

DOMESTIC ABUSE (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

REVISED FINANCIAL MEMORANDUM

CONTENTS

1. As required under Rule 9.7.8B of the Parliament's Standing Orders, this revised Financial Memorandum is published to accompany the Domestic Abuse (Scotland) Bill (introduced in the Scottish Parliament on 27 May 2010) as amended at Stage 2. This document has been prepared on behalf of Rhoda Grant, the member in charge of the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.
2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin. The principal changes relate to the removal of section 2 from the Bill. Sidelining is also used to indicate where updated figures which have become available since publication of the original Financial Memorandum have been included. However, this document does not seek to fully reflect all of the views on potential costs of the Bill expressed at Stage 1.

INTRODUCTION

3. The Bill aims to increase access to justice for victims of domestic abuse and will enable police and prosecutors to provide a more robust response to breached civil protection orders, which in turn may deter abusers from further abusive action. The Bill will amend the current legislation relating to non-harassment orders (NHOs) and will also introduce a new criminal offence in order to achieve these aims.
4. The main costs likely to arise from the Bill relate to an anticipated increase in the number of cases brought to court for NHOs and interdicts with a power of arrest. These costs will fall on the Scottish Administration.

METHODOLOGY AND STRUCTURE OF MEMORANDUM

Overview

5. In trying to estimate the extent to which costs might increase, efforts were made to obtain information on current costs, to produce a base level to work from.
6. The police, Scottish Legal Aid Board (SLAB) and the Scottish Court Service (SCS) all have some information. However, consideration of these different sets of data highlights certain difficulties:

- the different sources of data show differing numbers of cases and diverging trends in the number of cases. So, for example, applying the same percentage increase in cases in different contexts e.g. legal aid costs and police costs cannot be guaranteed to produce equally accurate estimates – the police, for instance, might be involved in some cases which do not currently make their way into the legal aid figures but which will as a result of the Bill changes;
- also, SLAB and SCS information does not necessarily distinguish between domestic abuse and non-domestic abuse cases. Also, SLAB data includes both pursuers and defenders, when the Bill is aimed at protecting pursuers;
- SLAB data is considered to be generally the most accurate, although part-year data for 2009-10 have been considered in preparing this Memorandum rather than full-year data for any previous year, given that the current rules on eligibility have only been in place since April 2009.

7. For these reasons it is impossible to accurately quantify the costs arising from the Bill.

Available information

8. Police recorded incidents and cases recorded by SLAB indicate the number of domestic abuse related incidents. Whilst there is data that records repeat victimisation there is no robust statistical information available regarding rates of repeat offenders in relation to domestic abuse incidents.

9. Police recorded data regarding incidents of domestic abuse show that in 2009-2010, 51,926 incidents of domestic abuse were recorded¹. 62 per cent of the incidents led to the recording of at least one crime or offence². Where information was available, data shows that 57 per cent recorded incidents involve repeat victimisation while 36 per cent involved four or more previous incidents³.

10. The number of interdicts and NHOs granted by the SCS in relation to domestic abuse are not available. The SCS does not have robust statistical recording systems that would allow the identification of domestic abuse related interdicts or NHOs.

11. Information relating to the number of interdicts and NHOs initiated through Sheriff Courts is available. However, it is not clear if, or how many, of these NHOs or interdicts relate to domestic abuse cases. Data obtained clearly shows disparities between recorded incidents of domestic abuse and those who pursue legal protection.

12. The data provided by SLAB is the most comprehensive data in regards to protection orders and access to legal aid. Within the data obtained it outlines legal aid cases that were seeking protection orders. This covers civil legal aid applications under the following headings: interdict, NHOs, interdict non-molestation, Protection from Abuse (Scotland) Act 2001, power

¹ Statistical Bulletin: Crime and Justice Series: Domestic Abuse Recorded by the Police in Scotland, 2009-10

² *Ibid.*

³ *Ibid.*

of arrest and, breach of interdict cases⁴. It also includes advice and assistance case applications under the following headings: breach of interdict, harassment, interdict, NHOs and Protection from Abuse (Scotland) Act 2001. The cases do not isolate the protection orders that are sought in relation to domestic abuse and include figures for orders that will not be affected by the terms of this Bill.

