

# Domestic Abuse (Protection) (Scotland) Bill

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## Financial Memorandum

### Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Domestic Abuse (Protection) (Scotland) Bill, introduced in the Scottish Parliament on 2 October 2020.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 84-EN)
  - a Policy Memorandum (SP Bill 84-PM)
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 84-LC)
3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### The Bill

4. The Bill is intended to provide the courts with a new power to impose protective orders ("domestic abuse protection orders" or DAPOs) which can impose restrictions and prohibitions on a suspected perpetrator of domestic abuse, including removing them from a home they share with a person at risk and prohibiting them from contacting or otherwise abusing the person at risk while the order is in effect. The Bill provides a power for the police to impose a very short-term administrative notice (a "domestic abuse protection notice" or DAPN) ahead of applying to the court for a DAPO in circumstances where such a notice is necessary for protecting person B from harm before an interim or full DAPO is made. The Bill requires the police to apply to a court for a DAPO no later than the next court day after

giving a DAPN. As the DAPN can only exist for a very short period and does not involve a court process, this memorandum focuses on the costs arising from DAPO, though where relevant distinct cost estimates for DAPNs are provided.

5. The orders are intended to fill the gap that exists in that where someone is experiencing domestic abuse, they are likely to lack the freedom of action to pursue other longer term remedies to address their situation such as seeking a civil order through the courts themselves, and the police and criminal courts would only have powers to impose restrictions where the alleged perpetrator has been arrested on suspicion of having committed a criminal offence or convicted of a criminal offence. The orders will provide the person at risk with some certainty about their protection which is immediate, does not require any action to be taken by the person at risk and is independent of any criminal investigation.

6. The police notices and court-issued orders are intended to provide another means by which action can be taken to protect someone who is at risk of abuse from their partner or ex-partner. The intention is that during the time in which the police and court-imposed protective orders are in place, the person at risk would be protected from harm and would have time and space to consider their long-term housing options and take steps to secure their safety. Depending on the circumstances, this could involve moving home, pursuit of an exclusion order, non-harassment order or interdict or steps to remove a person from shared tenancy.

7. The Bill will also create a new ground on which a social landlord can apply to the court to end the tenancy of the perpetrator with a view to transferring it to the victim of domestic abuse or end the perpetrator's interest in the tenancy where the perpetrator and victim are joint tenants, and enable the victim to remain in the family home.

## Introduction of DAPNs and DAPOs

### **Methodology applied in developing estimates in respect of usage of DAPOs**

8. In 2018/19 the police recorded 60,641 domestic abuse incidents, of which 41%<sup>1</sup> resulted in the recording of at least one offence. There were

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<sup>1</sup> See <https://www.gov.scot/publications/domestic-abuse-scotland-2018-2019-statistics/>

29,054 charges reported to COPFS with a domestic abuse marker, of which 26,138 resulted in court action<sup>2</sup>. In 2018/19, 9,210 people were convicted of an offence with a domestic abuse marker (the disparity between the two is explained to a significant extent by the fact that a single accused may be charged with several offences).

9. However, only a relatively small proportion of domestic abuse incidents are reported to the police. The 2017/18 Scottish Crime and Justice Survey's Partner Abuse Module<sup>3</sup> found that 3% of adults indicated as part of the survey as having experienced partner abuse in the previous 12 months, which equates to around 135,000 people, which is considerably higher than the number of cases that result in criminal prosecution. Of those who had experienced partner abuse, 37.7% of those who reported having experienced partner abuse said that they were living with their partner at the time of the most recent incident. This would indicate that the total number of people who experience domestic abuse by a partner or ex-partner with whom they live in any given year is in the order of 51,000 people.

10. While these figures do not, in themselves, provide a clear indication of how many DAPOs may be made each year, they do give an indication of the overall level of domestic abuse in Scotland and show that there are many situations involving domestic abuse that are not dealt with through the criminal justice system.

11. In looking at the prospective number of DAPOs that may be applied for and made by the police, we can consider the number of Domestic Violence Protection Orders (DVPOs) which police forces in England and Wales have applied for and which the courts have granted in England and Wales using the powers contained in the Crime and Security Act 2010 ("the 2010 Act").

