

DOMESTIC ABUSE (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Domestic Abuse (Scotland) Bill introduced in the Scottish Parliament on 27 May 2010:

- Explanatory Notes;
- a Financial Memorandum;
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 45–PM.

EXPLANATORY NOTES

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.

SUMMARY AND BACKGROUND TO THE BILL

4. The Bill amends the law relating to civil protection orders and legal aid where these are sought by victims of domestic abuse. The amendments will be made in the following areas:

- 1) 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;
- 2) the Bill will also make amendments to the Legal Aid (Scotland) Act 1986 (“the 1986 Act”) to make legal aid available without means testing or the levying of a contribution in respect of all applications for an interdict with a power of arrest or a non-harassment order where domestic abuse is involved.

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

6. Finally, the Bill also provides a statutory definition of “domestic abuse”.

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 falls within the definition of “domestic abuse”.¹ 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.

¹ “Domestic abuse” is defined in section 4 of the Bill

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 requirement to demonstrate 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 a specified 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 2: Amendment of the Legal Aid (Scotland) Act 1986

12. Section 2 of the Bill makes amendments to the 1986 Act in order to make legal aid available without means testing or the levying of a contribution to all those who seek an interdict with a power of arrest under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 or the Protection from Abuse (Scotland) Act 2001 for the prevention of domestic abuse, or a non-harassment order under the new section 8A of the 1997 Act.

13. Section 2(1) of the Bill inserts new subsections into section 15 of the 1986 Act which deals with means testing. The new subsections, subsections (1A) and (1B), provide that, where a person seeks the civil protection orders as described in paragraph 12, legal aid will be available regardless of the disposable income of the applicant. This means that a person will not face means testing when seeking civil legal aid in these circumstances.

14. A new subsection is also inserted into section 17 of the 1986 Act. This provides that a person who is eligible for legal aid under section 15(1A) will not face paying a contribution towards their civil legal aid.

Section 3: Breach of interdict with power of arrest

15. Section 3(2) of the Bill makes breach of interdict with a power of arrest, obtained under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 or the Protection from Abuse (Scotland) Act 2001 for protection from domestic abuse, a crime.

16. 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 six months or by a fine not exceeding the statutory maximum, or by both such imprisonment and such fine.

17. 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 4: Meaning of “domestic abuse”

18. Domestic abuse is defined in section 4 of the Bill. This provides that any behaviour will be considered to be domestically abusive where it falls within the definition of abuse and occurs in any of the listed relationships.

19. Section 4(1) provides the list of relationships required for abuse to constitute “domestic abuse”. Any case where the victim and the abuser are (or were formerly) married, in a civil partnership, or in an established relationship of any length will qualify. Subsection (2) provides that an established relationship includes, but is not limited to, sexual relationships. Parental abuse is also included in the list of relationships by virtue of section 4(1)(b). By virtue of subsections (3) and (4), this list of relationships may be amended by subordinate legislation in order to add new categories of relationship.

20. The definition of abuse is taken from the Protection from Abuse (Scotland) Act 2001.

FINANCIAL MEMORANDUM

INTRODUCTION

21. This document relates to the Domestic Abuse (Scotland) Bill introduced in the Scottish Parliament on 27 May 2010. It has been prepared on behalf of Rhoda Grant, the member in charge of the Bill, by Liza Gilhooly to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

22. 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 civil protection orders and legal aid and will also introduce a new criminal offence in order to achieve these aims.

23. The main costs likely to arise from the Bill relate to an anticipated increase in the number of cases brought to court for non-harassment orders (NHOs) and interdicts with a power of arrest. Additionally there are expected costs associated with section 2, which proposes to make legal aid available without means testing in respect of all applications for an interdict with a power of arrest or a NHO where domestic abuse is involved. These costs will fall on the Scottish Administration.

METHODOLOGY AND STRUCTURE OF MEMORANDUM

Overview

24. 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.

25. 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 quickly 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 figures provided in this Memorandum are based on part-year data for 2009-10 rather than full-year data for any previous year, given that the current rules on eligibility for civil legal aid have only been in place since April 2009.

26. For these reasons it is impossible to accurately quantify the costs arising from the Bill. Where illustrative costs are provided, the margins of uncertainty in such costs are high (although more likely to be lower than suggested rather than higher than suggested).

Available information

27. 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.

