



# Protection from Abuse (Scotland) Act 2001

2001 asp 14

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 4th October 2001 and received Royal Assent on 6th November 2001**

An Act of the Scottish Parliament to enable a power of arrest to be attached to interdicts granted to protect individuals from abuse; to regulate the consequences of such attachment; and for connected purposes.

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

- (1) A person who is applying for, or who has obtained, an interdict for the purpose of protection against abuse may apply to the court for a power of arrest to be attached to the interdict under this Act.
- (2) The court must, on such application, attach a power of arrest to the interdict if satisfied that—
  - (a) the interdicted person has been given an opportunity to be heard by, or represented before, the court;
  - (b) attaching the power of arrest would not result in the interdicted person being subject, in relation to the interdict, to a power of arrest under both this Act and the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59); and
  - (c) attaching the power of arrest is necessary to protect the applicant from a risk of abuse in breach of the interdict.
- (3) The court, on attaching a power of arrest, must specify a date of expiry for the power, being a date not later than three years after the date when the power is attached.

## **2 Duration, extension and recall**

- (1) A power of arrest comes into effect only when it has been served on the interdicted person along with such documents as may be prescribed.
- (2) A power of arrest ceases to have effect—
  - (a) on the date of expiry specified by the court;
  - (b) when it is recalled by the court; or
  - (c) when the interdict to which the power is attached is varied or recalled,

whichever is the earliest.

- (3) The duration of a power of arrest must, on the application of the person who obtained it, be extended by the court, if satisfied that—
  - (a) the interdicted person has been given an opportunity to be heard by, or represented before, the court; and
  - (b) the extension is necessary to protect the applicant from a risk of abuse in breach of the interdict.
- (4) The court, on extending the duration of a power of arrest, must specify a new date of expiry for the power, being a date not later than three years after the date when the extension is granted.
- (5) Where the duration of a power of arrest has been extended—
  - (a) the extension comes into effect only when it has been served on the interdicted person along with such documents as may be prescribed; and
  - (b) subsection (2) applies as if the date referred to in paragraph (a) of that subsection were the new date of expiry specified by the court in granting the extension.
- (6) Subsections (3), (4) and (5) apply to further extensions as they apply to an initial extension.
- (7) A power of arrest must be recalled by the court if —
  - (a) the person who obtained it applies for recall; or
  - (b) the interdicted person applies for recall and the court is satisfied that—
    - (i) the person who obtained the power has been given an opportunity to be heard by, or represented before, the court; and
    - (ii) the power is no longer necessary to protect that person from a risk of abuse in breach of the interdict.

### **3 Notification to police**

- (1) As soon as possible after—
  - (a) a power of arrest has been served;
  - (b) an extension of the duration of a power of arrest has been served;
  - (c) a recall of a power of arrest has been granted; or
  - (d) the relevant interdict has been varied or recalled,

the person who has obtained such power, extension, variation or recall, or such other person as may be prescribed, must deliver such documents as may be prescribed to the chief constable of any police area in which the relevant interdict has effect or (in the case of paragraph (d)) had effect before it was varied or recalled.
- (2) In this section “relevant interdict” means the interdict to which the power of arrest is or was attached.

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

- (1) Where a power of arrest attached to an interdict has effect a constable may arrest the interdicted person without warrant if the constable—
  - (a) has reasonable cause for suspecting that person of being in breach of the interdict; and