12. In considering the number of DVPOs granted in England and Wales, account should also be taken of the number of DVPNs that are granted in advance of the application being submitted to and heard by the court. In 2018-2019 4,349 DVPNs were granted and the proposed DAPNs would to

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<sup>2</sup> See

<https://www.copfs.gov.uk/images/Documents/Statistics/Domestic%20abuse%20stats%202018-19/Table%201%20-%20Domestic%20abuse%20identifier%20-%202018-19.pdf>

<sup>3</sup> Figures contained in <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Datasets/SCJS/SCJS2017-18vol6>

an extent mirror DVPNs which may or may not be converted into a court imposed DVPO. The distinct costs associated with DVPNs falling on the police are provided for later on in this memorandum. Otherwise, references within the financial memorandum to DAPOs should be taken to include DAPNs where the context requires it. For example, breaches of DAPOs include breaches of DAPNs.

13. The table below provides information on the number of DVPOs applied for and granted in England and Wales between April 2016 and March 2019<sup>4</sup>.

**Table 1 - Numbers of DVPOs in England and Wales**

Year	Number of DVPOs applied for	Number of DVPOs granted	Proportion of DVPOs granted
2016-17	3,814	3,698	97%
2017-18	5,674	4,878	86%
2018-19	6,546	5,859	90%

14. In making the estimates included in this memorandum, consideration has been given to the differences in population between Scotland and England and Wales. Scotland’s population as a proportion of England and Wales is approximately 9%.

15. However, population share alone would not be sufficient to provide an informed estimate as to usage of DAPOs. There are a number of other relevant factors to consider.

16. It is important to note that the power contained in the Bill to make DAPOs is wider than that contained in the legislation in England and Wales in a key respect. This is a DAPN can be made where the police have reason to believe that the person against whom the DAPN is made has been abusive towards the person at risk, whereas under legislation in

<sup>4</sup><https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/domesticabuseandthecriminaljusticesystemappendixtables> (table 2)

England and Wales the police can make a DVPO only if they believe the person has been violent towards the person at risk or has threatened violence towards that person. The definition of abusive in the Bill is wider than the definition used in England and Wales for the operation of DVPOs.

17. In Scotland, extensive training has been provided to police officers on domestic abuse as part of the implementation of the Domestic Abuse (Scotland) Act 2018 and it may be that, as a result of this training, police officers are better able to identify, in particular, non-violent abuse. This might also lead to an increase in the use of DAPOs when compared to the use of DVPOs in England and Wales.

18. In this regard it is noteworthy that there are indications that the domestic abuse offence contained in the Domestic Abuse (Scotland) Act 2018 has been prosecuted considerably more frequently than the 'coercive control' offence in the Serious Crime Act 2015 has been in England and Wales with there being almost as many prosecutions in Scotland for the Domestic Abuse (Scotland) Act offence as there were in England and Wales for their coercive control offence.

19. Set against this, the powers in the Bill are narrower as opposed to the position in England and Wales in another respect in that they are restricted to cases where the person against whom the order is made is the partner or ex-partner of the person at risk of abuse, in line with the Scottish Government definition of domestic abuse. The powers in the 2010 Act enable the police to make an order to protect a person at risk of abuse from e.g. their adult children or from an adult sibling who lives with them.

20. There are no statistics available on the proportion of DVPOs made in England and Wales where the person against whom the order is made is not the partner or ex-partner of the person at risk. However, the Crime Survey for England and Wales<sup>5</sup> estimated that in 2017/18, 5.7% of adults aged 16 to 74 years experienced domestic abuse<sup>6</sup> in the last year and a higher percentage of adults experienced abuse carried out by a partner or ex-partner (4.2%) than by a family member (2.0%).

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<sup>5</sup><https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwalesoverview/november2019>

<sup>6</sup> As defined in that publication, to include abuse by family members who are not partners or ex-partners.

21. If it is assumed that these figures are reflected in the proportion of cases where a DVPO has been made in England and Wales to protect a person who is at risk from abuse by a family member who is not a partner or ex-partner, then it might be reasonable to assume that the number of protective orders made per head of population will be around a third lower<sup>7</sup>.

22. On the other hand, the Scottish Crime and Justice Survey's partner abuse module for 2017/18 found that respondents were more likely to report having experienced psychological abuse (13.8% of respondents) by a partner or ex-partner since the age of 16 than to have experienced physical abuse (10.2% of respondents). This indicates that, because the DAPO can be used where it is believed that the suspected perpetrator has abused the person at risk, rather than only where they have used or threatened physical violence, there could be a wider range of cases where a DAPO in Scotland can be used than is the case with a DVPO in England and Wales.

