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Briefing for the Public Petitions Committee on petition PE2270: Introduce a self-application process for Non-Harassment Orders, lodged by Cat Thornton

Brief overview of issues raised by the petition

Non-harassment orders in Scotland: the current law

A **non-harassment order** (NHO) is a court order requiring the person subject to it to refrain, for the period specified in the order, from engaging in specified conduct towards another named person. The order may be made for a fixed period or may remain in force indefinitely.

Breach of an NHO is, of itself, a criminal offence and can be investigated as such by the police.

In Scotland, under sections 8 to 11 of the Protection from Harassment (Scotland) Act 1997, an NHO can be granted by the **civil court**, on application by the person at risk to that court.

The application can be made either as a standalone proceeding or as part of another civil action, such as divorce proceedings. In the civil courts, NHOs are part of a wider group of protective court orders known as civil protection orders (or civil protective orders).

Separately, under sections 234A and 234AZA of the Criminal Procedure (Scotland) Act 1995 ('the 1995 Act'), an NHO can be granted by the criminal court, at the end of a successful prosecution. NHOs granted by criminal courts are far more common in practice.

A victim/survivor of a criminal offence cannot apply directly to the criminal court for an NHO. Instead, the system depends on the prosecutor requesting one when appropriate, or on the court to issue one on its own initiative, where the law permits this.

Where someone is convicted of certain offences relating to domestic abuse, under section 234AZA, there is what may be described as a **presumption** in favour of making an NHO, in that the court is to make one unless it concludes that the protection one would provide is not needed. In 2023-24 and in 2024-25, NHOs were granted in around 40% of cases involving domestic abuse offences.

For wider background, NHOs are one of a range of protective measures available to both the civil and criminal courts, and to the police, with the aim of protecting those at risk.

Policy debates associated with NHOs in Scotland

There are various policy issues associated with NHOs.

Costs of an NHO

First, the ability of a person at risk to apply for an NHO through the civil courts gives them autonomy over whether to seek this form of protection.

However, unless the person at risk qualifies to have all their legal costs fully met out of the legal aid budget, there are solicitors' fees for legal advice and representation associated with such an application. Court fees may also be payable, although in some circumstances fee exemptions apply.

Furthermore, even if a person is eligible for the costs of legal advice and representation to be covered (fully or partly) by legal aid, the legal aid system is thought to be under significant pressure, with an acute shortage of legal aid solicitors in some parts of Scotland.

Related to costs, the question of whether legal aid should be made **automatically available**, without means testing, for applications for NHOs and other types of protective order, has been debated at various points over the years.

Proponents argue that means-tested legal aid leaves many people unable to afford representation. It might force them either to incur unmanageable debt or to self-represent in court, which can be legally complex and potentially re-traumatising for those who have experienced abuse.

Critics of automatic legal aid highlight issues including the potential strain on the legal aid budget. Because NHOs and other protective orders may be linked to wider family cases (such an action for divorce), funding could have to extend to them too, increasing overall costs, while fairness would likely also require legal aid for those opposing such orders, again adding expenditure.

Possible limitations of NHOs through the criminal courts

One advantage that an NHO imposed through the criminal courts has over an application by the person at risk for an NHO through the civil courts is that the protections can be obtained at no financial cost to the affected individual.

On the other hand, a criminal investigation or prosecution may not proceed for a range of reasons: the behaviour may not be reported; the police may consider that there is insufficient evidence to charge and therefore not refer the case to Crown Office and Procurator Fiscal Service (COPFS); or COPFS may decide not to prosecute.

These factors arguably point to a distinct role for civil protection orders within the civil courts.

The capacity of NHOs to provide emergency protection

Another key policy issue relating to NHOs in either the criminal or civil courts is the argument - advanced both in Scotland and internationally - that a system of

protective orders relying entirely on the courts, and therefore involving inherent delay, cannot respond effectively to emergency situations.

Domestic Abuse (Protection) (Scotland) Act 2021

Related to the potential drawbacks of victim-initiated civil processes, and the capacity of NHOs and similar orders to provide emergency protection, Part 1 of the Domestic Abuse (Protection) (Scotland) Act 2021 ('the 2021 Act') took a somewhat different policy approach.

Part 1 introduces two new powers. They do not require the consent of, or application by, a person at risk to be exercised. These powers are:

- the power available to a senior police officer to impose a **domestic abuse protection notice** (DAPN) on a suspected perpetrator of abuse
- the power available to the civil court, on application by the police, to grant a **domestic abuse protection order** (DAPO) in relation to a perpetrator of abuse.

A DAPN and a DAPO can exclude the suspected perpetrator from a home and impose wider restrictions on contact.

Part 1 of the 2021 Act has not yet been commenced following practical implementation difficulties, including those highlighted by Police Scotland. Towards the end of Session 6, Scottish Government confirmed that legislative changes would be required to Part 1.

The Session 6 Equalities, Human Rights and Civil Justice Committee, and its successor committee in Session 7, have continued to monitor the issue of non-implementation of Part 1. See, most recently, the Committee meetings on 3 September and 24 September 2026.

This session, the Criminal Justice Committee has also taken an interest in the implementation of Part 1 of the 2021 Act. At the Committee's meeting on 30 September 2026, the Convener, David Linden MSP, asked:

> "Part 1 of the Domestic Abuse (Protection) (Scotland) Act 2021, which relates to domestic abuse protection orders and domestic abuse protection notices, has not yet been implemented. The Scottish Government has to get a move on with that, does it not?" (col 51)

Marsha Scott (Scottish Women's Aid) responded:

> "… It just would not be true to say that that part of the bill was readily implementable when it was passed. It was too complex, with too many hoops, and it was too expensive a proposition—and I argued that at the time. I know that colleagues in Police Scotland are working hard to find a solution for its implementation, but I think that the conclusion that we are all reaching is that we are trying to fit a square peg into a round hole. The question is how we put emergency barring orders or emergency protection orders – which Scotland is far behind in implementing – on a practical footing. It is not a matter of just

> getting on with it; it is a matter of figuring out a different solution, because the tools that we have are not going to work." (cols 51-52)

The Scottish Government's Programme for Government 2026-2031 (at p 70) states that the Government intends to consult on DAPOs, although there is no explicit mention of DAPNs.

