

PROTECTION FROM ABUSE (SCOTLAND) ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 7: Interpretation

43. **Section 7** defines a number of terms used in the Act.
- “Abuse”: A number of areas which would constitute abuse under the Act have been included to ensure in particular that psychological as well as physical abuse is covered. This is not an exhaustive definition of what constitutes abuse but an inclusive approach to ensure that the areas defined are included by the courts within the understanding of abuse.
 - “Conduct” has been defined to help ensure that the Act covers a relatively wide category of behaviour. Defining conduct as including presence in a specified place or area makes clear that conduct does not have to be active for it to be abusive.
 - “Court”: The Act applies to both the Court of Session and the Sheriff Courts. In section 5 “the court” will always be the Sheriff Court.
 - “Documents”: The definition of documents as including documents in electronic form is intended to encompass future circumstances where courts may intimate, notify, or communicate documentary information by means of electronic communications. This definition makes clear that in the event of the civil courts adopting these practices, documentary evidence conveyed in this way would come within the definition of documents found in the Act. The Lord Advocate advised the Justice and Home Affairs Committee that an integrated information system would shortly be in place in the criminal justice system.¹ Such a system will allow for electronic transmission of documents by the clerk of court to the police and would enable the granting of a power of arrest to be notified immediately. Such a system is not yet in place in the civil courts.
 - “Interdict” is defined as including interim interdict. Interim interdict is interdict granted on an interim basis, without the need for a full hearing to determine the relevant facts. Once granted it has the same effect as an interdict. Although granted on an interim basis, an interim interdict lasts until it is recalled or varied, and in practice, where an application for interdict is not opposed, an interim interdict will last for an indefinite period. A court can grant interim interdict without requiring to give the party against whom interdict is sought the opportunity to contest the application. In practice however it does not become enforceable until the granting has been intimated to the interdicted person. Before granting a power of arrest, the court must give the person against whom the interdict is sought, or has been obtained, the opportunity to be heard on the application (see section 1(2)).

¹ *Proposal for a Protection from Abuse Bill, Annexe C, page 77, paragraph 4.*

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

- “Parental responsibilities and rights” is given the same meaning as in the Children (Scotland) Act 1995. This applies in respect of section 4(4) in relation to the intimation of detention of a person who appears to be under 16 years and the subsequent access to them while being detained.
- “Person” means individual person: this definition is intended to make it clear that companies, partnerships, etc. are excluded from relying on the Act, or from being made the subject of a power of arrest. Interdicts can be obtained by, or granted against, non-individual legal persons. However, the subject matter of the Act concerns individuals at risk of abuse from other individuals.