



Domestic Abuse (Protection) (Scotland) Act 2021

2021 asp 16

PART 1

DOMESTIC ABUSE PROTECTION NOTICES AND ORDERS

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.

Status: Prospective version(s) available.

Status: This is the original version (as it was originally enacted).

- (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.