

# Domestic Abuse (Scotland) Bill

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## Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 5

Long Title

Amendments marked \* are new (including manuscript amendments) or have been altered.

### Section 1

#### Rhoda Grant

- 1 In section 1, page 2, line 3, leave out <speech and presence in a specified> and insert—  
<( ) speech; and  
( ) presence in any>

#### Rhoda Grant

- 2 In section 1, page 2, line 6, at end insert <; and  
( ) in subsection (4)(b), for “pursued” substitute “engaged in”.>

#### Rhoda Grant

- 3 In section 1, page 2, leave out lines 7 and 8

### Section 2

#### Rhoda Grant

- 13 Leave out section 2 and insert—

#### <Amendment of the Legal Aid (Scotland) Act 1986

After section 14 of the Legal Aid (Scotland) Act 1986 (c.47) insert—

#### “14A Special provision in relation to certain proceedings arising from domestic abuse

- (1) This section applies where a person brings or intends to bring—
- (a) proceedings pursuing an interdict for the purpose of protecting the person from domestic abuse and, at the same time, proceedings under section 1(1A) or (2) of the Protection from Abuse (Scotland) Act 2001 (asp 14) for the attachment of a power of arrest to the interdict; or
  - (b) proceedings under section 8A of the Protection from Harassment Act 1997 (c.40) pursuing a non-harassment order.

- (2) The Board must, where conditions A, B and C apply, make civil legal aid available for work undertaken (or to be undertaken) in relation to the bringing of proceedings of a type mentioned in subsection (1) despite an application for civil legal aid in respect of those proceedings not having been made by the person bringing the proceedings or, as the case may be, determined by the Board.
- (3) Condition A is that the Board is satisfied that the person bringing the proceedings has a *probabilis causa litigandi* and it appears to the Board that it is reasonable in the particular circumstances of the case that the person bringing the proceedings should receive civil legal aid.
- (4) Condition B is that the reason for such an application not having been made or, as the case may be, determined is that—
  - (a) the person is unable to safely access documents required in connection with the making or determination of the application; or
  - (b) the work required (or requires) to be undertaken as a matter of special urgency to protect the person's position.
- (5) Condition C is that, on the basis of the information available—
  - (a) the person is likely to be eligible for civil legal aid under section 15(1) and unlikely to be refused civil legal aid under section 15(2); or
  - (b) the person may be ineligible for or refused civil legal aid under section 15 but is unable to safely access the resources which would be likely to give rise to that ineligibility or refusal.
- (6) The civil legal aid made available under subsection (2) must be that which would be available to the person if the application had been determined and the person determined to have no disposable income and no disposable capital.
- (7) Nothing in subsection (2) to (6) prevents the Board, when determining the person's application for civil legal aid, from—
  - (a) determining that the person is ineligible for civil legal aid under section 15(1);
  - (b) refusing the person civil legal aid under section 15(2); or
  - (c) requiring the person to make a contribution under section 17(1);and any such determination, refusal or requirement may relate to the period during which civil legal aid was being made available under subsection (2) as well as the period after the determination of the application.
- (8) Subsection (9) applies where the Board is determining, in connection with an application for civil legal aid in respect of proceedings of a type mentioned in subsection (1)—
  - (a) an applicant's disposable income for the purposes of section 15(1);
  - (b) whether an applicant who is eligible under section 15(1) should be refused civil legal aid under section 15(2);
  - (c) a legally assisted person's contribution under section 17(2).
- (9) In making its determination, the Board must disregard any resources relevant to the determination which the applicant or, as the case may be, legally assisted person is unable to safely access at the time the determination is made.

- (10) Subsection (9) does not prevent the Board from making a further determination in relation to a matter mentioned in paragraphs (a) to (c) of subsection (8) once the applicant or, as the case may be, legally assisted person has secured safe access to resources disregarded by virtue of subsection (9); and such a determination may relate to the period during which those resources were unable to be safely accessed as well as the period after safe access was secured.
- (11) The Scottish Ministers must by regulations make provision as to how any sums paid out of the Fund by virtue of subsection (2) or (9) which would not have been paid out but for this section may be recovered.
- (12) In this section, “interdict” includes interim interdict.”>

**Fergus Ewing**

- 4 Leave out section 2

**After section 2**

**Rhoda Grant**

- 14 After section 2, insert—

**<Report on access to justice for victims of domestic abuse**

In section 3 (duties of the Board) of the Legal Aid (Scotland) Act 1986 (c.47), after subsection (3), insert—

“(3A) A report under subsection (3) must include a statement of—

- (a) how the Board has, in the year to which the report relates, exercised its function under section 1(2A) in relation to monitoring the availability and accessibility of legal services to victims of domestic abuse who are seeking protection from such abuse through the use of civil remedies; and
- (b) any findings in relation to such availability and accessibility.

