

# Domestic Abuse (Protection) (Scotland) Bill

[As amended at Stage 2]

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## Revised Explanatory Notes

### Introduction

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these Revised Explanatory Notes are published to accompany the Domestic Abuse (Protection) (Scotland) Bill (which was introduced in the Scottish Parliament on 2 October 2020) as amended at Stage 2. Text has been added or amended as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.
2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

### The Bill

4. The Bill is intended to provide the courts with a new power to impose protective orders (“domestic abuse protection orders” or DAPOs) which can remove a suspected perpetrator of domestic abuse (“person A”) from the home of a person at risk (“person B”) and prohibit them from contacting or otherwise abusing person B while the order is in effect. The Bill provides a power for the police to impose a very short-term administrative notice (a “domestic abuse protection notice” or DAPN) ahead of applying to the court for a DAPO in circumstances where such a notice is necessary for

protecting person B from abusive behaviour by person A before an interim or full DAPO can be made. The Bill requires the police to apply to a court for a DAPO no later than the next court day after giving a DAPN.

5. The orders are intended to fill the gap that exists in that where someone is experiencing domestic abuse, they are likely to lack the freedom of action to pursue other longer term remedies to address their situation such as seeking a civil order through the courts themselves, and the police and criminal courts would only have powers to impose restrictions where the alleged perpetrator has been arrested on suspicion of having committed a criminal offence or convicted of a criminal offence. The orders will provide the person at risk with some certainty about their protection which is immediate, does not require any action to be taken by the person at risk and is independent of any criminal investigation.

6. The police notices and court-issued orders are intended to provide another means by which action can be taken to protect someone who is at risk of abuse from their partner or ex-partner. The intention is that during the time in which the police notices and court-imposed protection orders are in place, the person at risk would be protected from harm and would have time and space to consider their long-term housing options and take steps to secure their safety. Depending on the circumstances, this could involve moving home, pursuit of an exclusion order, non-harassment order or interdict or steps to remove a person from shared tenancy.

7. The Bill will also create a new ground on which a social landlord can apply to the court for recovery of possession of a house from a perpetrator of domestic abuse with a view to transferring it to the victim or, where the perpetrator and victim are joint tenants, to end the perpetrator's interest in the tenancy and enable the victim to remain in the family home.

## Part 1 – Domestic abuse protection notices and orders

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

#### **Section 1 – Persons to whom domestic abuse protection notices and orders may relate**

8. Section 1 describes who can be protected by the operation of domestic abuse protection notices (DAPN) and domestic abuse protection

orders (DAPO) as well as describing the persons against whom such notices and orders may be made. The person who is protected is person B and the person against whom the DAPN or DAPO is imposed is person A.

9. Section 1(1)(a) provides that person A must be at least 18 years old.

10. Section 1(1)(b) provides that person B must be at least 16 years old. In addition, person B must be the partner or ex-partner of person A and person A must live with person B some or all of the time. The DAPN or DAPO must be for the purpose of protecting person B from abusive behaviour by person A.

11. Section 1(2) provides a definition of partner. Person A and person B are partners if they are each other's spouse or civil partner or in an intimate personal relationship with each other. Former relationships of the specified types are covered in addition to current relationships.

12. The phrase "intimate personal relationship" is intended to cover relationships between boyfriends and girlfriends (including same-sex and non-binary relationships), although the relationship need not be sexual. Other family relationships and other types of relationship (e.g. between friends or business partners or work colleagues) are not covered.

## **Section 2 – Meaning of abusive behaviour**

13. Section 2 provides the meaning of abusive behaviour by person A towards person B.

14. Section 2(2) provides that behaviour by person A is abusive of person B if a reasonable person would consider the behaviour is likely to cause person B to suffer physical or psychological harm. References to psychological harm include fear, alarm or distress by virtue of section 2(5).

15. Under section 2(2), there is no requirement for person B to actually suffer physical or psychological harm.

16. Section 2(3) provides that "behaviour" includes things said or otherwise communicated as well as things done. It also encompasses an intentional failure to do, say or otherwise communicate something (e.g. a failure to pass on times and dates of appointments or social occasions, or a failure to feed a family pet).

17. Section 2(4)(a) provides that behaviour directed at a person includes behaviour directed towards property. It is not a requirement that the property must belong to person B. It could, for instance, be shared property or property belonging to a third party, such as person A's parents. Property includes pets or other animals (for example agricultural livestock) whether belonging to person B or others.

