

PROTECTION FROM ABUSE (SCOTLAND) ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 5: Court appearance

36. Subsections (1) and (2) make clear that the procedure under the Act only applies where the procurator fiscal is not taking criminal proceedings against the arrested person as a result of the facts leading to the arrest. The subsection requires that the arrested person is brought to court without delay and sets out the period within which this must happen.
37. Subsection (3) sets out the matters that should be referred to in the procurator fiscal's petition to the court. The subsection enables the procurator fiscal to present to the court matters which will assist the sheriff in coming to a view as to whether it would be appropriate to order the arrested person's further detention on prevention of abuse grounds. Subsection (3) also requires the procurator fiscal to request the court to consider whether a further period of detention is justified.
38. Subsection (4) provides that the arrested person must be given an opportunity to make representations.
39. Subsection (4) also sets out the test that the sheriff must apply in deciding whether or not to order the detention of the arrested person for a further two days. The test is that both of the following conditions are satisfied:
 - that the information presented shows that there has been a prima facie breach of interdict. In other words, the reference to a "prima facie" breach recognises that information that is presented to the court at the hearing will not be tested in the normal way. The sheriff will require to decide whether there has been a breach at first impression ("prima facie") on the basis of the information presented by the procurator fiscal and any representations by the arrested person; and
 - that if such further detention was not ordered there would be a substantial risk of the arrested person causing abuse or further abuse in breach of the interdict.
40. The reference to "abuse or further abuse" in the second part of the test takes account of the fact that the interdicted person, when arrested on suspicion of being in breach of interdict, may not in fact have been causing any abuse. For instance, the arrested person might have been shouting abuse through the applicant's window, in breach of interdict, when the applicant was away.
41. It should also be noted as regards the second part that the risk of further abuse has to be a risk of abuse that would be in breach of the interdict. If both parts of the test are satisfied the sheriff has a discretion whether to order detention and as to the length of such detention up to a maximum of two days.