At a meeting of the Equalities, Human Rights and Civil Justice Committee on 24 September 2026, the Minister for Victims and Community Safety, Kirsten Oswald MSP, confirmed that the Scottish Government remained committed to the policy underpinning Part 1, that it was engaging with the complexities associated with the legislation and that it intended to consult shortly (col 34).

On 3 November 2026, the Minister wrote to the Committee with a further update on Part 1, commenting:

> "the provisions in Part 1 of the Act are now considered by a wide range of justice partners to be unsuitable for implementation in their current form. Five meetings of a specialist working group were held between September 2025 and spring 2026, to consider which legislative and non-legislative changes might be needed to ensure that Domestic Abuse Protection Orders and Notices can be operationalised. That group completed a substantial programme of work, and the potential changes identified now need to be subjected to wider consultation and engagement, to inform the development of draft legislative proposals…
>
> Officials are considering how best to manage further targeted consultation or engagement, given the range of complex issues and interests, and I expect advice from them in that regard in the coming weeks."

Victims, Witnesses, and Justice Reform (Scotland) Act 2025

Section 108 of the Victims, Witnesses, and Justice Reform (Scotland) Act 2025 ('the 2025 Act') came into force on 1 September 2026. Section 108 provides that, when deciding whether to make an NHO at the conclusion of criminal proceedings relating to certain domestic abuse offences, the criminal court must have regard to any bail conditions previously imposed on the offender that prohibited contact with the victim.

In addition, new powers under section 109 of the 2025 Act to enforce in Scotland protective orders made elsewhere in the UK will come into force on 1 December 2026.

Part 5 of the 2025 Act (which is not yet in force) also aims to strengthen the use of 'special measures' in civil court proceedings, including those associated with applications for protective orders. Special measures are practical arrangements designed to help vulnerable witnesses and litigants participate in proceedings, such as giving evidence by video link or from behind a screen.

Scottish Law Commission: domestic abuse project

In another relevant policy development, the Scottish Law Commission, the independent statutory law reform body, is currently reviewing civil law remedies for

domestic abuse aimed at protection of vulnerable individuals and their families, including consideration of NHOs. A final report with recommendations for the Scottish Government is expected to be published in 2027.

The law in England and Wales

England and Wales, like Scotland, has a range of civil protection orders, as well as relevant police and criminal court powers.

For example, it is possible to apply for an NHO through the civil courts under section 3 of the Protection from Harassment Act 1997.

Another example is DAPNs and DAPOs, which were introduced by the Domestic Abuse Act 2021. The police can issue a DAPN or apply for a DAPO, but, unlike Scotland, it is also possible for a person at risk to apply on their own behalf.

On 4 August 2026, following a successful pilot, the Ministry of Justice announced that a nationwide rollout of DAPNs and DAPOs across England and Wales will commence on **25 November 2026**.

A non-molestation order, specifically mentioned by the petitioner, is a court order available under section 42 the Family Law Act 1996, as amended, which prohibits an abuser from molesting another person they are associated with.

Molestation is not defined in the Act but has been interpreted to include violence, harassment and threatening behaviour. As with a number of civil protection orders, breach of a non-molestation order is a criminal offence.

The process for applying for a non-molestation order is set out on the GOV.UK website. There is no court fee for applying. Accordingly, a person who follows the guidance and self-applies for an order wouldn't incur any costs. However, someone who wanted legal advice and representation associated with their application would either need to apply for legal aid, find free legal help, or self-fund their legal costs.

For interest, there is a scheme run by RCJ Advice (a specialist legal Citizens Advice service) called SupportNav, which provides free online help and legal advice for people who want to apply for a non-molestation order and enables people to apply online through a tool called CourtNav.

SupportNav and CourtNav are both part of a wider project called FLOWS (Finding Legal Options for Women Survivors), delivered by RCJ Advice alongside the charity Rights of Women and Newcastle Law Centre. FLOWS receives funding from the UK Government but it also relies on other funding sources and volunteer solicitors. The 2025 RCJ Advice annual report and accounts (PDF) provide background on funding:

> FLOWS is delivered in partnership with Rights of Women and Newcastle Law Centre and provides legal advice and tools to front line agencies across England to increase their confidence in ensuring women experiencing domestic abuse are aware of legal remedies. FLOWS further expands the modules available on CourtNav with the development of the FL401 non- molestation order and a new module called Support Nav to assist clients to navigate the legal procedures and direct them to the appropriate advice. FLOWS received

three years funding from 1st April 2022 from the Ministry of Justice to support victims of domestic abuse and ongoing funding until 31st March 2026. CourtNav is a unique and innovative online application to support Litigants in Person to complete court forms. This has been developed through a working partnership with Freshfields Bruckhaus Deringer LLP as well as funding from the Ministry of Justice.

Separately, there has also been work to integrate the CourtNav tool with HM Courts and Tribunal Services computer systems, as explained in PQ 91439.

Key Organisations and relevant links

- Law Society of Scotland
- Scottish Women's Aid
- Scottish Women's Rights Centre
- Police Scotland
- Scottish Law Commission
- SPICe briefing: Domestic abuse and civil law in Scotland

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19 November 2026

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Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP