

# **PROTECTION FROM ABUSE (SCOTLAND) ACT 2001**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 1: Attachment of power of arrest to interdict***

13. Subsection (1) sets out that a person may apply to have a power of arrest attached to an interdict if the purpose of the interdict is to provide protection against abuse. “Person” means an individual person, not e.g., a company or a partnership (see section 7). As subsection (1) makes clear, the person applying for the power of arrest must be the person applying for, or who has obtained, the interdict.
14. In practice, an individual may apply both for an interdict and for a power of arrest in one court application, or may apply to have a power of arrest attached to a pre-existing interdict. There is nothing in the Act to prevent an application for a power of arrest being made in respect of an interdict granted before the Act comes into force.
15. Subsection (2) requires the court to grant the application if it is satisfied that the conditions set out in paragraphs (a) to (c) have been met. First, the interdicted person must be given an opportunity to be heard by, or represented before, the court. The precise rules as to what constitutes an “opportunity” will be set out in rules of court, but it is expected that the interdicted person would be given a copy of the application and notice of the hearing. This means that a power of arrest could not be attached until at least the expiry of the period set in court rules. The equivalent period under the 1981 Act is seven days.
16. Secondly, a court cannot attach a power of arrest to an interdict under the Act where a power of arrest has already been attached to the same interdict under the 1981 Act. For this to be the case, the interdict would have to be a “matrimonial interdict” within the terms of the 1981 Act.
17. The rationale behind this second condition is that it could be confusing and complicated – especially from the point of view of the police – to allow a person to have two different types of power of arrest in respect of the same interdict. Although the broad effect of a power of arrest under each legislative route is the same – the police being given a right to arrest the interdicted person on suspicion of breaching the interdict – there are a number of differences between the two types of power. For instance, the post-arrest procedure under this Act differs slightly from that set out under the 1981 Act, and the rules on the duration of powers of arrest under this Act are different from those set out in the 1981 Act. There is nothing to prevent an individual asking a court to grant either a power of arrest under the 1981 Act or a power of arrest under this Act. But in the event of the court deciding that the applicant would be entitled to a power of arrest under either piece of legislation, the applicant would have to elect which power of arrest to choose.
18. The final condition is that the court must be satisfied that the attachment of the power is necessary to protect the applicant from a risk of abuse. In accordance with normal civil rules, the applicant is the person for whom the protection is sought, this would be

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

the child or a person suffering from mental illness should a parent or guardian apply on their behalf. If so satisfied the court must grant the application. The interdict and the risk of abuse must be causally connected: it would not be enough to prove (a) that one has an interdict against another person, and (b) that that person is abusive or potentially abusive. The court would have to be satisfied that there is a risk of conduct occurring, in breach of the interdict, which would be abusive.

19. Subsection (3) requires the court when attaching a power of arrest to set a period for its duration. The longest a power of arrest can last for (although an application for extension may be made – see subsection (3)) is three years. It should be noted that the maximum three-year life-span of a power of arrest runs from the time of the power being granted, not from the time of the power having effect.