- (b) considers that there would, if that person were not arrested, be a risk of abuse or further abuse by that person in breach of the interdict.
- (2) A person who is arrested under subsection (1) must be informed immediately of the reason for the arrest and must thereafter be taken to a police station as quickly as is reasonably practicable and detained until—
- (a) accused on petition or charged on complaint with an offence in respect of the facts and circumstances giving rise to the arrest; or
  - (b) brought before a court under section 5.
- (3) A person who is detained under subsection (2) is entitled—
- (a) to be informed immediately of the rights given by paragraphs (b) to (e);
  - (b) to have, on request, intimation of the detention and of the place of detention sent, without delay, to a solicitor and to one other person reasonably named by the detained person;
  - (c) to have, on request, intimation given to a solicitor that the solicitor's professional assistance is required;
  - (d) to have, on request, the solicitor informed, as soon as the information is available, of the court to which the detained person is to be taken and the date when that is to happen; and
  - (e) to have, on request, a private interview with the solicitor before any appearance in court under this Act.
- (4) Where a person detained under subsection (2) appears to the officer in charge of the police station to be under 16 years of age the officer must where practicable, without delay and in addition to complying with subsection (3), send intimation of the detention and of the place of detention to any person known to have parental responsibilities and rights in relation to the detained person or to have care of that person; and any person to whom such intimation is given must be permitted reasonable access to the detained person.
- (5) The following matters are to be recorded by the police in connection with the detention of a person under subsection (2)—
- (a) the time at which the person was arrested;
  - (b) the police station to which the person was taken;
  - (c) the time when the person arrived at that police station;
  - (d) the address of any other place to which the person is, during the detention, thereafter taken;
  - (e) the time when the person was informed of the rights given by subsection (3);
  - (f) the time and nature of any request made by the person under subsection (3); and
  - (g) the time and nature of any action taken by a police officer under subsection (3) or (4).
- (6) When a person has been arrested under this section the facts and circumstances giving rise to the arrest must be reported to the procurator fiscal as soon as is practicable.

## **5 Court appearance**

- (1) If the procurator fiscal decides that no criminal proceedings are to be taken in respect of the facts and circumstances which gave rise to the arrest, the detained person must wherever practicable be brought before the sheriff sitting as a court of summary

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

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criminal jurisdiction for the district in which the person was arrested not later than in the course of the first day after the arrest, such day not being a Saturday, a Sunday or a court holiday for that court.

- (2) Nothing in subsection (1) prevents the detained person from being brought before the sheriff on a Saturday, a Sunday or a court holiday if the sheriff is sitting on such a day for the disposal of criminal business.
- (3) When the detained person is brought before the sheriff under this section the procurator fiscal must present to the court a petition—
  - (a) giving particulars of the detained person;
  - (b) stating the facts and circumstances which gave rise to the arrest;
  - (c) giving any information known to the procurator fiscal about the circumstances which gave rise to the interdict and the attachment of the power of arrest;
  - (d) giving any other information known to the procurator fiscal and relevant to an assessment of the risk of abuse or further abuse in breach of the interdict; and
  - (e) requesting the court to consider whether, on the information presented, a further period of detention is justified.
- (4) If it appears to the sheriff, after affording the detained person the opportunity to make representations, that—
  - (a) the information presented to the court discloses a prima facie breach of the interdict by that person; and
  - (b) there would, if further detention were not ordered, be a substantial risk of abuse or further abuse by that person in breach of the interdict,
 the sheriff may order that person to be detained for a further period not exceeding 2 days.
- (5) If the sheriff does not order further detention the detained person must, unless in custody in respect of any other matter, be released from custody.

## 6 **Amendment of the Matrimonial Homes (Family Protection) (Scotland) Act 1981**

Section 15 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59) is amended as follows—

- (a) in subsection (1), for “The”, at the beginning, there is substituted “Subject to subsection (1A) below, the”; and
- (b) after subsection (1) there is inserted—

“(1A) The court may attach a power of arrest to an interdict by virtue of subsection (1) above only if satisfied that attaching the power would not result in the non-applicant spouse being subject, in relation to the interdict, to a power of arrest under both this Act and the Protection from Abuse (Scotland) Act 2001 (asp 14).”

## 7 **Interpretation**

In this Act, unless the context otherwise requires—

“abuse” includes violence, harassment, threatening conduct, and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress;

“conduct” includes—

- (a) speech; and
- (b) presence in a specified place or area;

“court” means the Court of Session or a sheriff;

“documents” includes documents in electronic form;

“interdict” includes interim interdict;

“interdicted person” means—

- (a) in section 1, the person against whom the power of arrest is sought (being the person or one of the persons prohibited by the interdict mentioned in subsection (1) of that section); and
- (b) in sections 2 and 4, the person against whom the power of arrest has been granted;

“parental responsibilities and rights” has the same meaning as in the Children (Scotland) Act 1995 (c. 36);

“person” means natural person;

“power of arrest” means a power of arrest under this Act; and

“prescribed” means prescribed by rules of court.

## **8 Short title and commencement**

- (1) This Act may be cited as the Protection from Abuse (Scotland) Act 2001.
- (2) This Act comes into force at the end of the period of three months beginning with the date of Royal Assent.