(3B) As soon as practicable after receiving a report under subsection (3), the Scottish Ministers must lay a copy of the statement made under subsection (3A) before the Scottish Parliament.”>

**Rhoda Grant**

- 15\* After section 2, insert—

*<Domestic abuse interdicts*

**Domestic abuse interdicts**

- 5 (1) A domestic abuse interdict is an interdict granted on the application of a person (“A”) against another person (“B”), for a purpose mentioned in subsection (2), where A is (or was)—
  - (a) B’s spouse,
  - (b) B’s civil partner,
  - (c) living with B as if they were husband and wife or civil partners, or

- 10 (d) a partner in an established relationship of a non-platonic nature with B.
- (2) The purposes are—
- (a) protecting A from domestic abuse by B,
  - (b) prohibiting B from entering or remaining in any place (including A’s place of residence or work) specified in the interdict.
- 15 (3) Subsection (4) applies—
- (a) in the case mentioned in subsection (1)(a), if in relation to a family home B—
    - (i) is an entitled spouse (within the meaning of section 1(1) of the 1981 Act),  
or
    - (ii) has occupancy rights (within the meaning of section 1(4) of that Act),
  - 20 (b) in the case mentioned in subsection (1)(b), if in relation to a family home B—
    - (i) is an entitled partner (within the meaning of section 101(1) of the 2004 Act), or
    - (ii) has occupancy rights (within the meaning of that section),
  - (c) in the case mentioned in subsection (1)(c), if B—
    - 25 (i) is entitled to occupy a family home,
    - (ii) is permitted by a third party to occupy it, or
    - (iii) has, by virtue of section 18(1) of the 1981 Act, occupancy rights in it.
- (4) Except where subsection (5) applies, the court may not grant a domestic abuse interdict prohibiting B from entering or remaining in the family home.
- 30 (5) This subsection applies—
- (a) in the case mentioned in subsection (1)(a), if—
    - (i) the interdict is ancillary to an exclusion order (within the meaning of section 4(1) of the 1981 Act), or
    - (ii) by virtue of section 1(3) of that Act, the court refuses leave to exercise occupancy rights,
  - 35 (b) in the case mentioned in subsection (1)(b), if—
    - (i) the interdict is ancillary to an exclusion order (within the meaning of section 104(1) of the 2004 Act), or
    - (ii) by virtue of section 101(4) of that Act, the court refuses leave to exercise occupancy rights,
  - 40 (c) in the case mentioned in subsection (1)(c), if—
    - (i) the interdict is ancillary to an exclusion order (with the meaning of section 4(1) of the 1981 Act, as applied by section 18(3) of that Act), or
    - (ii) an order under section 18(1) of that Act granting or extending occupancy rights is recalled.
- 45 (6) In section 1(1A) of the Protection from Abuse (Scotland) Act 2001 (asp 14)—
- (a) the word “or” immediately following paragraph (a) is repealed, and
  - (b) after paragraph (b), insert “; or

50 (c) a domestic abuse interdict (as defined by section (*Domestic abuse interdicts*)(1) of the Domestic Abuse (Scotland) Act 2011 (asp 00),”.

(7) As soon as possible after a domestic abuse interdict has been granted (or recalled) a prescribed person must deliver such documents as may be prescribed to the chief constable of any police area in which the interdict has effect (or had effect before it was recalled).

55 (8) In this section—

“the 1981 Act” means the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59),

“the 2004 Act” means the Civil Partnership Act 2004 (c.33),

“family home” has—

60 (a) in relation to a case mentioned in subsection (1)(a), the same meaning as the meaning given to “matrimonial home” by subsection (1) of section 22 of the 1981 Act (as read with subsection (2) of that section),

65 (b) in relation to a case mentioned in subsection (1)(b), the meaning given by subsection (1) of section 135 of the 2004 Act (as read with subsection (2) of that section),

(c) in relation to a case mentioned in subsection (1)(c), the meaning given by subsection (3) of section 18A of the 1981 Act (as read with subsection (4) of that section),

