

# Domestic Abuse (Scotland) Bill

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## Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

### Groupings of amendments

#### **Relationship context of offence**

1, 2

#### **Extra-territorial jurisdiction**

3

#### **Aggravation in relation to a child**

4, 5, 6, 7, 8, 9

#### **Restriction on bail in solemn cases**

10, 11

#### **Non-harassment orders as to children**

14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 23, 25

*Notes on amendments in this group*

Amendments 18, 19 and 20 are pre-empted by amendment 31 in group “Mandatory non-harassment orders”

Amendment 24 pre-empts amendment 23

#### **Mandatory non-harassment orders**

29, 30, 31, 32, 33, 34, 35, 36

*Notes on amendments in this group*

Amendment 31 pre-empts amendments 18, 19 and 20 in group “Non-harassment orders as to children”

#### **Specialist domestic abuse courts**

37, 27, 28

**Annual report on support to victims**

13

**Duty to promote public awareness**

26

**Review of measures to exclude**

38

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### Amendments in debating order

#### Relationship context of offence

##### **Margaret Mitchell**

- 1 In section 1, page 1, line 11, after <("B") insert <in the context of the relationship between A and B>

##### **Margaret Mitchell**

- 2 In section 1, page 1, line 14, after <behaviour> insert <in the context of the relationship between A and B>

#### Extra-territorial jurisdiction

##### **Michael Matheson**

- 3 After section 2, insert—

##### **<Extra-territorial jurisdiction**

- (1) An offence under section 1(1) can be constituted by a course of behaviour engaged in by A even if the course of behaviour occurs wholly or partly outside the United Kingdom.
- (2) If the course of behaviour occurs wholly outside the United Kingdom—
  - (a) A may be prosecuted, tried and punished for the offence—
    - (i) in a sheriff court district in which A is apprehended or in custody, or
    - (ii) in a sheriff court district that is determined by the Lord Advocate, as if the offence has been committed entirely in that district,
  - (b) the offence is, for all things incidental to or consequential on trial and punishment, deemed to have been committed entirely in that district.
- (3) Subsections (1) and (2) apply only if A, when the course of behaviour occurs—
  - (a) is habitually resident in Scotland, or
  - (b) is a UK national.
- (4) "UK national" means someone who is, as referred to in the British Nationality Act 1981—
  - (a) a British citizen,
  - (b) a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen, or
  - (c) a British subject or a British protected person.>

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### Aggravation in relation to a child

#### Michael Matheson

4 In section 4, page 2, line 36, at beginning insert—

<(2A) The offence is so aggravated if>

#### Michael Matheson

5 In section 4, page 2, line 37, at end insert—

<(2B) The offence is so aggravated if a reasonable person would consider the course of behaviour, or an incident of A's behaviour that forms part of the course of behaviour, to be likely to adversely affect a child usually residing with A or B (or both).>

#### Michael Matheson

6 In section 4, page 2, line 37, at end insert—

<(2C) For it to be proved that the offence is so aggravated, there does not need to be evidence that a child—

(a) has ever had any—

(i) awareness of A's behaviour, or

(ii) understanding of the nature of A's behaviour, or

(b) has ever been adversely affected by A's behaviour.>

#### Michael Matheson

7 In section 4, page 3, line 10, at end insert—

<( ) Each of subsections (2) to (2B) operates separately along with subsection (2C), but subsections (2) to (2B) may be used in combination along with subsection (2C).>

#### Michael Matheson

8 In section 4, page 3, line 10, at end insert—

<( ) Nothing in subsections (2) to (2C) prevents evidence from being led about—

(a) a child's observations of, or feelings as to, A's behaviour, or

(b) a child's situation so far as arising because of A's behaviour.>

#### Michael Matheson

9 In section 4, page 3, line 10, at end insert—

<( ) In subsections (2B) and (2C), the references to adversely affecting a child include causing the child to suffer fear, alarm or distress.>

### Restriction on bail in solemn cases

#### Michael Matheson

10 In section 11, page 5, line 7, at end insert—

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<restriction on bail in solemn cases,>

### Michael Matheson

11 In the schedule, page 7, line 5, at end insert—

#### <CHAPTER

#### RESTRICTION ON BAIL IN SOLEMN CASES

A1(1) The 1995 Act is amended as follows.

