

ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 45-EN. A Policy Memorandum is printed separately as SP Bill 45-PM.

Domestic Abuse (Scotland) Bill

[AS INTRODUCED]

5 An Act of the Scottish Parliament to amend the Protection from Harassment Act 1997 by making provision in relation to harassment amounting to domestic abuse; to amend the Legal Aid (Scotland) Act 1986 by making provision in relation to eligibility for, and the making of contributions towards, civil legal aid in certain proceedings arising from domestic abuse; to make breach of an interdict relating to domestic abuse with a power of arrest attached an offence; and for connected purposes.

Non-harassment orders

1 Amendment of the Protection from Harassment Act 1997

- 10 (1) In section 8 (harassment) of the Protection from Harassment Act 1997 (c.40), after subsection (1) insert—

“(1A) Subsection (1) is subject to section 8A.”

- (2) After that section insert—

“8A Harassment amounting to domestic abuse

- 15 (1) Every individual has a right to be free from harassment and, accordingly, a person must not engage in conduct which amounts to harassment of another and—

(a) is intended to amount to harassment of that person; or

(b) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person.

- 20 (2) Subsection (1) only applies where the conduct referred to amounts to domestic abuse.

- (3) Subsections (2) to (7) of section 8 apply in relation to subsection (1) as they apply in relation to subsection (1) of that section but with the following modifications—

25 (a) in subsections (2) and (4), the words “course of” are omitted; and

(b) for subsection (3) there is substituted—

“(3) For the purposes of this section—

“conduct”—

- (a) may involve behaviour on one or more than one occasion; and
- (b) includes speech and presence in a specified place or area; and

“harassment” of a person includes causing the person alarm or distress.”

(4) In subsection (2), “domestic abuse” is to be construed in accordance with section 4 of the Domestic Abuse (Scotland) Act 2010 (asp 00).”

(3) In section 9(1) (breach of non-harassment order) of that Act, after “section 8” insert “or section 8A”.

(4) In section 18B(1) (actions of harassment) of the Prescription and Limitation (Scotland) Act 1973 (c.52), after “section 8” insert “or section 8A”.

(5) In section 10(1) (interpretation) of the Damages (Scotland) Act 1976 (c.13), in the definition of “personal injuries”, after “section 8” insert “or section 8A”.

Legal aid

2 Amendment of the Legal Aid (Scotland) Act 1986

(1) In section 15 (financial conditions) of the Legal Aid (Scotland) Act 1986 (c.47)—

(a) in subsection (1), insert at the beginning “Subject to subsection (1A),”,

(b) after that subsection, insert—

“(1A) A person shall be eligible for civil legal aid regardless of that person’s disposable income in the circumstances mentioned in subsection (1B).

(1B) Those circumstances are where a person brings proceedings—

(a) under—

(i) the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59), or

(ii) the Protection from Abuse (Scotland) Act 2001 (asp 14),

pursuing an interdict with a power of arrest (providing, in the case mentioned in sub-paragraph (ii), that the case relates to domestic abuse), or

(b) under section 8A of the Protection from Harassment Act 1997 (c.40) pursuing a non-harassment order.”,

(c) after subsection (2), insert—

“(2A) Subsection (2) does not apply in the circumstances mentioned in subsection (1B).”,

(d) after subsection (4), insert—

“(5) In this section—

“domestic abuse” is to be construed in accordance with section 4 of the Domestic Abuse (Scotland) Act 2010 (asp 00), and

“interdict” includes interim interdict.”

(2) In section 17 (contributions etc.) of that Act, after subsection (1) insert—

“(1A) Subsection (1) does not apply in relation to legally assisted persons who are eligible for civil legal aid by virtue of section 15(1A).”

Breach of interdict with power of arrest

3 Breach of interdict with power of arrest

- 5 (1) This section applies where—
- (a) a power of arrest has been attached to an interdict under—
 - 10 (i) section 15(1) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59), or
 - (ii) section 1(2) of the Protection from Abuse (Scotland) Act 2001 (asp 14),
providing, in the case mentioned in sub-paragraph (ii), that the case relates to domestic abuse, and
 - (b) that power of arrest is in effect.
- (2) A person who breaches an interdict to which this section applies is guilty of an offence.
- (3) A person guilty of an offence under subsection (2) is liable—
- 15 (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.
- (4) Following conviction, a breach of an interdict with a power of arrest is not punishable other than in accordance with subsection (3).
- (5) Where a person is convicted of an offence under this section in respect of any conduct, that conduct is not punishable as a contempt of court.
- (6) A person cannot be convicted of an offence under this section in respect of any conduct which has been punished as a contempt of court.
- 25 (7) In this section, “interdict” includes interim interdict.

4 Meaning of “domestic abuse”

- (1) In section 3, “domestic abuse” means any abuse perpetrated against a person who—
- (a) is (or was formerly)—
 - 30 (i) married to or the civil partner of, or
 - (ii) a partner in an established relationship of any length with,
the person who carried out the abuse (“the perpetrator”), or
 - (b) is the perpetrator’s parent, child, grandparent or grandchild (whether by blood or by adoption).
- (2) In this section—
- 35 “abuse” includes violence, harassment, threatening conduct and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress,
- “established relationship” includes, but is not limited to, a sexual relationship.

- (3) The Scottish Ministers may by order made by statutory instrument amend subsection (1) by adding further types of relationships.
- (4) A statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

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*General***5 Short title and commencement**

- (1) This Act may be cited as the Domestic Abuse (Scotland) Act 2010.
- (2) This Act, except this section, comes into force three months after Royal Assent.

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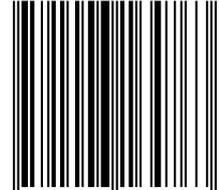
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