18. Section 2(4)(b) provides that behaviour directed at person B includes behaviour carried out with or through a third party. This might include, for example, getting another person to spy on or report on the activities of person B. The third party's involvement could possibly be unwitting or unwilling, as they may be entirely unaware that their behaviour was helping person A to abuse person B or may have been coerced into participating in the abuse of person B.

19. Section 2(6) provides that for the purpose of Part 1, 'behaviour' may consist of a single incident or a course of conduct, and so in determining whether behaviour is abusive, regard is to be had, not only to whether an individual incident is likely to cause person B to suffer physical or psychological harm, but whether a course of conduct as a whole is likely to do so.

### **Section 3 – What constitutes abusive behaviour**

20. 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.

21. 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).

22. 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.

23. 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.

24. 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.

25. 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.

26. 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 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.

27. 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.

28. 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).

## Domestic abuse protection notices

### **Section 4 – Making of domestic abuse protection notice**

29. Section 4 sets out the test for making a DAPN and the process by which a senior constable can make a DAPN. A definition of a ‘senior constable’ is provided at section 17. A senior constable is a constable holding the rank of inspector or above.

30. Section 4(1) sets out the conditions which must be met for a senior constable to make a DAPN.

31. Section 4(1)(a) provides that the senior constable must have reasonable grounds for believing that person A has engaged in behaviour that is abusive of person B. A definition of abusive behaviour is contained at sections 2 and 3.

32. Section 4(1)(b) provides that the senior constable must have reasonable grounds to believe that it is necessary for a DAPO to be made for the purpose of protecting person B from abusive behaviour by person A. Only a sheriff can make a DAPO but this part of the test reflects the fact that a DAPN can only exist as a precursor to an application for a DAPO under section 8(1).

33. Section 4(1)(c) provides that the senior constable must also have reasonable grounds for believing that there is a risk of person A engaging in further abusive behaviour towards person B immediately and it is necessary to make a DAPN to protect person B from that abusive behaviour.

34. Section 4(1A) makes clear for the purposes of section 4(1)(c), “immediately” means in the period before the sheriff can make an interim DAPO or a full DAPO.

35. Section 4(2) provides that, in determining whether person A has been abusive towards person B, it does not matter whether the abusive behaviour occurred in Scotland or elsewhere.

36. Section 4(3) sets out the steps which the senior constable must take and factors which the senior constable must take into account before making a DAPN.

37. Section 4(3)(aa) provides that they must take such steps as are reasonable in the circumstances to establish whether person A and person B have any views in relation to the notice which they wish to be taken into account and, if so, to obtain those views. It does not need to be the senior constable who personally obtains the views – it could, for example, be a constable who attends an incident involving person A and person B.

38. Section 4(3)(ab) provides the senior constable must take into account any views of which the senior constable is aware as a result of the duty contained in section 4(3)(aa) and the welfare of any child whose interests the senior constable considers to be relevant to the making of a DAPN. In the majority of cases, this is likely to be a child who normally resides with person B.

39. Section 4(4) provides, for the avoidance of doubt, that the senior constable does not require to obtain the consent of person B before making a DAPN.

## **Section 5 – Content and effect of notice**

40. Section 5 sets out what conditions may be included in a DAPN and the period for which it has effect.

41. Section 5(1) provides a list of prohibitions and requirements that may be included in a DAPN. The list is exhaustive and a DAPN cannot include a prohibition or requirement that is not listed in this subsection.

42. Section 5(2) provides that a prohibition or requirement listed at section 5(1) can only be imposed in a DAPN if the senior constable who makes the notice considers that it is necessary to do so to protect person B from abusive behaviour by person A.

43. Section 5(2A) provides discretion to the senior constable to decide whether to make it a requirement of a DAPN for person A, at the time the notice is delivered, to either: provide an address at which person A can be notified with details of the hearing to be held on the application for a DAPO; or undertake to provide such an address within a specified time or to attend a specified police station at a specified time for the purpose of being given notice of the hearing. Person A would then be required to comply with any undertaking given.

44. Section 5(3) provides that a DAPN takes effect when it is given to person A in accordance with section 6(3), which requires that it must be delivered in person to person A by a constable. Section 5(3) further provides that the requirement mentioned in subsection (2A) takes effect only if and when person A fails to provide an address in response to a request under section 6(4), which places a duty on the constable, when giving the notice, to ask person A for an address at which person A may be given notice of the hearing on the application for a DAPO. A DAPN ceases to have effect in accordance with section 11(9). If the sheriff makes a DAPO or interim DAPO at the hearing under section 11(3) then the DAPN ceases to have effect when the sheriff makes the order. If the sheriff does not make a DAPO or interim DAPO at the hearing then the DAPN ceases to have effect when the hearing ends.

