person cannot be convicted of an offence under this section in respect of any conduct which has been punished as a contempt of court.
- (7) In this section and section 3, “interdict” includes interim interdict.

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### **3 Determination as to whether an interdict is a domestic abuse interdict**

- (1) A person who is applying for, or who has obtained, an interdict may apply to the court for a determination that the interdict is a domestic abuse interdict.
- (2) The court may make the determination if satisfied that the interdict is, or is to be, granted for the protection of the applicant against a person who is (or was)—
  - (a) the applicant's spouse,
  - (b) the applicant's civil partner,
  - (c) living with the applicant as if they were husband and wife or civil partners, or
  - (d) in an intimate personal relationship with the applicant.
- (3) Before making a determination under subsection (1), the court must give the person against whom the interdict is, or is to be, granted (“A”) an opportunity to make representations.
- (4) A determination under subsection (1) is of no effect for the purposes of section 2 until a copy of the interlocutor containing the determination has been served on A.
- (5) Where a court varies an interdict in relation to which a determination under subsection (1) is in effect, the court must—
  - (a) review whether the interdict as varied continues to be a domestic abuse interdict, and
  - (b) if not, recall the determination.
- (6) A determination under subsection (1) ceases to have effect for the purposes of section 2 if it is recalled under subsection (5).

#### *General*

### **4 Ancillary provision**

- (1) The Scottish Ministers may by order made by statutory instrument make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under subsection (1) may modify any enactment (including this Act).
- (3) An order under subsection (1) is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

### **5 Short title and commencement**

- (1) This Act may be cited as the Domestic Abuse (Scotland) Act 2011.
- (2) This Act, except section 4 and this section, comes into force three months after the day on which the Bill for this Act receives Royal Assent.

**Changes to legislation:**

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