

Domestic Abuse (Protection) (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Domestic Abuse (Protection) (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of the Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament.

Outline of Bill provisions

3. The Bill is in three parts.

4. Part 1 of the Bill provides the courts with a new power to make a Domestic Abuse Protection Order ("DAPO") which can impose restrictions and prohibitions on a suspected perpetrator of domestic abuse, including removing them from a home they share with a person at risk and prohibiting them from contacting or otherwise abusing the person at risk while the order is in effect. It also provides a power for the police to impose a very short-term Domestic Abuse Protection Notice ("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 first court day after giving a DAPN.

5. Part 2 of the Bill creates 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

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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.

6. Part 3 of the Bill makes provision concerning powers to make ancillary provision and commencement.

Rationale for subordinate legislation

7. In deciding whether provisions should be specified on the face of the Bill or left to subordinate legislation, the Scottish Government has carefully considered the importance of each matter against the need to:

- achieve the appropriate balance between the importance of the issue and the need to provide flexibility to respond to changing or unforeseen circumstances quickly, in light of experience, without the need for primary legislation; and
- ensure the proper use of parliamentary time is made.

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Section 19 – Ancillary provision

Power conferred on:	the Scottish Ministers
Power exercisable by:	regulations made by Scottish statutory instrument
Parliamentary procedure:	affirmative if amends primary legislation, otherwise negative

Provision

8. Section 19(1) of the Bill enables the Scottish Ministers to make such 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 Bill.

Reason for taking power

9. As with any new body of law, the Bill may give rise to a need for a range of ancillary provision. This power is necessary to allow flexibility when it comes to implementation of the Bill or to address issues that may arise in light of experience of the operation of the Act. While the Scottish

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Government has given careful consideration to the content of the Bill, there may be unforeseen matters which require the use of this ancillary power in order to ensure the proper effect of the Bill is realised.

10. The power in section 19 is framed by reference to what is appropriate for the purposes of, in connection with, or for giving full effect to, the Bill. It is therefore expressly limited to that extent. Without the power to make ancillary provision it may be necessary to return to Parliament, through subsequent primary legislation, to deal with technical, operational or implementation matters in order to give full effect to the original Bill. That would not be an effective use of either the Parliament’s time or resources.

Choice of procedure

11. Regulations made under this section which contain a provision which adds to, omits or replaces any part of the text of an Act are subject to affirmative procedure. Otherwise, regulations made under this section are subject to negative procedure. This approach is typical for ancillary powers of this type. It is considered appropriate that these free-standing ancillary powers are subject to these procedures. This approach provides the appropriate level of Parliamentary scrutiny for the textual amendment of primary legislation while ensuring that other ancillary provision is still subject to scrutiny by Parliament.

Section 20 – Commencement

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: laid only

Provision

12. Section 20 of the Bill enables the Scottish Ministers to make regulations appointing days on which the provisions in the Bill come into force (other than this section, section 17 and sections 19 and 21, which come into force on the day after Royal Assent). The regulations may include transitional, transitory or saving provision.

Reason for taking power

13. The power is necessary to enable the Scottish Ministers to commence the provisions in the Bill appropriately once the necessary planning has been completed and it is possible that different provisions may commence on different dates. It is possible, for example, that the provisions at Part 2 concerning termination of Scottish secure tenancies in cases involving abusive behaviour may be commenced at a different time from the provisions concerning domestic abuse protection orders and domestic abuse protection notices at Part 1. The power to include transitional, transitory or saving provision in relation to commencement, will enable Scottish Ministers to take account of existing law and provide for the smooth transition towards the rules established by the provisions in this Bill.

Choice of procedure

14. The power is subject to the default laying requirement under section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. This is typical for commencement regulations and reflects the fact that the policy behind the provisions to be commenced will have already been considered by Parliament during the passage of the Bill.

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