(2) In section 23D—

(a) in subsection (2)—

(i) in paragraph (a), for the words “a violent or sexual offence” there is substituted “an offence falling within subsection (3A)”,

(ii) in paragraph (b), for the words “a violent or sexual offence” there is substituted “an offence falling within subsection (3A)”,

(b) after subsection (3) there is inserted—

“(3A) An offence falls within this subsection if it is—

(a) a violent offence,

(b) a sexual offence, or

(c) a domestic abuse offence.”,

(c) in subsection (4), after the first definition there is inserted—

““domestic abuse offence” means—

(a) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2017, or

(b) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016;”,

(d) in subsection (5), for the words “a violent or sexual offence or a drug trafficking offence” there is substituted “a type of offence”.>

### Non-harassment orders as to children

#### Mairi Gougeon

14 In the schedule, page 12, line 27, leave out <(5)(b)> and insert <(1A)(c)>

#### Mairi Gougeon

15 In the schedule, page 12, line 27, at end insert—

<(1A) For the purposes of this section—

(a) “victim” has the same meaning as it has in section 234A,

(b) “child” has the same meaning as given by section 4(5) of the Domestic Abuse (Scotland) Act 2017,

(c) the list is—

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- (i) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2017,
- (ii) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.>

**Mairi Gougeon**

**16** In the schedule, page 12, line 27, at end insert—

<(1B) A non-harassment order in the person’s case may include provision for the order to apply in favour of any of the following, in addition to the victim—

- (a) in any circumstances, a child usually residing with the person or a child usually residing with the victim (or a child usually residing with both the person and the victim),
- (b) where the offence is one under section 1(1) of the Domestic Abuse (Scotland) Act 2017, and is aggravated as described in section 4(1)(a) of that Act, a child to whom the aggravation relates,

if the court is satisfied that it is appropriate for the child to be protected by the order.>

**Liam McArthur**

**17** In the schedule, page 12, line 30, after <case> insert <—

- ( ) in respect of the victim,
- ( ) where the offence is aggravated within the meaning of section 4 of the Domestic Abuse (Scotland) Act 2017, in respect of a child>

**Liam McArthur**

**18** In the schedule, page 12, line 34, after <for> insert <—

( )>

**Mairi Gougeon**

**19** In the schedule, page 12, line 34, after <victim> insert <, or

- ( ) the children (if any) in mind by virtue of subsection (1B),>

**Liam McArthur**

**20** In the schedule, page 12, line 34, at end insert—

<( ) where the offence is aggravated within the meaning of section 4 of the Domestic Abuse (Scotland) Act 2017, a child to be protected by such an order.>

**Mairi Gougeon**

**21** In the schedule, page 12, line 35, leave out <Accordingly,>

**Liam McArthur**

**22** In the schedule, page 13, line 4, at end insert—

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- <( ) where the offence is aggravated within the meaning of section 4 of the Domestic Abuse (Scotland) Act 2017, the references in subsections (1), (2) and (2BA) of section 234A to the victim are to be read as being to the victim and a child,
- ( ) where the offence is aggravated within the meaning of section 4 of the Domestic Abuse (Scotland) Act 2017, the references in subsections (1), (2A) and (2BA) of section 234A to misconduct are to be read as being to—
  - (A) misconduct in respect of the victim, and
  - (B) behaviour involving a child as specified in the complaint or libelled in the indictment,
- ( ) where the offence is aggravated within the meaning of section 4 of the Domestic Abuse (Scotland) Act 2017, the references in subsection (1B) of section 234A to conduct are to be read as being to—
  - (A) conduct in respect of the victim, and
  - (B) behaviour involving a child as specified in the complaint or libelled in the indictment,>

### **Mairi Gougeon**

- 24 In the schedule, page 13, leave out lines 19 to 25

### **Liam McArthur**

- 23 In the schedule, page 13, line 19, at end insert—

<( ) “child” means a child as referred to in section 4 of the Domestic Abuse (Scotland) Act 2017,>