45. Section 5(4) makes clear that the term “specified” as contained in section 5(2A) means specified by the constable delivering the notice to person A under section 6(3).

## **Section 6 – Further requirements in relation to notice**

46. Section 6 sets out further requirements regarding the content and giving of a DAPN.

47. Section 6(1) provides that a DAPN must be in writing.

48. Section 6(2) sets out the information that must be included in a DAPN.

49. Section 6(2)(a) provides that a DAPN must state that the senior constable who made the notice had reasonable grounds for believing that: person A engaged in behaviour which is abusive of person B; it is necessary for a DAPO to be made to protect person B from abusive behaviour by person A; and there is a risk of person A engaging in further



behaviour which is abusive of person B immediately and it is necessary to make the DAPN to protect B from that behaviour. Section 6(2A) makes clear that the reference to “immediately” in subsection (2)(a)(iii) has the same meaning given by section 4(1A) which means in the period before the sheriff can make an interim domestic abuse protection order or a domestic abuse protection order.

50. Section 6(2)(b) provides that a DAPN must state that the person against whom it has been made commits an offence if, without reasonable excuse, they fail to do anything that they are required to do by the notice, or do anything which they are prohibited from doing by the notice (see section 7).

51. Sections 6(2)(c) to (g) set out the information about the procedure for applying for a DAPO that requires to be included in a DAPN. It must explain that the police will make an application to the sheriff for a DAPO no later than the first court day after the day on which the DAPN is given to A, that person A will be given notice of the hearing on a DAPO to be held under section 11(3), that the DAPN ceases to have effect when the sheriff makes a DAPO or interim DAPO, or otherwise when the hearing ends and that a DAPO may impose such requirements and prohibitions as the sheriff considers to be necessary for the purpose of protecting person B from abusive behaviour by person A. Section 6(3) requires the DAPN to be given in person to person A by a constable.

52. Section 6(4) places a duty on the constable to ask person A for an address at which they can be contacted in order to give them notice of the hearing on the application for a DAPO.

## **Section 7 – Offence of breaching notice**

53. Section 7 provides that it is a criminal offence for a person to breach the terms of a DAPN without reasonable excuse. The maximum penalty on summary conviction is 12 months imprisonment and a fine not exceeding level 3 on the standard scale.

## **Domestic abuse protection orders**

### **Section 8 – Making of domestic abuse protection order**

54. Section 8 sets out the process for applying to the court for a DAPO. The application will be made in the name of the chief constable but section

18(1) of the Police and Fire (Reform) (Scotland) Act 2012 enables the chief constable to direct or authorise any other constable to carry out any of his functions.

55. Section 8(1)(a) provides that where a senior constable has made a DAPN, the chief constable must apply to the sheriff for a DAPO in relation to the person to whom the DAPN has been given. Section 8(1)(b) allows an application to be made in any case in which a DAPN has not been given.

56. Section 8(2) provides for the test which the sheriff must apply in determining whether to make a DAPO. Subsection (2)(a) provides that the sheriff may make a DAPO only if they are satisfied that: person A has engaged in behaviour which is abusive of person B; there is an immediate or imminent risk of person A engaging in further behaviour which is abusive of person B; and that it is necessary to make the order to protect person B from abusive behaviour by person A. Section 8(2)(b) provides that a sheriff may only make a DAPO if person B consents to the order being made.

57. Section 8(3) provides that, in determining whether person A has been abusive towards person B, it does not matter whether the abusive behaviour occurred in Scotland or elsewhere.

58. Section 8(3A) provides that, in deciding whether it is necessary to make a DAPO to protect person B from abusive behaviour by person A, the abusive behaviour the court has in mind must include, but need not be limited to, the behaviour that the sheriff considers there is a risk of occurring immediately or imminently. This means that the sheriff can also have regard to any risk of abusive behaviour that may occur at a later point in time (although this needs to be read in the context of the DAPOs only lasting for a maximum of two months, which may be extendable on application to three months).

59. Section 8(4) provides that the sheriff may permit person B to become party to proceedings.

60. Section 8(5) provides that, before determining the application, the sheriff must give an opportunity to the chief constable, person A and person B to make representations about the application, although section 10(5) enables the sheriff to make an interim order even if such an opportunity has not been given.

61. Section 8(6) sets out matters which the sheriff is required to take into account in determining an application for a DAPO. They are: any representations made to the sheriff by the chief constable or by person A; any views of person B in relation to the application of which the sheriff is aware, whether these views are expressed in representations made to the sheriff or by another means, such as expressing them to the police; and the welfare of any child whose interests the sheriff considers to be relevant to the application.

