

Social Justice and Social Security Committee
Thursday 8 May 2025
14th Meeting, 2025 (Session 6)

Inquiry into financial considerations when leaving an abusive relationship

Note by the Clerk

Written submissions

1. Please see below links to submissions from the organisations giving evidence today:
 - [Law Society of Scotland](#)
 - [Scottish Legal Aid Board](#)
 - [Govan Law Centre](#)

Call for views

2. 58 people and organisations responded to the Social Justice and Social Security Committee's call for views.
3. Questions for today's session have therefore been informed by submissions from the organisations giving oral evidence, as well as from other relevant responses to the call for views.

Lived Experience

4. On 26 March 2025, the Committee met with Members of Scottish Women's Aid's Survivor Reference Group, to consider the questions in the Committee's call for views. Participants provided their thoughts on the issues most important to them, and a summary of the key themes from the discussion is available here: [Key themes from lived experience engagement with members of Scottish Women's Aid Survivor Reference Group](#)

Correspondence

5. The Committee has also received the below written correspondence:

- [Legal Services Agency](#) on 28 February 2025
- [Robert Gordon University](#) (Professor Sarah Pedersen) on 1 May 2025
- [Scottish Legal Aid Board](#) on 1 May 2025

SPICe Briefings

6. SPICe have prepared an analysis of the call for views, which is available here: [Financial considerations when leaving an abusive relationship: analysis of the call for views](#).
7. SPICe have also prepared a briefing on civil protection orders, which is especially relevant for this week's session on legal aid. This is attached as an annexe.

Clerks to the Committee
May 2025

Annexe



Social Justice and Social Security Committee

Briefing note: civil protection orders

Purpose

1. The purpose of this briefing note is to provide an overview of the system of civil protection orders in Scotland. Civil protection orders are court orders which can be used to protect people at risk from abuse or further abuse.
2. The aim of the note is to provide background information to support [the Committee's inquiry on financial considerations when leaving an abusive relationship](#).
3. Depending on the circumstances, financial barriers of leaving an abusive relationship can include difficulties in paying for legal costs in the context of an application for a civil protection order.
4. Accordingly, this briefing note includes, for example, a specific section on some current issues associated with the legal aid system (beginning at para 47). It also covers a range of other topics relating to civil protection orders.

How the law in Scotland deals with domestic abuse

5. As a preliminary point, it is important to be aware of the distinction between criminal and civil law, including as it applies to domestic abuse.
6. The criminal law has various criminal offences relating to domestic abuse. These can be investigated by the police and prosecuted on behalf of the state by the [Crown Office and Procurator Fiscal Service](#) (COPFS) through the criminal courts.

7. However, the civil law also has an important role to play in relation to domestic abuse.
8. Civil law is the branch of law which aims, among other things, to manage conflicts between people in society, through the courts if necessary. While one of its aims is to protect people, civil law does not criminalise behaviour to achieve that. It leaves this to the criminal law.
9. In the context of domestic abuse, as well as other forms of abuse and harassment, civil law offers a range of court orders, sometimes collectively referred to as “civil protection orders” (as in this briefing note), “civil protective orders” or sometimes just “protective orders”.
10. Civil protection orders aim to prevent harm and distress. They prohibit a person named in the order from doing certain things, such as repeatedly phoning or messaging someone on social media or approaching them or coming to their place of work. In some circumstances, they can also offer protection in relation to the person at risk’s home, or the vicinity of it.
11. A court can make a civil protection order if satisfied ‘on the balance of probabilities’ this is appropriate. This is the general evidential standard which applies in civil cases. The matter does not have to be proved ‘beyond reasonable doubt’, the standard which usually applies in criminal cases.
12. This might mean a person might obtain a civil protection order through the civil courts even if a related criminal prosecution was unsuccessful.
13. Notably, in 2022 to 2023, [there were at least 1,200 applications for civil protection orders in family cases in Scotland](#).

Different types of civil protection order

14. There are several different types of civil protection order to which the Committee might hear stakeholders refer. Some key examples are set out below.