23. Furthermore, differences in the broader legislative and policy landscape as it relates to other options available to the police when dealing with cases of suspected domestic abuse in Scotland when compared to England and Wales may affect the extent to which the figures for the use of protective orders in England and Wales can be used to accurately predict how many such orders will be made in Scotland. For example, the use of "investigative liberation" in Scotland may differ from the use of its equivalent, "pre-charge bail", in England and Wales.

24. While statistics for 2019/20 on the use of DVPOs in England and Wales have not been published, it is understood that new guidelines on the use of pre-charge bail in domestic abuse cases, which came into effect in April 2019, have significantly reduced the extent to which the police have relied on the use of DVPOs and that police forces are now using them in around 1%-2% of all domestic abuse cases. Set against this, the UK Government has estimated in the supporting material for its Domestic

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<sup>7</sup> Though this may not in fact be the case. In the absence of data it is not possible to say whether, for example, cases involving serious risk of harm are more likely to involve a partner or ex-partner and as such, a much greater proportion of protective orders are made to protect a person from their partner/ex-partner than these figures might suggest. Equally, it could be that there is a greater reluctance on the part of victims to report abuse by an adult family member.

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Abuse Bill that the reformed system of orders will lead to between 8,500 to 25,500 applications by the police.

25. All of the above paints a picture in which providing specific estimates is challenging. Therefore, the approach taken in this financial memorandum is to provide three estimates with the methodology explained for each. Later on in the memorandum, these three estimates are applied to help understand what the cost impact of the Bill will be depending on usage of the orders.

26. DAPOs are also intended to be used in cases where there has been no crime recorded and so account needs to be taken of applications that will be made outwith the category of recorded crimes in situations where the police decide to make an application based on information provided by third sector organisations and/or through Multi Agency Risk Assessment Conference meetings.

27. Additionally, in situations where the police have reported an offence to COPFS for consideration of prosecution and where a crime is identified but there is not sufficient admissible evidence to commence proceedings, Police Scotland will require to consider if public protection considerations and victim risk management require the application for a DAPO as no other protective orders would be in place at that point.

28. What this all indicates is that there is a great degree of uncertainty about exactly how many DAPOs might be expected to be made each year and there are reasons to be cautious in assuming that the experience in England and Wales provides a good indication of how many DAPOs would be made in Scotland. In part, this reflects that there is a national police service in Scotland whereas there are 42 police forces in England and Wales and the degree to which there is a consistent approach across those 42 police forces is not known.

29. One estimate is based on data for the latest year available in England and Wales. In 2018-19, 6,549 applications for DVPOs were made by the police in England and Wales<sup>8</sup>. Using broad population share data with

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<sup>8</sup> Figures for the number of DVPNs imposed in England and Wales are not available for all police forces. However, as the Crime and Security Act 2010 requires the police to apply for a DVPO when they make a DVPN and there is no power to apply for a DVPO without having first made a DVPN, it can reasonably be assumed that the number of applications for DVPOs and the number of DVPNs made ought to be the same.

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Scotland representing 9% of the population in England and Wales, this would result in an estimate of around 600 applications per year.

30. Another approach to developing an estimate is to use UK Government estimates for their Domestic Abuse Bill for usage in England and Wales. They estimate between 8,000 and 25,000 police order applications which, if taking the mean, is 17,000 applications. Applying the 9% ratio based on population share, this represents 1,530 applications.

31. However, if account is taken for observed recognition and prosecution of domestic abuse in Scotland, the ratio could be changed to, say, 18% to reflect this. This would result in an estimate of 3,060 applications.

32. Given the uncertainties, no central estimate is provided in this financial memorandum and instead these three estimates (600, 1,530 and 3,060) are provided to aid general understanding of the potential impact of the new orders including in assessing the cost impact.

33. The Bill provides the police with a power to make a notice which then requires an application to be made to the court for a court order. An application can also be made to the court for an order in circumstances where a police notice has not been given. Table 1 showed that, in England and Wales, there has been variation in the proportion of DVPOs which the court determines should be granted, ranging from 86% in 2017/18 and 97% in 2016/17.

34. It is not certain as to what the explanation is for this variation, though it may reflect changes in the approach taken by different police forces to the use of such orders over time. In total, over the three year period, police forces in England and Wales made 16,034 applications to the court for DVPOs, and 14,435 of these applications were granted, a total of 90% of all applications made.