62. Subsection (6A) when read together with subsection (6B) places a duty on the sheriff to take such steps as are reasonable in the circumstances to give a child an opportunity to express views in relation to an application for a DAPO where the sheriff is considering making provision in an order which would relate directly to the child, such as a requirement that person A should not contact or approach the child. The sheriff is then required to take into account any views of the child of which the sheriff is aware, whether as a result of the steps taken to give an opportunity to express their views or otherwise.

63. Section (6C) provides that in taking account of any such views of the child, the sheriff must take into account the child's age and understanding.

## **Section 9 – Content and effect of order**

64. Section 9 sets out the provisions that may be included in a DAPO and the period for which it has effect.

65. Section 9(1) provides that a DAPO is an order which requires person A to do, or prohibits A from doing, a thing or things specified in the order.

66. Section 9(2) provides that the requirements and prohibitions may include, but are not limited to, any requirement or prohibition which can be imposed by a DAPN under section 5(1). This might include, for example, a requirement to leave the place where person B is living, or a prohibition on contacting or approaching person B. In contrast with the DAPN, there is no exhaustive list of provisions which may be included in a DAPO and the sheriff may impose any prohibition or requirement that they consider necessary for the purpose of protecting person B from abusive behaviour by person A.

67. Section 9(3) provides that the sheriff can only include a prohibition or requirement in a DAPO if they consider it is necessary for the purpose of protecting person B from abusive behaviour by person A.

68. Section 9(4) provides that a sheriff can make provision in a DAPO which has effect outside the sheriff's sheriffdom so, for example, a prohibition on person A contacting or approaching person B could apply outside the sheriff's sheriffdom.

69. Section 9(5) provides for the period of time for which a DAPO has effect. Section 9(5)(a) provides that a DAPO has effect for such a period as is specified in the order, and that this period must not exceed two months. Section 9(5)(b) provides that an order may specify different periods for which different requirements or prohibitions may have effect. This provides flexibility to address any anticipated changes to person A or person B's circumstances which the sheriff is aware of at the time that they make the DAPO. By way of example, a sheriff may consider it necessary to prohibit person A from coming within a specified distance of person B's place of work or study but if it is known that person B will not be attending this place of work or study for the full duration of the order then it would not be necessary for such a prohibition to have effect for the full duration of the order.

## **Section 10 – Interim domestic abuse protection order**

70. Section 10 makes provision for a sheriff to make an interim DAPO where an application for a DAPO has been made under section 8(1). An interim DAPO may be made regardless of whether a DAPN has been given.

71. Section 10(2) provides that a sheriff may make an interim DAPO if the sheriff considers that, on the balance of convenience, it is just to do so. In deciding where the balance of convenience lies, the sheriff will balance the competing interests of those affected with a view to reaching a decision which causes the least harm to the persons affected in the interim period. Section 10(3) provides that, in deciding whether to make an interim DAPO, the sheriff must have regard to all the circumstances, including any risk that person A will cause harm to person B if an interim order is not made pending determination of the application for a full order.

72. Section 10(4) provides that an interim DAPO can include any prohibition or requirement that could be included in a DAPO.

73. Section 10(5) provides that the sheriff may make an interim order notwithstanding that person A or person B have not been given notice of proceedings as is required by section 11(5) or by rules of court, and before person A or person B have been given an opportunity to make representations about the interim order. Read with section 8(5) and section 11(5), the effect of this is that, where person A or person B have not been given notice of proceedings or an opportunity to make representations, the sheriff may make an interim DAPO to protect person B but not a final order. Section 10(5) also makes clear that the consent of person B is not required for an interim DAPO to be made.

74. Section 10(6) provides that where a sheriff makes an interim order in the circumstances described in section 10(5), they must hold a hearing in relation to the application for a DAPO as soon as is reasonably practicable.

75. Section 10(7) provides for the period of time for which an interim DAPO has effect. Section 11(7)(a) provides that an interim DAPO has effect for such a period as is specified in the order, and that this period must not exceed 3 weeks. The duration of an interim order does not count towards the maximum duration of a DAPO. Section 10(7)(b) provides that an interim order ceases to have effect, if it has not already done so, when the application for a DAPO under section 8(1) has been determined.

## **Section 11 – Hearing to be held where domestic abuse protection notice has been given**

76. Section 11 makes provision with regard to the hearing which must take place where the chief constable applies to the sheriff for a DAPO under section 8(1)(a) after they have made a DAPN against person A.