Interdicts

15. One important type of civil protection order is **an interdict**, broadly, a court order preventing someone from doing something.
16. One challenge associated with interdicts is that the law in this area is very complex, with numerous pieces of Scottish and UK legislation to navigate.
17. There is a proliferation of different statutory terms associated with interdicts. For example, according to one statutory classification, an interdict can be:
 - a **matrimonial interdict** (if a perpetrator and person at risk are married)

- a **relevant interdict** (if the perpetrator and person at risk are in a civil partnership)
- a **domestic interdict** (if the perpetrator and person at risk are living together as a couple).

18. Separately, to add a further layer of complexity, if an interdict meets certain statutory criteria, a court can classify the order as a **domestic abuse interdict** (not to be confused with a domestic interdict, referred to above).

Non-harassment orders (NHOs)

19. A non-harassment order (NHO), another important type of civil protection order, were created by [UK legislation from 1997](#), applying to Scotland.
20. Like an interdict, NHOs also aim to prevent the person named in the order from doing certain things. However, there are some important differences between NHOs and interdicts, including around enforcement. These differences are explored in more detail later.

Exclusion orders

21. An **exclusion order** is a specific type of civil protection order which can exclude a perpetrator from a home which they share with the victim/survivor and which the perpetrator is otherwise legally entitled to occupy (as a tenant or an owner). Exclusion orders were created by [UK legislation from 1981](#), applying to Scotland.
22. The Scottish Government [consulted on reforming the law relating to exclusion orders in 2018](#) but ultimately the relevant proposals were abandoned.

DAPNs and DAPOs

23. Part 1 of the [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), not yet in force, would introduce two new types of civil protection order – the Domestic Abuse Protection Notice (DAPN) and the Domestic Abuse Protection Order (DAPO).
24. One policy innovation of DAPNs/DAPOs is that they are designed to give short-term emergency protection.
25. In contrast, most civil protection orders are focused on medium- to long-term protection of the person at risk.
26. One limited exception in the current law is an interim interdict, that is, a temporary court order, pending a final court decision. This can be obtained relatively quickly through the courts, but arguably not fast enough for an emergency. This is why DAPNs/DAPOs were thought important.

27. However, despite identifiable policy benefits to the new measures, [the Scottish Government seems to have hit practical problems with the implementation of Part 1 of the 2021 Act](#). At this point, it is not known when Part 1 will be brought into force.
28. The [Equalities, Human Rights and Civil Justice Committee](#) has been monitoring the non-implementation of Part 1 (along with other unimplemented legislation). The latest update from the Scottish Government on Part 1 came via [a letter to that Committee, dated 11 March 2025](#). The letter highlighted a workshop planned for late March with “members of the Implementation Advisory Board” to consider key challenges around implementation.

How do you get a civil protection order?

An application by a person at risk - drawbacks

29. Earlier in the briefing, it was explained that criminal offences relating to domestic abuse are prosecuted through the criminal courts by a public body known as COPFS.
30. However, an important policy issue is that some important types of civil protection order, such as interdicts and exclusion orders, must be obtained through the civil courts by the person at risk. There is no equivalent public body acting in the person at risk’s interest.
31. Drawbacks of this include the potential for significant legal costs (unless these are wholly met out of the legal aid budget) and stress for the person at risk.
32. In terms of legal costs, there are a range of issues associated with the legal aid system, which may mean that financial barriers remain even if someone is eligible for legal aid. These issues are discussed later in this briefing note at para 44.

Non-harassment orders

33. Non-harassment orders (NHOs) can be applied for through the civil courts, by the person at risk.
34. However, a standout feature of the relevant legislation is that it is also possible for a prosecutor to apply for, or the criminal court to impose at its own initiative, an NHO at the end of a successful prosecution in a criminal case.
35. It makes special provision for cases where a person is convicted of an offence involving domestic abuse. Where it applies there is what may be described as a ‘presumption’ in favour of making an NHO, in that the court is directed to make one unless it concludes that the protection such an order would provide is not needed.
36. This arguably avoids the problems discussed above in relation to other types of civil protection orders (or where an NHO is applied for through the civil courts).