35. The financial memorandum uses an estimate that the court will make a DAPO in 90% of cases where the police apply for one.



**Table 2 – Estimated DAPOs applied for and granted**

	Number of DAPOs applied for by police	Number of DAPOs granted by court
Estimate 1	600	540
Estimate 2	1,530	1,377
Estimate 3	3,060	2,754

## Costs on the Scottish Administration

### Making a Domestic Abuse Protection Order

#### Scottish Courts and Tribunals Service

36. The cost to the Scottish Courts and Tribunals Service (SCTS) of making a determination on an application made by the police for a DAPO is likely to depend on a wide range of factors which make it difficult to provide a specific estimate.

37. One of the factors is whether that order is contested by the person against whom it is made. It is difficult to estimate what proportion of orders applied for by the police will be contested by the person against whom the order is sought. However, the Impact Assessment produced for the UK’s Domestic Abuse Bill<sup>9</sup> notes that in England and Wales, data from one police force indicated that 15% of DVPO applications are currently contested.

38. Information on estimated costs provided by the UK Government in their impact assessment for reforms to the system of protective orders in England and Wales estimate that the court costs amount to approximately £461 per order<sup>10</sup>.

<sup>9</sup> <https://publications.parliament.uk/pa/bills/cbill/58-01/0096/IAFEB2020.pdf> (page 22, paragraph 82, footnote 45)

<sup>10</sup> See paras 87-93 - [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/869070/Impact\\_assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/869070/Impact_assessment.pdf)

39. In the financial memorandum for the Female Genital Mutilation (Scotland) Bill<sup>11</sup>, an estimate of £105 was provided for the protection orders court process for the protective orders created within that Bill. While there are reasons why this is not directly comparable with the orders proposed in this Bill e.g. likely volumes, this does give an indication of other protection order estimated costs.

40. Dialogue with SCTS has led to an estimate of £458 per order being provided. This is based on approximately 600 to 650 orders being applied for. This estimate allows for an element in relation to applications for variation/discharge of orders allowed for in the Bill and in relation to appeals against orders. It also takes into account that provision is to be made in the Bill for these to be heard by summary sheriffs as well as sheriffs.

41. A number of factors are likely to mean costs will probably be higher than this estimated figure of £458. These include:

- The Bill provisions allow the person at risk (person B) to make representations and to apply to become a party. The application would require to be intimated to that person and they would need to be given the opportunity to make representations or to enter the process. It is considered the intimation and lodging of representations (if written)/application to become a party would have to take place within the 21 day period of an interim order which will impact on costs to the SCTS;
- The Bill provides that where the sheriff is considering making provision in an order which would directly relate to a child, the sheriff must take into account any views of the child of which the sheriff is aware (taking into account the child's age and understanding). How this will work in practice will impact on the costs of such applications e.g. how will the child be able to offer their views to the court, how will the child be contacted, will proceedings be continued for this purpose;
- There will be recording of evidence and the provision of special measures for witnesses which while standard for the operation of the courts will result in some higher costs given the timescales for dealing with application under the Bill;

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<sup>11</sup>[https://www.parliament.scot/S5\\_Bills/Female%20Genital%20Mutilation%20\(Protection%20and%20Guidance\)%20\(Scotland\)%20Bill/SPBill47FMS052019.pdf](https://www.parliament.scot/S5_Bills/Female%20Genital%20Mutilation%20(Protection%20and%20Guidance)%20(Scotland)%20Bill/SPBill47FMS052019.pdf) (paragraph 13)

- The Bill requires the initial hearing where a DAPN has been given to be held quickly and this will result in there being an operational impact in some courts – for instance a number of smaller courts do not have judiciary sitting in them every day. Changes to the SCTS civil case management system are likely to be required to meet the policy intent of the Bill. However the full extent of those changes are not known and will not be known, until court rules are in place.

42. Taking these factors into account and the challenges of estimating a specific cost, no specific estimated cost is provided. However, for illustrative purposes and taking into account the list of factors above which can make the process of hearing an application more complicated e.g. taking into account the views of a child, if the average cost for the court processing of a DAPO was, say, £800, 600 applications each year would result in costs of £480,000, 1,530 applications would result in costs of £1,224,000 and 3,060 applications would result in costs of £2,448,000.