77. Section 11(2) provides that, where the police make a DAPN, they must make an application under section 8(1)(a) to a sheriff for a DAPO not later than the first court day after the day on which the DAPN is given to person A as per section 6(3). “Court day” is defined at section 17. It is any day which is not a Saturday or Sunday or a court holiday.

78. Section 11(3) requires the sheriff to hold a hearing in relation to the application no later than the first court day after the day on which the application is made and section 11(4) requires that the hearing must be concluded on the day on which it begins.

79. Section 11(5)(a) places a duty on the chief constable to give person A notice of the hearing either by (i) leaving it at the address which person A has provided to the police whether given in accordance with section 5(2A) or 6(4) or otherwise in connection with the giving of notice under this subsection or (ii) giving it to person A on person A attending a police station in accordance with section 5(2A) or otherwise by delivering it to person A in person. Section 11(5)(b) places a duty on the chief constable to give person B notice of the hearing by leaving it the address at which person B usually resides, or by delivering it to person B in person.

80. Section 11(6) provides that the sheriff must hold the hearing even if the requirement at section 11(5) is not met. In such a case, the sheriff could make an interim order by virtue of section 10(5), but could not make a full order as the condition at section 8(5) would not be met.

81. Section 11(7) sets out the options available to the sheriff at that hearing. The sheriff can determine the application, providing the requirement to give an opportunity to person A, person B and the chief constable to make representations has been met, can make an interim DAPO or can continue proceedings, setting a date for a further hearing, without determining the application or making an interim DAPO.

82. Section 11(8) provides that the sheriff may not make an interim DAPO or a DAPO before the hearing is held.

83. Section 11(9) provides that a DAPN ceases to have effect if the sheriff makes a DAPO or interim DAPO at the hearing or otherwise, when the hearing ends. Because the hearing must come to an end on the day it begins, the DAPN will cease to have effect no later than the second court day after the day on which it is given to person A.

## **Section 12 – Extension, variation or discharge of order**

84. Section 12 makes provision to enable an application to be made to extend, vary or discharge a DAPO.

85. Section 12(1) provides that the chief constable, person A and person B may apply to the sheriff to extend, vary or discharge a DAPO. The effect of this is that person B may apply to extend, vary or discharge the order even where person B is not a party to the proceedings for the order under section 8.

86. Section 12(2) provides that the sheriff may permit any person referred to in section 12(1) to become party to proceedings relating to an application made by another person mentioned in that section.

87. Section 12(3) provides that, before determining an application to extend, vary or discharge a DAPO, the sheriff must give an opportunity to make representations on the application to the chief constable, person A and person B (whether or not the chief constable or person B is a party to proceedings).

88. Section 12(4) provides that, in determining an application to extend, vary or discharge a DAPO, the sheriff must take account of: any representations made to them by the chief constable or by person A; any views of person B in relation to the application of which the sheriff is aware, whether these views are expressed via representations made to the sheriff or by another means; and the welfare of any child whom the sheriff considers to be relevant to the application.

89. Section 12(4A) when read together with section 12(4B) places a duty on the sheriff to take such steps as are reasonable in the circumstances to give a child an opportunity to express views where the sheriff is considering extending or discharging a DAPO which contains provision relating directly to the child, or where the sheriff is considering varying a DAPO by including, removing or altering provision that relates directly to the child. The sheriff is then required to take into account any views of the child of which the sheriff is aware, whether as a result of the steps taken to give an opportunity to express their views or otherwise.

90. Section 12(4C) provides that in taking account of any such views of the child, the sheriff must take into account the child's age and understanding.

91. Section 12(5) provides that any reference to extending a DAPO in sections 12, 13 and 14 include a reference to extending the period for which a particular provision of the DAPO has effect. This would enable, for example, the court to extend a provision requiring person A not to contact or approach person B, while discharging a requirement or prohibition which is no longer necessary such as a prohibition against entering person B's home where person B has left that home.

### **Section 13 – Extension, variation or discharge of order: further provision**

92. Section 13 makes further provision regarding the sheriff’s powers to extend, vary or discharge a DAPO.

93. Section 13(1) provides that when a sheriff is considering an application to extend a DAPO, they may extend the DAPO only if it is necessary to do so and must vary the DAPO to remove any requirement or prohibition that is no longer necessary, and discharge the DAPO if satisfied that it is no longer necessary. Section 13(6) provides a definition of “necessary.”