28. Police recorded data regarding incidents of domestic abuse show that in 2008-2009, 53,681 incidents of domestic abuse were recorded.² This is an 8 per cent increase from the previous year. 55 per cent of the incidents led to the recording of at least one crime or offence.³ Where information was available, data shows that over 61 per cent recorded incidents involve repeat victimisation while 44 per cent involved four or more previous incidents.⁴ Trends in

² National Statistics, (24 November 2009). Domestic Abuse Recorded By the Police in Scotland, 2008-2009. *Statistical Bulletin: Crime and Justice Series*. p.4

³ *Ibid.*

⁴ *Ibid.* p.5

incidents recorded where repeat victimisation is known show a general increase over the previous nine years.⁵

29. The numbers 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.

30. 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.

31. 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 of arrest and, breach of interdict cases.⁶ 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.

32. 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.

33. The anticipated effects on legal aid cases as a result of the change to legal aid eligibility implemented in April 2009 by the Legal Profession and Legal Aid (Scotland) Act 2007 are still to be determined by the end of the financial year. For the purposes of this Bill data obtained up to 17 November 2009 has been used to calculate costs. This data includes costs per case and number of applications for civil legal aid as well as advice and assistance cases.

34. Advice and assistance cases have been included in the cost estimations. Legal aid for advice and assistance helps individuals to pay for advice from a solicitor on any matter of Scots law. In some cases it can cover their solicitor representing them in court, known also as assistance by way of representation. This is also subject to means testing under current eligibility. It is not be clear how many of advice and assistance cases were in reference to domestic abuse related incidents but it is assumed that calculations based on *all* information available will cover possible related cases despite a probability that it may overstate the actual costs. The Bill only removes means testing for civil legal aid and not advice and assistance.

⁵ *Ibid.* p.16

⁶ 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.

Structure of Memorandum

35. The remainder of this Memorandum considers separately the likely costs of sections 1 to 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.

36. It should be noted that the same difficulties in relation to calculating the possible costs of the Bill arise in relation to all 3 sections. In addition, sections 1 and 2 and sections 2 and 3 have mutually reinforcing effects (for example, if section 1 increases the number of applications made for NHOs in cases of domestic abuse, then the fact that section 2 makes civil legal aid free in respect of such applications will mean that the associated legal aid costs increase by more than they would have done based on the effect of section 1 alone. The fact that section 2 makes civil legal aid free might also increase the number of applications for NHOs beyond what it would have been based on section 1 alone). For these reasons, there is some repetition of themes in the discussion of each section, although this has been minimised as far as possible.

37. **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 40 to 47.

38. **Section 2** amends the Legal Aid (Scotland) Act 1986 so as to make civil legal aid free to all persons applying to a civil court for an interdict with a power of arrest or a non-harassment order where domestic abuse is involved. This section is discussed in paragraphs 48 to 66.

39. **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 67 to 76.

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

Estimating possible increased demand for non-harassment orders

40. 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.

41. Several possible sources of information could be considered in order to determine the likelihood of an increase in application for NHO. Police data is referred to in paragraph 28 (although these incidents do not all relate to NHOs) and shows 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. Data regarding the number of cases involving NHOs cannot be obtained from the Scottish Court Service. The numbers of recorded NHOs through Sheriff Courts for 2008-2009 is considerably lower than that recorded by SLAB, although it is not

specified if these NHOs were linked to domestic abuse. Furthermore, reasons for initiation, disposal and granting of NHOs cannot be obtained.

42. 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.

Costs on the Scottish Administration

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

43. 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 61% of all domestic abuses cases reported to the police in 2008-2009⁷). 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 69 to 74.

44. 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

45. 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.

46. 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

47. 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 – which will be magnified in the case of civil legal aid by the effect of section 2). As 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. However, see paragraphs

⁷ National Statistics, (24 November 2009). Domestic Abuse Recorded By the Police in Scotland, 2008-2009. *Statistical Bulletin: Crime and Justice Series*. p.17

52 to 66 for a cost illustration based on the combined effect of sections 1, 2 and 3 being a 10% increase in the number of cases in which legal aid is made available.

SECTION 2: AMENDMENT OF THE LEGAL AID (SCOTLAND) ACT 1986

Estimating possible increased demand for civil legal aid

48. The effect of this section will clearly be to increase civil legal aid costs, as it will mean that individuals who would previously have had to make a contribution towards the cost of civil legal aid will now have full costs met. However, it is possible that a further effect of section 2 will be to generate more cases by encouraging people who otherwise may not have been able to afford it to apply.

49. As discussed previously, it is not possible to accurately estimate the possible increase in demand for legal aid arising as a result of this section, as the available data shows that the numbers of those who seek civil protection orders do not correlate with the number of reported incidents recorded by the police.

Costs on the Scottish Administration

Police, COPFS etc.

50. No additional costs to the police are expected as a *direct* consequence of section 2. If an indirect effect of section 2 is to increase the number of NHOs and interdicts with a power of arrest in existence then more offences might be committed, with possible effects on police and other costs. However, there could also be counter-balancing savings. These points are discussed in more detail in relation to section 3 in paragraphs 69 to 74.