### Scottish Legal Aid Board

43. Where the person against whom an order is sought wishes to oppose the making of an order, they may qualify for civil legal aid. It is estimated that, given the relatively brief nature of the hearing and the fact it is unlikely that expert witnesses would be required, a reasonable estimate of the cost per case would be £1,000. This figure is based on data the Scottish Legal Aid Board (SLAB) provided on the average case cost for some grants of legal aid. They advise that 90% of such grants will charge an account of £1000 or less. SLAB has done significant calculations when we set the various case cost limits we have in place for civil grants. As such, they set all limits at a level which encompassed accounts up to the 90<sup>th</sup> percentile so there are very few accounts in excess of this limit, but many in the range up to £1000 thus making this figure a robust selection of an average application cost.

44. It is estimated that around 15% of applications will be opposed based on experience in England and Wales.

45. On that basis, applying the estimate of 600 applications per year, the cost to SLAB is estimated to be around £90,000 per year. If the number of DAPOs made each year is 1,530, it is estimated the cost would be around £230,000 and if it is 3,060 DAPOs each year, the cost would be £459,000.

## **Breach of Domestic Abuse Protection Order**

46. In addition to the cost of applications for DAPOs to be considered by the courts, the Scottish Government expects there will be costs in relation to the new criminal offence of breaching a DAPO.

47. In order to estimate the proportion of DAPOs which may be breached, the Scottish Government has used the figures provided to the UK Government concerning the proportion of DVPOs which are breached, which found that in the year ending June 2016, the breach rate for these orders was 28%<sup>12</sup>.

48. There are 3 estimates provided as to the possible number of orders to be imposed. These are 540, 1,377 or 2,754 orders.

49. Applying these estimates being made by the courts each year and using the breach rate from England and Wales, it is suggested that there may be around 151, 386 or 771 cases involving the breach of a DAPO reported to COPFS each year.

50. Consideration should also be given to the possibility of multiple repeated breaches of a single order. While it is difficult to be certain, there is an increased possibility of repeated breaches of an order given that it is likely in the majority of convictions a non-custodial disposal will be imposed with the order remaining in force and the perpetrator still at liberty.

51. In addition to the reported breaches of DAPOs, there will be a number of reported breaches of DAPNs that will require reporting and prosecution. However, given the DAPN can only exist for a very short period of time, no separate estimates are provided for breaches as instead they are contained within the estimates of breaches of DAPOs.

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<sup>12</sup> See paragraph 69 of <https://publications.parliament.uk/pa/bills/cbill/58-01/0096/IAFEB2020.pdf>

**Costs on the Scottish Courts and Tribunals Service, Scottish Legal Aid Board and Crown Office and Procurator Fiscal Service**

52. The costs would depend on the proportion of cases which result in a prosecution, the court procedure under which a prosecution is brought and how the accused pleads.

53. In 2017-18, 90% of cases reported to COPFS with a ‘domestic abuse marker’ were prosecuted in court and for the purpose of estimating the cost to the criminal justice system of prosecuting breach of a DAPO that court action would be taken in the same proportion of cases. This would mean that if 151 cases were reported to COPFS for consideration of prosecution, 136 would be prosecuted in court. If 386 cases were reported to COPFS for consideration of prosecution, 347 would be prosecuted in court. If 771 cases were reported to COPFS for consideration of prosecution, 694 would be prosecuted in court.

54. The Scottish Government publication “Costs of the Criminal Justice System in Scotland 2016/17”<sup>13</sup> estimates that the average cost of criminal cases in different levels of court. The table below sets out these costs, updated to reflect for inflation to the period 2019-20 (which averaged 3.2% between these years):

**Table 3 – individual criminal proceedings case costs associated with breaches**

	Sheriff Solemn Court Case	Sheriff Summary Court Case
Cost to COPFS	£4,790	£487
Cost to SCTS	£2,404	£472
Cost to SLAB	£1,780	£691
Total Cost	£8,974	£1,650

<sup>13</sup> <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot/costcrimjustdataset>

55. The Bill provides that the maximum sentence for breach of a protective order is 5 years imprisonment. As such, breach may be prosecuted either under summary procedure or on indictment. It is assumed here, for modelling purposes that the proportion of cases tried on indictment will be the same as the proportion of cases relating to breach of a non-harassment order or domestic abuse interdict<sup>14</sup>. In 2018/19<sup>15</sup>, 95% of these cases were tried in the summary sheriff courts and 5% were tried on indictment in the sheriff courts.