94. Sections 13(2) and 13(3) make provision regarding the length of time for which a DAPO can be extended. They provide that a DAPO can be extended for a period not exceeding one month (though this does not apply to an interim DAPO) and that the maximum period for which the order may have effect, including any period for which it is extended, is 3 months for a DAPO, and 3 weeks for an interim DAPO.

95. Section 13(4) provides that where an application is made under section 12(1) to vary the terms of a DAPO, the sheriff may vary the DAPO so as to add a prohibition or requirement if satisfied that it is necessary to do so (“necessary” is defined at section 13(6)) and must vary the DAPO to remove any requirement or prohibition which the sheriff is satisfied is no longer necessary and discharge the DAPO if satisfied that it is no longer necessary.

96. Section 13(5) provides that where an application is made under section 12(1) to discharge a DAPO, the sheriff must discharge the DAPO if satisfied that it is no longer necessary, and, if the sheriff does not discharge the order they must vary the DAPO so as to remove any requirement or prohibition which the sheriff is satisfied is no longer necessary.

97. Section 13(6) provides that, for the purpose of section 13, “necessary” means necessary for the purpose of protecting person B from abuse by person A.

### **Section 14 – Interim extension or variation of order**

98. Section 14 makes provision enabling a sheriff to extend or vary a DAPO on an interim basis, pending determination of the application, when



considering an application to extend or vary a DAPO made under section 12(1).

99. Section 14(2) provides that the sheriff may vary or extend the order on an interim basis only if they consider, on the balance of convenience that it is just to do so.

100. Section 14(3) provides that, in deciding whether it is, on the balance of convenience, just, the sheriff must have regard to all the circumstances including any risk that if the order is not extended or varied on an interim basis, person A will cause harm to person B or, in the case of an application to vary an order, that if the order is varied on an interim basis, person A will cause harm to person B before the application is determined. This may be especially relevant in a case where person A applies to the court to vary the order by removing a prohibition or requirement.

101. Section 14(4) provides that the sheriff may extend or vary the DAPO on an interim basis even if the chief constable, person A or person B has not been given notice of the proceedings, and before giving the chief constable, person A, or person B the opportunity to make representations about the application. Section 14(5) provides that where the sheriff does so, they must hold a hearing in relation to the application as soon as reasonably practicable.

102. Section 14(6) provides that the extension or variation of a DAPO on an interim basis has effect for such a period as is specified by the sheriff, subject to the limits on the extension of a DAPO set out at section 13(3) and that it ceases to have effect, if it has not already done so, when the application under section 12(1) has been determined.

## **Section 15 – Jurisdiction and competence**

103. Section 15 makes provision as regards the sheriff to whom an application for a DAPO under section 8(1) or an application to vary, extend or discharge a DAPO under section 12(1) should be made.

104. Section 15(2)(a) provides that an application for a DAPO may be made to a sheriff in whose sheriffdom either person A or person B is ordinarily resident. Section 15(2)(b) provides that an application to extend, vary or discharge a DAPO may be made to a sheriff of the same sheriffdom as the sheriff who considered the application for a DAPO which resulted (whether or not after appeal) in the making of the DAPO or interim DAPO to

which the application under section 12(1) relates. This ensures that all applications for extension, variation or discharge, including applications in cases where the order was made in the course of appeal proceedings, should be made to a sheriff in the same sheriffdom where the original application for a DAPO was considered.

105. Sections 15(3) to 15(6) make provision to enable a sheriff to make an order to transfer proceedings to a sheriff of another sheriffdom.

106. Section 15(4) provides that the sheriff may do so if they are satisfied that it would be more appropriate for the proceedings to be dealt with by a sheriff of another sheriffdom.

107. Section 15(5) provides that the sheriff may make an order under section 15(4) on the application of a party to proceedings, or on the sheriff's own initiative.

108. Section 15(6) provides that where an order is made under section 15(4), a sheriff of the sheriffdom to which the proceedings are to be transferred has jurisdiction and competence to consider and determine the proceedings. Section 15(7) provides that this does not affect any power that a sheriff has to decline jurisdiction in any case.

109. Section 15(8) amends schedule 1 of the Courts Reform (Scotland) Act 2014 so as to provide that a summary sheriff has competence with respect to proceedings relating to a DAPO or an interim DAPO.

## **Section 15A – Effect of making of appeal on decision appealed against**

110. Section 15A concerns appeals against decisions made in DAPO proceedings.

111. Section 15A(1) and (2) make clear that decisions to make or refuse to make a DAPO and decisions to extend, vary or discharge, or refuse to extend, vary or discharge a DAPO are decisions which are appealable under section 110 of the Courts Reform (Scotland) Act 2014, meaning that an appeal may be taken without the need for permission.

