

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 4: Powers and duties of police***

31. **Section 4** sets out what the power of arrest entitles the police to do, and the procedure to be followed after the interdicted person has been arrested but before he or she is brought to court.
32. Subsection (1) sets out the two-step test that must be satisfied if a police constable is to carry out an arrest. First, the constable must have reasonable cause for suspecting the interdicted person of being in breach of interdict. Secondly, the constable must consider that there would be a risk of abuse, or further abuse, in breach of the interdict, if the interdicted person was not arrested. In other words, it is not sufficient that the constable suspects that the interdict has been breached. He or she must in addition be satisfied that there is a potentially abusive situation that the victim needs to be protected from. This must be abuse in breach of the interdict; it would not be enough merely for the constable to suspect that the interdicted person would be likely to be abusive if not arrested where the abusive behaviour is not prohibited by the interdict.
33. The reference to “abuse or further abuse” acknowledges that the interdicted person might be breaking the terms of the interdict without causing abuse, as where, for instance, the interdicted person is shouting abuse through the applicant’s window, in breach of interdict, when no-one is at home. Even though no one is in fact being abused by that conduct, that should not prevent the constable from arresting the interdicted person. However, as noted, the constable would have to be satisfied that there was a risk of abuse being caused if he or she did not arrest the interdicted person. In the example given above, the absence of anyone in the home might make it harder for the constable to be so satisfied.
34. Subsections (2) to (5) cover the procedure to be followed in the period between arrest and appearance in court. The rights of the arrested person are essentially the same as the normal rights of an arrested person under sections 15 and 17 of the Criminal Procedure (Scotland) Act 1995. Subsection (2) provides that the arrested person must be informed of the reason for the arrest immediately and taken to a police station as soon as is reasonably possible, they must be detained until either the court hearing or until they are accused on petition or charged on complaint with a criminal offence arising from the incident for which they were arrested. Subsection (3) sets out a series of entitlements that may be accessed by the arrested person, including the right of access to a solicitor. Subsection (4) makes provision in cases where the person who is arrested appears to be under the age of 16.
35. Subsection (6) requires that where a person has been arrested under these provisions, the facts and circumstances giving rise to the arrest must be communicated to the procurator fiscal as soon as is practicable. This is linked to the procurator fiscal’s duty to present a

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

petition to the court setting out the relevant facts and circumstances on the first available court day after the arrest (see section 5(2)).