### **Liam McArthur**

- 25 In the schedule, page 13, line 25, at end insert—

#### **<234AZB Non-harassment orders: domestic abuse cases: further provision**

- (1) The Scottish Ministers may by regulations make further provision about non-harassment orders in cases where an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2017 has been aggravated as described in section 4(1) of that Act.
- (2) Regulations under subsection (1) may in particular make provision about the circumstances where a court must consider making a non-harassment order for the purpose of the protection of a child.
- (3) Regulations under subsection (1) are subject to the affirmative procedure.”.>

### **Mandatory non-harassment orders**

#### **Linda Fabiani**

- 29 In the schedule, page 12, line 29, leave out <consider whether to>

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**Linda Fabiani**

- 30 In the schedule, page 12, line 31, leave out <the question of whether to make such an order> and insert <—
- (i) the terms of the order,
  - (ii) the period for which the order is to run>

**Linda Fabiani**

- 31 In the schedule, page 12, line 33, leave out from <including> to end of line 34

**Linda Fabiani**

- 32 In the schedule, page 13, leave out lines 1 to 3 and insert—
- <(aa) subsections (1A) and (2) of that section are of no effect,>

**Linda Fabiani**

- 33 In the schedule, page 13, line 4, at end insert—
- <( ) the references in subsections (2A) and (2BA) of that section to the purpose of subsection (2) are to be read as being to the court’s consideration of—
- (A) the terms of the order,
  - (B) the period for which the order is to run,>

**Linda Fabiani**

- 34 In the schedule, page 13, line 7, leave out <making of a non-harassment order is being considered> and insert <non-harassment order is being made>

**Linda Fabiani**

- 35 In the schedule, page 13, line 11, leave out <the question of whether to make a non-harassment order> and insert <—
- (A) the terms of the order,
  - (B) the period for which the order is to run>

**Linda Fabiani**

- 36 In the schedule, page 13, line 12, at end insert—
- <( ) the reference in subsection (3) of that section to an appeal is to be read as an appeal against—
- (A) the terms of the order,
  - (B) the period for which the order is to run,>

**Specialist domestic abuse courts**

**Claire Baker**

- 37 In section 12, page 5, line 22, at end insert—



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- <( ) Regulations under subsection (1) may in particular make provision in respect of specialist courts to consider cases involving—
- (a) an offence under section 1(1),
  - (b) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.>

### Claire Baker

27 After section 12, insert—

#### *<Power to designate specialist courts*

#### **Power to designate specialist courts**

- (1) The Courts Reform (Scotland) Act 2014 is amended as follows.
- (2) After section 28, there is inserted—

**“28A Scottish Ministers’ power to require designation of specialist court: domestic abuse cases**

  - (1) The Scottish Ministers may by order provide that a sheriff principal of a specified sheriffdom must designate one or more sheriff courts in the sheriffdom as a specialist court for the purposes of dealing with the category of case mentioned in subsection (2).
  - (2) The category of case is a case involving—
    - (a) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2017,
    - (b) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.
  - (3) In subsection (1), “specified” means specified by an order under that subsection.
  - (4) An order under subsection (1) may be made only with the consent of the Lord President of the Court of Session.
  - (5) The sheriff principal of a specified sheriffdom may, in relation to the sheriff court designated under subsection (1)—
    - (a) designate one or more sheriffs of the sheriffdom as specialists in the category of case mentioned in subsection (2),
    - (b) make special provision for the disposal of business, including the period within which proceedings relating to that category of case must be brought.
  - (6) An order under subsection (1) does not affect—
    - (a) in relation to the sheriffdom specified in the order, the jurisdiction or competence of a sheriff of any other sheriffdom to deal with the category of case mentioned in subsection (2),
    - (b) in relation to the sheriff court designated under subsection (1), the jurisdiction or competence of a sheriff sitting at any other sheriff court to deal with such proceedings.
- (3) In section 133, in paragraph (a) of subsection (2) after the words “section 2(1),” there is inserted “28A,”.>