112. Subsections (3) to (5) provide that, in all appeals under section 110 of the Courts Reform (Scotland) Act 2014, the original decision appealed

against continues in effect until the determination of the appeal unless the decision is suspended by the Sheriff Appeal Court. In the case of an appeal which is remitted to the Court of Session under section 112 of the Courts Reform (Scotland) Act 2014, the power to suspend the original decision may be exercised by either the Sheriff Appeal Court or the Court of Session.

113. Subsections (6) and (7) set out a similar position in relation to appeals to the Court of Session made under section 113 of the 2014 Act against a decision of the Sheriff Appeal Court in an appeal under section 110 of the 2014 Act. The decision appealed against continues in effect until the appeal is disposed of, unless suspended by the Sheriff Appeal Court, or the Court of Session. Subsection (8) provides that, where the decision appealed against under section 113 is a decision to remit the case back to the sheriff, the sheriff may not take any further action in the case until the appeal is disposed of. This avoids the possibility of proceedings with potentially different outcomes taking place simultaneously.

## **Section 16 – Offence of breaching order**

114. Section 16 makes provision relating to breach of a DAPO or an interim DAPO.

115. Section 16(1) provides that breach of a DAPO or an interim DAPO, without reasonable excuse, is a criminal offence. Section 16(2) provides that the maximum penalty on conviction at a summary trial is a term of imprisonment of up to 12 months or to a fine or both; and the maximum penalty on conviction on indictment is a term of imprisonment of up to five years or to a fine or both.

## **Interpretative provision**

### **Section 17 – Interpretation of Part**

116. Section 17 defines certain terms used in Part 1.

## **Part 2 – Termination of Scottish Secure Tenancies in cases involving abusive behaviour**

117. The Housing (Scotland) Act 2001 (“the 2001 Act”) creates and regulates a class of residential tenancies known as Scottish secure tenancies. These are tenancies in the social sector, where the landlord is

either a local authority landlord, a registered social landlord (such as a housing association) or Scottish Water. A Scottish secure tenancy may not be brought to an end except in the circumstances specified in section 12(1) of the 2001 Act. One of those circumstances is where a landlord obtains a court order under section 16(2) of the 2001 Act for recovery of possession. A landlord is only entitled to recover possession on certain grounds, set out in schedule 2 of the 2001 Act. Section 14 of the 2001 Act sets out a process which a landlord must follow before the landlord can raise proceedings (by way of summary cause) for recovery of possession. The landlord must serve notice on the tenant specifying a ground or grounds on which recovery is sought. Proceedings may not be raised until the period of time specified in section 14(4) of the 2001 Act has passed after service of the notice.

118. Part 2 of the Bill creates one new ground for recovery of possession by a landlord, namely that the tenant, who is a sole tenant, has engaged in behaviour which is abusive of a partner or ex-partner. This is to allow the landlord to enter into a new tenancy with the partner or ex-partner who is the victim of the abusive behaviour. It also allows a landlord to apply for an order terminating a tenant's interest in a Scottish secure tenancy, where that tenant is a joint tenant with the partner or ex-partner, and has an engaged in behaviour which is abusive of the partner or ex-partner.

## **Section 18 – Additional ground for ending tenant's interest in house**

119. Section 18 amends sections 14 and 16 and schedule 2 of the 2001 Act to make provision for recovery of possession, or termination of a joint tenant's interest, on that ground.

### **Additional ground**

120. Section 18(4) inserts paragraph 15A into schedule 2 of the 2001 Act, creating a new ground on which the landlord under a Scottish secure tenancy may raise court proceedings under section 14 of the 2001 Act. On this new ground, the landlord may raise proceedings either: for recovery of possession of the house (in the case of a sole tenant), or for termination of the tenant's interest in the tenancy (in the case of a joint tenant).

121. Sub-paragraphs (1) and (2) of the new ground require that a person ("person T") who is the tenant or one of the joint tenants has engaged in behaviour which is abusive of a person ("person P") who is a partner or ex-

partner of person T. In addition, the house must be person P's only or principal home, and person P must wish to continue living in the house. Where person T is the sole tenant, the landlord must also wish to recover possession of the house from person T for the purpose of entering into a tenancy with person P instead.