Courts

51. If the number of applications for NHOs and interdicts with a power of arrest increases as a result of the changes made by section 2 encouraging people to apply for such orders, there could be some impact on court costs. As stated in paragraph 45, information on the costs of civil cases is not available, but again, in the absence of an estimate as to the likely increase in cases, it would not anyway be possible to quantify the effect of section 2 on court costs.

Legal aid

52. The main area in which this section will give rise to increased costs is clearly legal aid.

53. The first step in trying to quantify these costs was to try to identify the current number of persons who receive civil legal aid in relation to applications for NHOs and interdicts with a power of arrest in domestic abuse cases (and the associated costs). It was not possible to obtain this level of detail from SLAB. However, it was possible to obtain information on the total number of cases falling under the following headings: interdict, NHOs, interdict non-molestation, Protection from Abuse (Scotland) Act 2001 and breach of interdict. This information forms the basis of the estimated total number of cases relating to civil protection orders quoted below.

54. Not all of the cases under the headings mentioned above will relate to domestic abuse. So the number of actual domestic abuse cases will be lower than the number of cases stated and the tables below are likely to overestimate costs for this reason. In addition, the SLAB data does not distinguish between assistance provided to pursuers and defenders, while the Bill only affects pursuers. This will also contribute to the figures below overestimating the costs of the Bill.

55. A further uncertainty in the figures used below arises from the fact that they have been calculated from partial data for 2009-10 (by analysing equivalent stage 2008-09 data). This was preferred over using full year data from an earlier year in order to provide the most up-to-date information, given that the current rules on eligibility for civil legal aid have only been in place since April 2009.

56. Information on the actual costs of the cases falling under the headings mentioned in paragraph 53 was also obtained from SLAB and, again because these were only part-year figures, this was used in order to estimate total costs for 2009-10. The total cost estimated was £1,827,476 (£697,620 for advice and assistance and £1,129,856 for civil legal aid).

57. These costs were gross costs to SLAB i.e. before any income was applied. In order to calculate the effect of making civil legal aid free, it was also necessary to estimate the amount of contributions made by legally assisted persons. Again, data relating to domestic abuse cases only was not available and a suitable comparator was therefore sought: SLAB data shows that in 2008-09, the total cost of legal assistance in family/matrimonial cases was £23.7 million and that contributions from assisted persons in such cases totalled £1.02 million – or 4.3% of the total cost. This deduction was applied to the estimated costs for 2009-10 to estimate the total cost after applying contributions from assisted persons.

58. It should be noted that, even allowing for the fact that all of the figures shown are estimates, this is not the true cost met by SLAB, as income is also received from other sources such as expenses from opponents and amounts awarded to assisted persons. The Bill does not affect these sources of income and so they are not distinguished in the figures shown below. Again, this will contribute to the figures below overestimating the costs of the Bill (because the average cost per case is overstated due to other sources of income not being deducted from the gross costs).

59. The total costs were divided by the total number of cases in order to provide an estimated average cost per case for the purpose of providing cost illustrations. It should be noted that the figures in the tables below may not tally exactly in all cases due to the effects of rounding costs to the nearest pound.

60. All of the above leads to an estimated actual situation in 2009-10 as shown in table 1.

Table 1: Estimated SLAB costs for civil protection orders in 2009-10 (after applying income from contributions only)

	Number of cases	Average case cost (£)	Total cost (£)
Advice & assistance	4,620	144	667,622
Civil legal aid	776	1,393	1,081,272
Total	5,396	-	1,748,894

61. Table 2 shows what the situation would have been in 2009-10 if section 2 of the Bill had been in force i.e. if civil legal aid (but not advice and assistance) was free, assuming that the number of cases stays constant. This is achieved by not reducing the original estimated gross cost for civil legal aid by 4.3% (see paragraphs 56 and 57).

Table 2: Estimated SLAB costs for civil protection orders in 2009-10, if contributions in civil legal aid cases had been removed (section 2)

	Number of cases	Average case cost (£)	Total cost (£)
Advice & assistance	4,620	144	667,622
Civil legal aid	776	1,456	1,129,856
Total	5,396	-	1,797,478

62. This shows that the simple effect of section 2 compared with the table 1 scenario is an increase in SLAB costs of **£48,584**. This relatively small increase is supported by the estimate that 75% of adults in Scotland are already eligible for legal aid at the 2009-10 threshold.