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**Claire Baker**

28 After section 12, insert—

*<Review of operation of Act*

### **Review of operation of Act**

- (1) The Scottish Ministers must review the operation of this Act and lay before the Parliament a report on that review at the end of the reporting period.
- (2) The report must set out in relation to the reporting period—
  - (a) the number of cases involving—
    - (i) an offence under section 1(1),
    - (ii) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,
  - (b) the number of convictions in respect of a type of case mentioned in paragraph (a)(i),
  - (c) the average length of time taken to dispose of each type of case mentioned in paragraph (a),
  - (d) information about the experience of witnesses in respect of each type of case mentioned in paragraph (a),
  - (e) such other information as the Scottish Ministers think fit.
- (3) The information mentioned under subsection (2) must be broken down in respect of—
  - (a) sheriff courts that have been constituted to specialise in dealing with offences the commission of which involves domestic abuse,
  - (b) sheriff courts other than the sheriff courts mentioned in paragraph (a).
- (4) The report must include a statement by the Scottish Ministers setting out—
  - (a) whether they are planning to recommend to the Lord President of the Court of Session that additional sheriff courts must be constituted to specialise in dealing with cases of the type mentioned in subsection (2)(a), or
  - (b) where no such recommendation is to be made, their reasons for not doing so.
- (5) A report prepared under this section must be laid before the Parliament.
- (6) In this section, the “reporting period” means the period of two years from the day on which the Bill for this Act receives Royal Assent.>

### **Annual report on support to victims**

**Mary Fee**

13 After section 12, insert—

*<Annual report*

### **Annual report**

- (1) The Scottish Ministers must as soon as practicable after 31 March each year prepare and publish an annual report setting out information about cases involving—

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- (a) the commission of an offence under section 1(1),
  - (b) the commission of an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.
- (2) The report must include in relation to the reporting year—
- (a) information about the provision of support and assistance to a person who is, or appears to be a victim of an offence mentioned in subsection (1), including—
    - (i) the average period of time during which support and assistance was provided,
    - (ii) the types of support and assistance provided, and
    - (iii) the manner in which the support and assistance was provided,
  - (b) information about the provision of funding to secure the support and assistance mentioned in paragraph (a),
  - (c) information about the number of proceedings involving an offence mentioned in subsection (1) in relation to which special measures were applied for and authorised,
  - (d) any steps that the Scottish Ministers plan to take as a consequence of the information provided in accordance with paragraphs (a) to (c).
- (3) A report published under this section must be laid before the Parliament.
- (4) In this section,
- the “reporting year” means—
    - (a) in the case of the first report, the period of time from the date on which the Bill for this Act receives Royal Assent until 31 March of the following year,
    - (b) in the case of each subsequent report, the period of time beginning with 1 April and ending with 31 March in the following year,
- “special measures” means any of the special measures set out in, or prescribed under, section 271H of the Criminal Procedure (Scotland) Act 1995.>

### **Duty to promote public awareness**

**Maurice Corry**

26 After section 12, insert—

*<Duty to promote public awareness*

#### **Duty to promote public awareness**

The Scottish Ministers must take such steps as they consider appropriate to promote public awareness and understanding of the operation of this Act, including the kind of conduct that constitutes abusive behaviour for the purposes of an offence under section 1(1).>

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### Review of measures to exclude

Liam Kerr

38 After section 12, insert—

*<Review of measures to exclude*

#### **Review of measures to exclude**

- (1) The Scottish Ministers must carry out a review of legal measures that have the effect of temporarily excluding a person (“A”) from the home of A’s partner or ex-partner (“B”) where it appears that—
  - (a) A has, or may have, committed an offence against B under section 1(1), and
  - (b) there is a risk of immediate danger to B or a child usually residing with B.
- (2) In carrying out the review under subsection (1), the Scottish Ministers must consult—
  - (a) Police Scotland,
  - (b) the Crown Office and Procurator Fiscal Service,
  - (c) such persons as they consider to be representative of victims of domestic abuse, and
  - (d) such other persons as they consider appropriate.
- (3) The review must be carried out within 1 year from the day on which the Bill for this Act receives Royal Assent.
- (4) The Scottish Ministers must—
  - (a) publish a report setting out—
    - (i) the findings of the review under subsection (1),
    - (ii) any steps that they plan to take in consequence of the review,
  - (b) lay a copy of the report before the Parliament.
- (5) In this section, “home” means the dwelling where B is for the time being living, which B may or may not share with A.>

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