“interdict” includes interim interdict,

70 “prescribed” means prescribed by rules of court.>

### **Rhoda Grant**

**15A** As an amendment to amendment 15, leave out line 10 and insert—

<( ) a partner in an established relationship with B.>

### **Rhoda Grant**

**15B** As an amendment to amendment 15, leave out line 10 and insert—

<(d) in a sexual relationship with B.>

### **Rhoda Grant**

**15C\*** As an amendment to amendment 15, line 54, at end insert—

<( ) For the purposes of subsection (1)(d), a relationship need not involve sexual intercourse (whether vaginal or anal) in order to be a sexual relationship.>

## **Section 3**

### **Rhoda Grant**

**16\*** In section 3, page 3, line 5, leave out from beginning to <applies> in line 13 and insert—

<(2) A person who breaches a domestic abuse interdict which has been served on the interdicted person>

**Fergus Ewing**

- 5\* In section 3, page 3, line 6, leave out from beginning to <abuse,> in line 11 and insert—
- <(za) on or after the date on which this section comes into force, an interdict is granted against a person (“A”) for the protection of a person who is (or was)—
    - (i) A’s spouse,
    - 5 (ii) A’s civil partner, or
    - (iii) living with A as if they were husband and wife or civil partners,
  - (a) a power of arrest is attached to the interdict under section 1(1A) or (2) of the Protection from Abuse (Scotland) Act 2001 (asp 14),>

**Rhoda Grant**

- 5A As an amendment to amendment 5, line 6, at end insert <or
- ( ) a partner in an established relationship of a non-platonic nature with A,>

**Rhoda Grant**

- 6 In section 3, page 3, line 15, leave out <6> and insert <12>

**Rhoda Grant**

- 17 In section 3, page 3, line 19, leave out <an interdict with a power of arrest> and insert <a domestic abuse interdict>

**Fergus Ewing**

- 7 In section 3, page 3, line 19, leave out <with a power of arrest> and insert <to which this section applies>

**After section 3**

**Rhoda Grant**

- 18 After section 3, insert—
- <**Notification that section 3 applies etc.**
  - (1) The Protection from Abuse (Scotland) Act 2001 (asp 14) is amended as follows.
  - (2) In section 2 (duration, extension and recall of powers of arrest)—
    - (a) in subsection (1), after “with” insert “—
      - (a) where the power of arrest is attached to an interdict of a type mentioned in section 3(1)(za) of the Domestic Abuse (Scotland) Act 2011 (asp 00)—
        - (i) a statement of the date on which the power of arrest will expire;
        - (ii) a statement that, while the power of arrest is in effect, breach of the interdict is an offence; and
        - (iii) such other documents as may be prescribed; and

(b) in any other case,”.

(b) in subsection (5)(a), after “with” insert “—

(i) where the power of arrest is attached to an interdict of a type mentioned in section 3(1)(za) of the Domestic Abuse Scotland Act 2011—

(A) a statement of the date on which the extended power of arrest will expire;

(B) a statement that, while the extended power of arrest is in effect, breach of the interdict is an offence; and

(C) such other documents as may be prescribed; and

(ii) in any other case,”.

(3) In section 3 (notification to police), after subsection (1), insert—

“(1A) Where the power of arrest mentioned in subsection (1)(a) to (c) is attached to an interdict of a type mentioned in section 3(1)(za) of the Domestic Abuse (Scotland) Act 2011 or the relevant interdict mentioned in subsection (1)(d) is such an interdict, the documents delivered under subsection (1) must include—

(a) a statement of the date on which the power of arrest (or, as the case may be, the extended power of arrest) will expire; and

(b) a statement that, while the power of arrest (or, as the case may be, the extended power of arrest) is in effect, breach of the relevant interdict is an offence.”>

## Section 4

### Rhoda Grant

8 Leave out section 4

## Before section 5

### Rhoda Grant

9 Before section 5, insert—

#### <Ancillary provision

(1) The Scottish Ministers may by order made by statutory instrument make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

(3) An order under subsection (1) is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.>

## Section 5

### Rhoda Grant

- 10 In section 5, page 4, line 8, after <except> insert <section (*Ancillary provision*) and>

### Rhoda Grant

- 11 In section 5, page 4, line 8, after <after> insert <the day on which the Bill for this Act receives>

## Long Title

### Fergus Ewing

- 12 In the long title, page 1, line 2, leave out from third <to> to <abuse;> in line 4



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