

PROTECTION FROM ABUSE (SCOTLAND) ACT 2001

EXPLANATORY NOTES

SUMMARY OF AND BACKGROUND TO THE ACT

3. The Bill for this Act was the first Committee Bill (i.e., a Bill initiated by a parliamentary committee under Rule 9.15 of Standing Orders) to be introduced in the Scottish Parliament. The Bill arose from a proposal contained in a report published on 23 November 2000, *Proposal for a Protection from Abuse Bill* (9th Report 2000, SP Paper 221) by the then Justice and Home Affairs Committee. This proposal was debated and agreed to by the Parliament on 24 January 2001.
4. The Bill arose from the committee's conclusion that the law afforded inadequate protection to individuals at risk of abuse from other individuals and the desire to give the police more powers to protect such individuals.
5. As the law then stood, the courts had the power to grant interdicts to protect individuals from abusive conduct. (An interdict is a court order prohibiting a person or persons from engaging in conduct that infringes the applicant's legal rights.)
6. It was not necessary to prove any particular personal relationship with the abuser in order to obtain the interdict. However, unless the interdict was a matrimonial interdict (see below), the courts had no power to attach a power of arrest to an interdict. This meant that unless a criminal offence had been committed, the police had no power to arrest an abusive person, who was in breach of interdict, and to take the person away from the scene.
7. The courts have the power to attach a power of arrest to interdicts classified as matrimonial interdicts, within the terms of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 ("the 1981 Act"). The 1981 Act at section 14 defines "matrimonial interdict". In general the definition applies to an interdict brought either by one spouse against another, or an interdict brought by one individual against another individual, where both individuals have been cohabiting as if they were man and wife. But neither the 1981 Act nor any other legal rule – statutory or non-statutory – gave the courts the power to attach powers of arrest to interdicts not coming within the category of matrimonial interdict.
8. The definition of a matrimonial interdict excludes a wide category of people who may wish to have a power of arrest attached to an interdict against an abusive person. Among these are divorced spouses, same-sex cohabitants, non-cohabitant partners, other family members such as parents or grandparents, or neighbours of abusive people.
9. The effect of the Act is to entitle any individual who has obtained, or who is applying for, an interdict against another individual for the purpose of providing protection from abuse to apply to the court to have a power of arrest attached to the interdict. This is regardless of whether the interdict is a matrimonial interdict or not. In other words, in order to obtain a power of arrest it is no longer necessary to demonstrate any particular personal relationship to the alleged abuser. Instead the court simply has to be satisfied

*These notes relate to the Protection from Abuse (Scotland) Act
2001 (asp 14) which received Royal Assent on 6 November 2001*

that granting the power is necessary to protect the applicant from the risk of abuse through a breach of interdict. If so satisfied, the court will grant the order.

10. The effect of attaching a power of arrest to an interdict is that in the event of the interdicted person being suspected of breaching the interdict, a constable is entitled to arrest the interdicted person, and take him or her away from the scene. The constable also has to be satisfied that if he or she did not arrest the interdicted person, there would be a risk of the person causing or continuing to cause abuse in breach of the interdict.
11. The Act also makes provision for procedure to be followed following the arrest, including provision for the arrestee to be detained for two days, if the court is satisfied that doing so would minimise the risk of any abuse.
12. The provisions in this Act are generally in line with the equivalent procedures under the 1981 Act for matrimonial interdicts. They do however differ in certain respects. The most important differences are explained in the following paragraphs; others are accounted for by the different context and some are drafting alterations.