13. SLAB data used does not distinguish between pursuers and defenders. The data does not indicate the amount of costs and cases allocated to pursuers or defenders. Therefore, the data also includes legal aid provided to defenders.

Structure of Memorandum

14. The remainder of this Memorandum considers separately the likely costs of sections 1 and 3 of the Bill on the Scottish Administration, before examining the overall cost impact of the Bill on local authorities and other bodies, individuals and businesses. Potential savings are considered under the relevant cost headings. A summary is provided at the end.

15. **Section 1** amends the Protection from Harassment Act 1997 by removing the “course of conduct” requirement for a non-harassment order to be granted by a civil court in domestic abuse cases. This section is discussed in paragraphs 17 to 24.

16. **Section 3** makes breach of an interdict with a power of arrest attached a criminal offence in cases of domestic abuse. This section is discussed in paragraphs 25 to 35.

SECTION 1: AMENDMENT OF THE PROTECTION FROM HARASSMENT (SCOTLAND) ACT 1997

Estimating possible increased demand for non-harassment orders

17. In theory, removing the requirement for a course of conduct to be demonstrated seems likely to lead to an increase in the number of applications for NHOs. However, diverging trends between different sources of data relating to NHOs (and the lack of clarity about the reasons for these diverging trends) means that quantifying the possible increased demand for NHOs under this section is difficult.

18. Several possible sources of information could be considered in order to determine the likelihood of an increase in application for NHOs. Police data is referred to in paragraph 9 (although these incidents do not all relate to NHOs) and, until recently, such data showed an increasing trend. SLAB data, however, suggests a decline in the number of total cases in which NHOs and interdicts were sought over the same years. Since publication of the original Financial Memorandum, data has also been obtained from the Scottish Court Service on the current number of applications under the Protection from Harassment Act 1997. The figures are very low (fewer than 5 cases initiated in each of 2008-2009 and 2009-2010 (lower than that recorded by SLAB)) and, in addition, it is not known how many of these cases were linked to domestic abuse.

⁴ The Protection from Abuse (Scotland) Act 2001 entitles any individual who has obtained, or applied for, an interdict for the purpose of providing protection from abuse to apply to the court to have a power of arrest attached to the interdict.

19. Overall, the absence of clear information on the current number of cases and also on whether numbers are generally increasing or decreasing means that it is not possible to accurately estimate the impact that section 1 will have on the number of applications for NHOs and therefore on costs in various areas. The areas where costs or savings might occur are noted below. Based on the low number of cases identified by the Scottish Court Service, cost impacts in all of the areas discussed are likely, even if the number of NHOs applied for increases substantially, to be minimal in the context of the overall budgets of the organisations mentioned.

Costs on the Scottish Administration

Police, Crown Office and Procurator Fiscal Service (COPFS) etc.

20. Breach of a NHO is a criminal offence and so if section 1 leads to more NHOs being granted then there could be an increase in the number of offences committed. However, it is hoped that more NHOs being in place would in fact have a deterrent effect and lead to an overall reduction in repeat offences in domestic abuse cases and thus call-outs of the police (bearing in mind that repeat victimisation accounted for 57% of all domestic abuses cases reported to the police in 2009-2010⁵). Furthermore, any breach of a NHO allows the police to arrest quickly and remove the person in breach. The same principles in relation to police and other costs apply here as apply in relation to section 3 (which puts interdicts with a power of arrest on an equal footing with NHOs in that breach of either will be a criminal offence). For more detailed discussion of these points, please see paragraphs 27 to 32.

21. Overall, though, it is considered unlikely that section 1 will give rise to any significant costs for the police – rather a saving in police costs is hoped for.

Courts

22. Applications for NHOs are dealt with in the civil courts and so an increase in the number of applications may have some consequences for SCS costs. The SCS does not hold information regarding the costs of civil cases centrally. But in the absence of an estimate of the increase in applications for NHOs as a result of section 1, it would not anyway be possible to be precise about the impact on SCS costs.

