



# Domestic Abuse (Scotland) Act 2011

## 2011 asp 13

### *Breach of domestic abuse interdict with power of arrest*

#### **2 Breach of domestic abuse interdict with power of arrest**

- (1) This section applies where—
  - (a) on or after the date on which this section comes into force, an interdict is granted against a person,
  - (b) a determination has been made under section 3(1) that the interdict is a domestic abuse interdict,
  - (c) that determination is in effect,
  - (d) a power of arrest is attached to the interdict under section 1(1A) or (2) of the [Protection from Abuse \(Scotland\) Act 2001 \(asp 14\)](#), and
  - (e) that power of arrest is in effect.
- (2) A person who breaches an interdict to which this section applies is guilty of an offence.
- (3) A person guilty of an offence under subsection (2) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both,
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.
- (4) Following conviction, a breach of an interdict to which this section applies is not punishable other than in accordance with subsection (3).
- (5) Where a person is convicted of an offence under this section in respect of any conduct, that conduct is not punishable as a contempt of court.
- (6) A person cannot be convicted of an offence under this section in respect of any conduct which has been punished as a contempt of court.
- (7) In this section and section 3, “interdict” includes interim interdict.

#### **3 Determination as to whether an interdict is a domestic abuse interdict**

- (1) A person who is applying for, or who has obtained, an interdict may apply to the court for a determination that the interdict is a domestic abuse interdict.

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*Status: This is the original version (as it was originally enacted).*

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- (2) The court may make the determination if satisfied that the interdict is, or is to be, granted for the protection of the applicant against a person who is (or was)—
  - (a) the applicant's spouse,
  - (b) the applicant's civil partner,
  - (c) living with the applicant as if they were husband and wife or civil partners, or
  - (d) in an intimate personal relationship with the applicant.
- (3) Before making a determination under subsection (1), the court must give the person against whom the interdict is, or is to be, granted ("A") an opportunity to make representations.
- (4) A determination under subsection (1) is of no effect for the purposes of section 2 until a copy of the interlocutor containing the determination has been served on A.
- (5) Where a court varies an interdict in relation to which a determination under subsection (1) is in effect, the court must—
  - (a) review whether the interdict as varied continues to be a domestic abuse interdict, and
  - (b) if not, recall the determination.
- (6) A determination under subsection (1) ceases to have effect for the purposes of section 2 if it is recalled under subsection (5).