37. However, in practice, an NHO granted by a criminal court relies on a successful prosecution in the first place, which may not happen. It also relies on prosecutors asking for, and the criminal courts imposing, NHOs in all circumstances where that might be appropriate. The person at risk has no direct say in what happens in this regard.
38. In this regard, relevant non-government amendments were considered at Stage 2 of the [Victims, Witnesses and Justice Reform \(Scotland\) Bill](#). See later in the briefing, at para 66, on this topic.

A new approach for DAPNs/DAPOs

39. The 2021 Act also took a noteworthy approach to the issue of who should act to protect a person at risk. The police can impose a DAPN, and they can also apply to the civil court for a DAPO. This means that the responsibility to apply for an order is again not on the person at risk.
40. However, [Police Scotland are arguing there are significant operational difficulties for them here](#). This is a key issue which appears to have delayed implementation of Part 1 of the 2021 Act. Accordingly, this policy approach also does not seem to have been without its challenges.

What happens when a civil protection order is disobeyed?

41. Note that if a civil protection order is disobeyed ('breached'), it is typically not a purely civil law issue at this stage.
42. For example, breach of an NHO, a DAPN or a DAPO without reasonable excuse is a criminal offence and can be investigated as such by the police. If someone commits this criminal offence it is punishable by imprisonment (up to five years), a fine, or both.
43. On the other hand, with an exclusion order and an interdict, breaching them is not, of itself, a criminal offence.
44. However, it is possible for the person applying to the civil court for an interdict to ask the court to attach a police power of arrest (without warrant) to an interdict. On breach of such an interdict, the perpetrator can be detained in police custody. The court can later imprison the person for up to two days.
45. In addition, where the person at risk asks the civil court for the interdict to be labelled a domestic abuse interdict (with a power of arrest attached), breach of a domestic abuse interdict is, of itself, a criminal offence (punishable by fine, imprisonment or both).

46. In other words, the consequences of disobeying a civil protection order varies. The law in this area associated with interdicts is complex. A legal practitioner advising a person at risk must be well-versed in the additional steps that maximise the strength of the enforcement powers for interdicts.

The role of legal aid

47. As the focus of the Committee's inquiry is financial barriers for a victim/survivor, legal aid is a potentially important topic in the context of civil protection orders.

48. A person at risk may qualify for legal aid covering all or part of their legal costs for applying for a civil protection order.

49. Legal aid aims to enable people on low and moderate incomes to access legal services.

50. Legal aid is funded by the Scottish Government and administered by the [Scottish Legal Aid Board](#) (SLAB). SLAB reimburses solicitors for their work.

51. There are two types of legal aid in civil cases (collectively referred to by SLAB as 'civil legal assistance'). 'Advice and Assistance' covers initial legal advice from a solicitor, 'Civil Legal Aid' covers legal representation in court.

52. However, for both types of legal aid, [financial eligibility criteria applied to a person at risk's circumstances](#) form a key part of the tests used to see if that person should be eligible, and in deciding the extent to which their costs should be covered.

53. In contrast, so-called 'automatic' criminal legal aid (that is, without means testing) [is available for criminal cases in some circumstances](#).

54. The need for legal aid to be available automatically for applications for civil protection orders, rather than being available if financial eligibility criteria are satisfied, has been debated by stakeholders at various points over the years.

55. For example, most recently, see [a report by prepared for the Scottish Women's Rights Centre](#) on issues with the legal aid system, published in December 2024 (hereafter 'the 2024 report'). For a description of earlier debates on this topic, see [the SPICe Briefing on the Bill which became the 2021 Act](#) (at p 35).

56. One argument is that self-funding (if a person at risk doesn't qualify, or fully qualify, for legal aid) is prohibitively expensive and therefore not possible for many people.