23. The changes made by section 1 may give rise to a need for training of SCS staff, but it is anticipated that any such cost could be met from within the existing budget for training and development.

Legal aid

24. If the number of applications for NHOs increases as a result of section 1, then there may be an accompanying increase in SLAB costs (both advice and assistance and civil legal aid). As in the increase in the number of applications for NHOs as a result of section 1 cannot be accurately estimated, it is also not possible to accurately quantify the effect on legal aid costs.

⁵ Statistical Bulletin: Crime and Justice Series: Domestic Abuse Recorded by the Police in Scotland, 2009-10

SECTION 3: BREACH OF INTERDICT WITH POWER OF ARREST

Estimating possible increased demand for interdicts with power of arrest

25. In theory, the enhanced protection offered by making breach of an interdict with a power of arrest an offence seems likely to lead to an increase in the number of applications for such interdicts (while simultaneously reducing the number of occasions on which breaches occur due to the greater deterrent effect of the offence compared with the currently available remedies).

26. However, everything that has been said previously about the difficulty of estimating possible increases in demand as a result of the Bill stands. Although some SLAB data is available in this area, it is likely that not all breaches of interdicts with a power of arrest are pursued through the civil courts. For this reason, it is not considered that the SLAB data provides a sound basis on which to base estimates of the effect of section 3 (which creates a criminal offence, rather than continuing to allow the burden of pursuing the breach to fall on the victim). Data regarding breach of interdicts is not readily available from the SCS or the police. So it is impossible to accurately quantify the effect that section 3 will have on the number of applications for interdicts with a power of arrest in domestic abuse cases.

Costs on the Scottish Administration

Police, COPFS etc.

27. When any new criminal offence is created there is an associated cost in terms of training and updating police IT systems. However, it is anticipated that costs in these areas arising from the effect of section 3 would be able to be absorbed within existing budgets.

28. If the number of occasions on which interdicts with a power of arrest relating to domestic abuse were breached remained constant, more offences would be committed as a result of section 3. However, the police are already likely to attend such cases, due to the existence of the power of arrest (even if, under the current law, no actual offence is committed). If the number of interdicts with a power of arrest increased due to more people applying in view of the enhanced protection offered as a result of section 3, and those interdicts were breached, then that could increase the number of offences committed/occasions on which the police were required to attend.

29. However, it is hoped that the creation of the new offence will have a deterrent effect and actually prevent actions which would constitute a breach of an interdict with a power of arrest from occurring in the first place (especially in the cases of repeat victimisation, which accounted for 57% of domestic abuse incidents reported to the police in 2009-2010⁶). This would reduce call-outs of the police (although it may also be that any such reduction simply counter-balances any increase in offences due to increased number of interdicts). In addition, if the number of interdicts with a power of arrest attached increases as a result of the Bill, then it may reduce the number of cases in which the police are called out to incidents of domestic abuse but do not have a power of arrest – and the ability to arrest can shorten the time spent at an incident by allowing the police to arrest quickly and remove the person in breach.

⁶ *Ibid.*

30. Overall, although it is difficult to be precise about the effect on costs due to the previously noted uncertainties about numbers of cases and to know whether section 3 will lead to net increase or decrease in the number of breaches of interdicts with a power of arrest, it is considered unlikely that this provision will lead to any significant increase in police expenditure.

31. The penalties available in respect of the new offence created by section 3 include imprisonment for up to 5 years following conviction on indictment and up to 12 months after summary conviction. If the number of breaches of interdicts with a power of arrest increased as a result of section 3 increasing the number of such interdicts in existence, there could be an increase in the number of persons imprisoned and so an effect on Scottish Prison Service costs. However, for the reasons discussed above, it is not certain that there will be such an increase and so a significant increase in SPS costs as a result of section 3 seems unlikely.

32. The fact that section 3 creates a new criminal offence means that there is a potential effect on COPFS. Note that although COPFS has no role in pursuing civil actions for breach of interdict with a power of arrest, it may currently be involved in determining whether the action constituting such a breach in itself constitutes a criminal offence (e.g. breach of the peace). So there is currently a base level of COPFS involvement in the cases affected by section 3. For this reason, much of the discussion about police costs is also relevant here and the conclusion is the same: although the various uncertainties about numbers of cases and so on make it difficult to be precise, it is considered unlikely that this provision will lead to any significant increase in COPFS expenditure.