## **Proceedings by the landlord for possession**

122. Where person P and person T are joint tenants (whether with or without others) (see paragraph 15A(2)(a) of schedule 2 of the 2001 Act, as inserted by section 18(4)), then the landlord may raise proceedings for an order to terminate person T's interest in the tenancy. Section 18(2)(a) and (b) amends section 14(1) of the 2001 Act, and inserts a new section 14(1A), accordingly. Section 18(2)(c) makes consequential amendments to section 14(4) of the 2001 Act.

123. Where person P is the sole tenant, then the new paragraph 15A is added (by section 18(4)) to the other grounds in schedule 2 of the 2001 Act on which a landlord may raise proceedings for recovery of possession, by virtue of section 14(1)(a) of the 2001 Act. As set out in paragraph 15A(2)(d)(i) of schedule 2 of the 2001 Act, the purpose of recovering possession from person T is to enter into a tenancy with person P instead.

124. Sub-paragraph (3) of the new ground defines the "partner or ex-partner of person T" to be either a spouse or former spouse, or civil partner or former civil partner, or a person with whom person T has lived with in the house as if a spouse for a period of at least six months in the twelve months prior to the proceedings being raised. This can include intermittent periods that amount to six months in total within the last twelve months. It also ensures that references to abusive behaviour by person T are construed in accordance with sections 2 and 3 (in Part 1 of the Bill)

125. Section 18(2)(d) inserts new subsection (5C) into section 14 of the 2001 Act. Where a landlord raises proceedings under section 14 which include the additional ground at paragraph 15A of schedule 2 of the 2001 Act, this new subsection requires the landlord to give the tenant, as well as any qualifying occupier, advice and assistance regarding alternative accommodation. This advice and assistance must be provided as soon as is reasonably practicable after raising the proceedings.

## **Powers of court in possession proceedings**

126. Section 18(3) amends section 16 of the 2001 Act.

127. Section 18(3)(a) amends section 16(1) of the 2001 Act so that the court can also adjourn the proceedings on the new ground at paragraph 15A of schedule 2 of the 2001 Act.

128. Section 18(3)(b) inserts new paragraphs (d) and (e) into section 16(2) of the 2001 Act to give the court the powers necessary, if it appears to the court that the new ground at paragraph 15A of the 2001 Act is established, to grant an order for recovery of possession (where person T is the sole tenant). New paragraphs (d) and (e) are inserted into section 16(2) of the 2001 Act by section 18(3)(b)(ii), setting out additional circumstances in which the court must make an order for recovery of possession. They require the court to make the order if the landlord has a ground for it under the new ground at paragraph 15A of schedule 2 of the 2001 Act, the tenant is the sole tenant, and either: it is reasonable to make the order, or the tenant has in the preceding year been convicted of an offence in respect of the abusive behaviour referred to in the new ground which is punishable by imprisonment. Section 18(3)(b)(i) makes a consequential amendment to section 16(2) of the 2001 Act.

129. Section 18(3)(c) inserts new subsection (3ZA) into section 16 of the 2001 Act, requiring the court, where person P and person T have a joint tenancy (whether or not with others), to make an order for termination of person P's interest in the joint tenancy if the landlord has a ground for it under the new ground at paragraph 15A of the 2001 Act and either: it is reasonable to make the order, or the tenant has in the preceding year been convicted of an offence in respect of the abusive behaviour referred to in the new ground which is punishable by imprisonment. Section 18(3)(d) makes a consequential amendment to section 16(3A) of the 2001 Act.

130. Section 18(3)(c) also inserts new subsection (3ZB) into section 16 of the 2001 Act, requiring the court, when considering whether it is reasonable to make an order under section 16(2)(d)(iii) or (3ZA)(a)(ii) of the 2001 Act, to have regard to any risk that the tenant will engage in further behaviour of the kind mentioned in the new ground at paragraph 15A of the 2001 Act.

131. Section 18(5) to (8) make consequential changes to titles and headings in relation to sections 14 and 16, and schedule 2, of the 2001 Act.

## Part 3 – Final provisions

### **Section 19 – Ancillary provision**

132. Section 19 provides a power for the Scottish Ministers to make, by regulations, incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with or for giving full effect to the Act for the Bill.

### **Section 20 – Commencement**

133. Section 20 provides that section 17 and Part 3 come into force on the day after Royal Assent. All other provisions are to come into force on a day appointed by regulations made by the Scottish Ministers, and those regulations may make transitional, transitory or saving provision related to commencement.

This document relates to the Domestic Abuse (Protection) (Scotland) Bill as amended at Stage 2 (SP Bill 84A)

# Domestic Abuse (Protection) (Scotland) Bill

## [As amended at Stage 2]

### Revised Explanatory Notes

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