56. The following table sets out the estimated costs to COPFS, SCTS and SLAB of 136, 347 and 694 prosecutions for breach of a DAPO:

**Table 4 – overall criminal proceedings case costs associated with breaches**

	Sheriff Solemn	Sheriff Summary	Total
Cost to COPFS	7 x £4,790	£487	£96,353
	17 x £4,790	330 x £487	£242,140
	35 x £4,790	659 x £487	£488,583
Cost to SCTS	7 x £2,404	129 x £472	£77,716
	17 x £2,404	330 x £472	£196,628
	35 x £2,404	659 x £472	£395,188
Cost to SLAB	7 x £1,780 17 x £1,780	129 x £691	£101,599
		330 x £691	£258,290
	35 x £1,780	659 x £691	£517,669

<sup>14</sup> In contrast with breach of other civil interdicts, which are dealt with by contempt of court, breach of a domestic abuse interdict is a criminal offence under section 2(2) of the Domestic Abuse (Scotland) Act 2011.

<sup>15</sup> See <https://www.gov.scot/publications/criminal-proceedings-scotland-2018-19/> (table 3, page 56)

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57. For 136 breaches of DAPOs, the estimated cost to COPFS, SCTS and SLAB would be £275,668.

58. For 347 breaches of DAPOs, the estimated cost to COPFS, SCTS and SLAB would be £697,058.

59. For 694 breaches of DAPOs, the estimated cost to COPFS, SCTS and SLAB would be £1,401,440.

### Costs on the Scottish Prison Service

60. For the purposes of estimating costs arising from the conviction of offenders for breaching a DAPO, the Scottish Government has assumed that the conviction rate will be the same as for cases with a domestic abuse identifier. In 2018/19 the conviction rate for offences of breaching a non-harassment order or domestic abuse interdict was 89%.

61. For breach of a DAPO, this would result in 120 convictions from 136 prosecutions, 309 convictions from 347 prosecutions for and 618 convictions from 694 prosecutions.

62. In 2018/19, 15.7% of all convictions for offences with a domestic abuse identifier resulted in a custodial sentence, with the average length being 287 days, 21.7% resulted in a financial penalty, 32.7% resulted in a community payback order and the remaining 29.8% resulted in another form of non-custodial disposal including admonishment.

63. Applying the breakdown of disposals from existing offences associated with domestic abuse to the new offence to each of 120 convictions, 309 convictions and 618 convictions produces the following outcomes.

64. 120 convictions would result in 19 custodial sentences, 26 financial penalties, 39 community payback orders and 36 other forms of non-custodial disposal.

65. 309 convictions would result in 49 custodial sentences, 67 financial penalties, 101 community payback orders and 92 other forms of non-custodial disposal.

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66. 618 convictions would result in 97 custodial sentences, 134 financial penalties, 202 community payback orders and 184 other forms of non-custodial disposal.

67. It should be noted that it is expected that the proportion of cases relating to breach of a DAPO which results in a custodial sentence may be lower than shown above as the sentencing outcomes for offences associated with domestic abuse will include crimes of assault to severe injury, sexual assault and rape where a custodial sentence is highly likely.

68. Under existing prisoner early release rules, offenders receiving an average sentence of 287 days will be released after serving half their sentence in custody. This is 144 days. 144 days is 39.4% of 365 days.

69. The Scottish Government publication “Cost of the Criminal Justice System” estimated the average cost of a prison place in 2017-18 to be £37,334. Each prisoner serving 144 days would represent a cost of £14,710.

70. The estimated cost in terms of prison places would be £279,490 (19 custodial sentences), £720,790 (49 custodial sentences) and £1,426,870 (97 custodial sentences).

71. It should be noted that, in practice, the costs associated with prosecution of breaches of DAPOs may over-estimate the cost to the justice system of this scheme as it may be that the behaviour amounting to breach of a protective order amounts to a criminal offence in itself and would be prosecuted irrespective as to whether it also amounts to a breach of the protective order. This is likely to be true particularly of the estimated costs to the Scottish Prison Service as it is likely that conduct which is sufficiently serious to warrant the imposition of a custodial sentence would be more likely to amount to a criminal offence in itself.