Courts

33. An increase in applications for interdicts with a power of arrest could have some cost implications for the SCS, although for the reasons stated earlier it is not possible to accurately estimate such costs. Actions for breach of interdict with a power of arrest pursued through the civil courts would be likely to decrease as a result of section 3, but any savings as a result of this could be counter-balanced by the need for the criminal courts to deal with such breaches (and, despite the absence of information on average civil case costs, it is believed that criminal cases have a higher cost).

Legal aid

34. If the number of applications for interdicts with a power of arrest increases as a result of section 3, then there may be an accompanying increase in SLAB costs (both advice and assistance and civil legal aid). There may also be cost implications in relation to the provision of criminal legal aid to persons who commit the new offence. In this case, though, there will also be a counter-balancing saving, in that legal aid costs will no longer be incurred in pursuing civil actions for breach of interdict with a power of arrest. Due to the previously noted uncertainties about numbers of cases and the consequent difficulty in estimating the possible increase in applications for interdicts with a power of arrest in cases of domestic abuse, it is not possible to accurately quantify the effect of section 3 on legal aid costs.

35. To provide an illustration based on the legal aid costs discussed in relation to section 2 of the Bill in the original Financial Memorandum, though, total SLAB costs for civil protection orders in 2009-2010 were estimated there at £1,748,894. If the Bill resulted in a 10% increase in applications for protective orders (assumed for current purposes to all be interdicts with a power

of arrest attached, given the low number of NHOs currently applied for (see paragraph 18)), then, on 2009-2010 figures, total SLAB costs would be £1,921,430 – an increase of £172,536. It should be noted, however, that the figures in the original Financial Memorandum were subject to high margins of uncertainty (see paragraphs 48 to 66 of the original Financial Memorandum for a full explanation of the assumptions used in calculating the costs of section 2 of the Bill (which was removed from the Bill by Stage 2 amendment) and the combined effect of sections 1 to 3 on legal aid costs). Discussion during Stage 1 also highlighted this point.

COSTS ON LOCAL AUTHORITIES

36. No additional costs to local authorities are anticipated as a result of the Bill.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

37. Bodies such as Women's Aid groups and Victim Support and other bodies who deal specifically with domestic abuse victims may experience an increase in number of people seeking counselling and advice as a result of the Bill. Training staff in relation to the changes proposed by this Bill may incur an operational cost to such organisations. This would be a one-off cost and would be the responsibility of those organisations.

38. If the Bill results in more applications for NHOs and interdicts with power of arrest in domestic abuse cases, defenders in such cases may also face some costs.

SUMMARY

39. Any increase in costs arising from the Bill is likely to fall principally on the Scottish Administration. The Bill comes into force 3 months after Royal Assent so, taking account of the time required for the Bill's Parliamentary passage, any such increase would be likely to first arise in financial year 2011-12.

40. In relation to legal aid costs, precise effects are not quantifiable due to the difficulty of obtaining clear information on the current number of cases, given the diverging trends in different sources of data.

41. Estimating other costs on the Scottish Administration (e.g. on the police and SCS) is difficult for the same reasons, and similar uncertainties also surround estimates of potential savings. But overall it is considered unlikely that, taking account of potential savings, significant additional costs will arise in any other area and indeed it may be more likely that savings will outweigh costs.

42. Finally, it is worth noting that the cost of domestic abuse to the Scottish public purse has been estimated to be as much as some £2.3 billion⁷. The more robust approach towards

⁷ The Scottish Government (June 2009). *Safer Lives: Changed Lives, A Shared Approach to Tackling Violence Against Women in Scotland*, p.12. Edinburgh

*This document relates to the Domestic Abuse (Scotland) Bill as amended at Stage 2
(SP Bill 45A)*

perpetrators of domestic violence and increased access to protection for victims offered by the Bill is considered to have the potential to decrease this sum to some extent.

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