63. As already noted, though, an additional effect of the changes made by section 2 could be to increase the number of cases in which civil legal aid is applied for. It is even possible that this change could have some impact on advice and assistance costs, even though the Bill does not directly change the position in relation to advice and assistance cases. In addition, the changes made by sections 1 and 3 of the Bill seem likely to lead to an increase in applications for NHOs and interdicts with power of arrest in domestic abuse cases (and such increases might impact on advice and assistance costs as well as civil legal aid costs). For all of these reasons the number of cases listed in table 2 seems likely to increase. For reasons already discussed, it is not possible to accurately quantify the likely increase in the number of cases resulting from the Bill. In order to provide some illustrative figures, however, it has been assumed that the combined effect of all of the changes made by the Bill might be to increase the number of cases by 10% (this is based on the increase in cases as a result of similar provision in the Adults Support and Protection (Scotland) Act 2007 (Adults with Incapacity) (Consequential Provisions) Order 2008). Table 3 sets out this scenario, based on 2009-10 estimated figures.

Table 3: Estimated SLAB costs for civil protection orders in 2009-10, if contributions in civil legal aid cases had been removed (section 2) and there had been 10% more cases (combined effect of sections 1 to 3)

	Number of cases	Average case cost (£)	Total cost (£)
Advice & assistance	5,082	144	731,808
Civil legal aid	854	1,456	1,243,424
Total	5,936	-	1,975,232

64. The total cost of £1,975,232 represents a further increase of **£177,754** over the table 2 scenario. The total estimated increase in SLAB costs compared with the current situation (shown in table 1) resulting from the Bill is therefore **£226,338**.

65. Removal of means testing for legal aid under this section should decrease associated administration costs. However, it is assumed that this cost may be offset by the administration costs associated with merit testing if, for example, the 10% increase in the number of cases as a result of the combined effect of sections 1 to 3 of the Bill illustrated above does in fact materialise.

Margins of uncertainty

66. Paragraphs 54 to 58 set out a number of reasons why the figures discussed above are likely to be overestimates rather than underestimates and so the figure of £226,338 should be treated as a maximum. In addition, as noted in paragraphs 55 and 56, the figures used in the tables above are not actual figures but rather estimates based on part-year data for 2009-10. Finally, SLAB data generally shows a declining trend in the number of applications for assistance falling under the headings listed in paragraph 53. For all of these reasons, the cost presented above should be treated as an illustration of a possible outcome of the Bill rather than a precise estimate.

SECTION 3: BREACH OF INTERDICT WITH POWER OF ARREST

Estimating possible increased demand for interdicts with power of arrest

67. 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). It would also seem likely that the creation of the new offence will lead to an increase in applications for a power of arrest to be added to existing interdicts.

68. However, everything that has been said previously about the difficulty of estimating possible increases in demand as a result of the Bill stands. In this case the SLAB data that is available shows that in the period 2003 to 2009 the number of cases involving breach of

interdicts was always between 11 and 28 (despite a decrease in the amount of interdicts sought through civil case applications in the same period). But 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.

69. 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.

70. 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.

71. 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 61% of domestic abuse incidents reported to the police in 2008-09⁸). 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.

72. 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.

73. 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 6 months after

⁸ National Statistics, (24 November 2009). Domestic Abuse Recorded by the Police in Scotland, 2008-2009. *Statistical Bulletin: Crime and Justice Series*. p.16

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.

74. 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

75. 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

76. 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 – which will be magnified in the case of civil legal aid by the effect of section 2). 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. However, see paragraphs 52 to 66 for a cost illustration based on the combined effect of sections 1, 2 and 3 being a 10% increase in the number of cases in which legal aid is made available.

COSTS ON LOCAL AUTHORITIES

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

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

78. 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.

79. 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

80. 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.

81. In relation to legal aid costs, section 2 has the simple effect of increasing legal aid costs by making civil legal aid free to applicants for interdicts with a power of arrest or a NHO in cases of domestic abuse. In addition, though, that change and the changes made by sections 1 and 3 may increase the number of applications for such interdicts and NHOs. 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. However, paragraph 64 suggests an annual increase of less than £226,338 in legal aid costs as result of the combined effect of sections 1, 2 and 3 (based on that effect being a 10% increase in cases).

82. 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.

83. 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 billion⁹. The more robust approach towards 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.

⁹ The Scottish Government (June 2009). *Safer Lives: Changed Lives, A Shared Approach to Tackling Violence Against Women in Scotland*, p.12. Edinburgh

These documents relate to the Domestic Abuse (Scotland) Bill (SP Bill 45) as introduced in the Scottish Parliament on 27 May 2010

PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE COMPETENCE

84. On 25 May 2010, the Presiding Officer (Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Domestic Abuse (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Domestic Abuse (Scotland) Bill (SP Bill 45) as introduced in the Scottish Parliament on 27 May 2010

DOMESTIC ABUSE (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

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