57. Another option is 'self-representation' in court by the person at risk, rather than using a solicitor. This is challenging given the complexity of the law associated with civil protection orders. It also comes with the potential to retraumatise a victim/survivor of domestic abuse, through interactions with abuser in the court room.

58. On the other hand, arguments against automatic legal aid in civil cases often include concern for the potential impact on the legal aid budget in terms of extra costs – see, for example, [a 2018 Scottish Government consultation paper](#) on this topic (at para 2.19 onwards).
59. Another key policy issue associated with legal aid is that, increasingly, there are reports emerging of people at risk struggling to access a legal aid solicitor, even if the person at risk might otherwise qualify financially for legal aid.
60. SPICe has no specific statistical or anecdotal evidence about this situation. However, this issue has been raised in the public domain both in the context of applications for civil protection orders ([see, for example, the 2024 report](#)) and other types of civil case where there is a person at risk as well - see, for example, [BBC news, 5 February 2025](#). The latter article describes a victim/survivor in the Highlands who asked more than 116 law firms to take on her case without success.
61. A key issue for practitioners is the perceived low rates of pay under legal aid. This means that it is, in their view, uneconomical to take on all, or all complex, work on civil cases.
62. On 27 February 2025, [the Scottish Government published a legal aid reform discussion paper](#). The Law Society of Scotland, the professional body for solicitors in Scotland, is one of the stakeholders which has commented on the paper thus far. [The Law Society has said that the Government's newly announced plans for legal aid fail to reflect the urgency and scale of the crisis in access to justice](#).

Other issues and points of interest

63. This briefing note concludes by drawing the Committee's attention to two other sets of proposals for reform, of which it is probably helpful to be aware.

The Victims, Witnesses and Justice Reform (Scotland) Bill

64. Part 3 of the [Victims, Witnesses and Justice Reform \(Scotland\) Bill](#) has a potential impact on the experience of people at risk when applying for civil protection orders in the civil courts.
65. Part 3 aims to improve the system of special measures in civil cases. Special measures are a range of practical steps aimed at making it easier for vulnerable witnesses to give their evidence to a court, or vulnerable parties to appear at court hearings (e.g. by video link from outside the court room or from behind a screen in the court).
66. Separately, proposed Stage 2 amendments to the Bill, [considered at the Criminal Justice Committee's meeting on 19 March 2025](#), included ones lodged by Pam Gosal, Maggie Chapman and Sharon Dowey MSPs. Ultimately withdrawn or not

moved, the amendments aimed to strengthen the use of non-harassment orders (NHOs) in criminal cases.

67. In broad terms they would have imposed a requirement on the courts to impose an NHO where a person is convicted of certain offences - either sexual offences or domestic abuse offences (depending on the amendment).

68. Responding to the proposed amendments, the Cabinet Secretary for Justice and Home Affairs said (col 5):

“The amendments seek to achieve something that we are all committed to. They seek to ensure that victims are fully supported by the justice system and that appropriate sentencing options are available and used by the independent court to protect victims. I cannot support the amendments as drafted, but I have written to Pam Gosal, Maggie Chapman and Sharon Dowey to indicate that I am sympathetic to their clearly well-intentioned amendments and to suggest that we work together ahead of Stage 3 to deliver the underlying policy aim of improving protection for victims.”

The Scottish Law Commission’s domestic abuse project

69. The [Scottish Law Commission](#) (‘the Commission’) is [currently reviewing the civil law applying to domestic abuse](#). The Commission is the independent statutory body that makes recommendations to Scottish Ministers for law reform.

70. In late 2024, the Commission published [an initial consultation paper](#) which unfortunately is lengthy and very technical. However, it considers existing civil protection orders related to domestic abuse and makes recommendations for reform.

71. The Commission wants to add another type of civil protection order to the statute books. This is provisionally entitled the **Domestic Abuse Civil Protection and Redress Order** (‘DACPRO’) – and is not to be confused with the legal measures contained in the 2021 Act and described earlier.

72. The Commission’s project and some other policy topics covered in this briefing note are explored in more detail in [the recent SPICe blog on civil law and domestic abuse](#).

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