

DOMESTIC ABUSE (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

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1. As required under Rule 9.7.8A of the Parliament’s Standing Order, these revised Explanatory Notes are published to accompany the Domestic Abuse (Scotland) Bill (introduced in the Scottish Parliament on 27 May 2010) as amended at Stage 2. Text has been added or deleted as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

INTRODUCTION

2. These Explanatory Notes have been prepared by Clare Connelly, legal academic and solicitor and James Clark LL.B. (Hons), Dip. L.P. on behalf of Rhoda Grant, the member in charge of the Bill. They have been prepared 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 schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

SUMMARY AND BACKGROUND TO THE BILL

4. The Bill amends the law relating to civil protection orders where these are sought by victims of domestic abuse.

5. The Bill will introduce a new section into the Protection from Harassment Act 1997 (“the 1997 Act”) which removes the requirement to show a course of conduct before a non-harassment order can be granted in civil proceedings involving domestic abuse; only one incident of harassing behaviour would be required in these circumstances.

6. The Bill also introduces a new offence, criminalising the breach of an interdict with a power of arrest where domestic abuse is involved.

COMMENTARY ON SECTIONS

Section 1: Amendment of the Protection from Harassment Act 1997

7. Section 1 of the Bill inserts a new section into the 1997 Act (section 8A). By virtue of section 8A(2), this new section only applies wherever the conduct which has led to the pursuer bringing the action of harassment to court amounts to domestic abuse. Section 1(1) establishes that where this is the case, the provisions of section 8A qualify those found in section 8 with regard to an action of harassment.

8. Section 8A(1) repeats the general principle, found in section 8 of the 1997 Act, that an individual has a right to be free from harassment. It differs from section 8 however, in that it removes the reference to a course of conduct and, instead, provides that a person must not engage in conduct which will amount to harassment.

9. Section 8A(3) provides that modified versions of sections 8(2) to 8(7) of the 1997 Act apply whenever an action of harassment arises in accordance with section 8A(2). In particular, subsection (3)(b) provides an altered definition of conduct to be used when this new section is engaged – conduct includes speech and presence in any place or area and may involve behaviour on one or more than one occasion.

10. The resulting effect of these changes is that a person need only present evidence of one occasion of harassing conduct before an action of harassment will be successful. There is no need to show that conduct has taken place repeatedly.

11. Section 1 also makes other consequential amendments in order to ensure consistent treatment between those non-harassment orders granted under section 8 and those granted under the new section 8A.

Section 3: Breach of interdict with power of arrest

12. Section 3(2) of the Bill makes it a criminal offence to breach an interdict to which section 3 applies.

13. Section 3(1) provides that section 3 applies where an interdict made on or after the coming into force of section 3 (which will be 3 months after the day on which Royal Assent is received) protects a person from their current or former spouse, civil partner or cohabiting equivalent. In addition, the interdict must also have a power of arrest attached under the Protection from Abuse (Scotland) Act 2001 and this power must be in effect at the time the interdict is breached.

14. Section 3(3) provides that this offence is punishable, on conviction on indictment, by imprisonment for a term not exceeding five years or by a fine, or by both such imprisonment and such fine; and on summary conviction, by imprisonment for a period not exceeding twelve months or by a fine not exceeding the statutory maximum, or by both such imprisonment and such fine.

15. The new offence does not replace the option of pursuing a civil hearing for contempt of court. For this reason, sections 3(5) and 3(6) are included in order to deal with the issue of double jeopardy. Where an abuser is convicted for breaching the interdict in a criminal court, the breach will not be punishable as contempt of court and vice versa.

Section 4A: Ancillary provision

16. Section 4A confers on the Scottish Ministers a power to make by order any incidental, supplementary, consequential, transitional, transitory or saving provision which they consider appropriate for the purpose of, in consequence of, or for giving full effect to any provision in the Bill. Such an order may modify any enactment. Subsection (3) provides that all orders under this section will be subject to affirmative Parliamentary procedure. By virtue of section 5(2), this section comes into force on the day after Royal Assent, allowing orders under this section to be made prior to the coming into force of sections 1 and 3 (3 months after the day on which Royal Assent is received) if necessary.

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

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