## Costs on Local Authorities

### **Costs arising from use of Domestic Abuse Protection Orders**

72. The Bill provides a power for the police and courts to prohibit a suspected perpetrator of domestic abuse from returning to a home that



they share with the person at risk for a period of time. In some cases, this may mean that the suspected perpetrator may become homeless.

73. Local authorities have a legal duty to help people who are homeless or at risk of becoming homeless. They do this by:

- providing information and advice
- offering temporary or permanent accommodation if circumstances warrant it

74. Under the Housing (Scotland) Act 1987 a person should be treated as homeless, even if they have accommodation, if it would not be reasonable for them to continue to stay in it.

75. This is likely to create additional costs for local authorities if they are required to re-house suspected perpetrators of abuse who have been made homeless because they are prohibited from returning to a home that they share with the person at risk.

76. It is very difficult to quantify what these costs will be as they will be highly dependent on the individual circumstances of the particular person seeking to be re-housed.

77. Temporary costs for single households can be higher because their stays are generally longer as appropriate permanent accommodation is harder to come by. This can create a perverse incentive to rehouse the victim, who would often have children with them, rather than the perpetrator.

## **Costs arising from breach of Domestic Abuse Protection Orders**

78. The 2016/17 Cost of the Criminal Justice System publication estimates that the average cost of a community sentence such as the community payback order is £1,894. In 2018/19, 32.7% offenders convicted of an offence with a domestic abuse identifier received a community penalty.

79. For 120 convictions, it is estimated there would be 39 community payback orders at a cost of £73,866.

80. For 309 convictions, it is estimated there would be 101 community payback orders at a cost of £191,294.

81. For 618 convictions, it is estimated there would be 202 community payback orders at a cost of £382,588.

82. This would be spread across the 32 different local authorities.

83. There will also likely be costs associated with preparing social enquiry reports in some of these cases. It is not possible to provide a specific estimated cost as the need for a social enquiry report is different depending on, amongst other matters, the seriousness of the alleged offence committed (there may be more than one charge libelled) and the background of the accused person. Some cases will require a report while other cases will not. For those cases where a report is required/obtained on a discretionary basis, the average cost of a criminal justice social enquiry report is £447.<sup>16</sup>

## Costs on other bodies, individuals and businesses

### Costs on Police Scotland

84. The introduction of DAPNs and DAPOs will have cost implications for Police Scotland. These will largely consist of legal and administrative costs arising from the requirement to make an application to the court for a protective order, training costs to ensure relevant sectors of the Police Scotland work force receive appropriate training and guidance on the use of DAPNs and DAPOs, administration costs arising from the costs associated with the issuing, application and review of DAPNs and DAPOs made and costs associated with policing the breach of conditions of DAPNs and DAPOs when they have been made.

### One-off training costs

85. Police officers will require training to ensure that DAPNs and DAPOs are used in a consistent manner. Police Scotland note that this could be done either by the use of classroom training for front-line officers or by the use of an e-learning package for all officers and staff.

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<sup>16</sup> Table 3 - <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot/costcrimjustdataset>

86. To undertake classroom training, sufficient numbers of trainers would need to be identified and trained to deliver national training. Based on their experience of training officers on the Age of Criminal Responsibility (Scotland) Act 2019, the cost of this is estimated at £53,000 as Police Scotland consider the training requirements are of a similar order.

87. Delivery of a 3 hour training course to all front-line officers is estimated to have an opportunity cost of around £1,515,000 in terms of the cost of the time of front-line officers attending such training including travelling time. Actual travel costs and the cost of producing training materials are estimated to be around £390,000.

88. However, due to competing demands, Police Scotland have advised that face-to-face training for all officers may not be viable. They consider an alternative approach would be to develop and deliver an e-learning package for front-line officers. Assuming that it would take around 2 hours for each officer to complete the e-learning package and attend a briefing presentation, the opportunity cost in terms of staff time is estimated at around £920,000. Police Scotland estimate that the cost of developing online training if this route is taken would be around £12,000.

89. There is likely to be a requirement for additional training for specialist officers, civilian staff and/or solicitors who will represent Police Scotland at court hearings on applications for DAPOs. This will be far more limited in terms of numbers involved given it is focused on key people involved in the DAPN and DAPO process and the costs are not able to be estimated prior to the development of specification for such training.

## Recurring costs associated with protective orders

90. There will be recurring costs for Police Scotland associated with making a DAPN and with applying to the courts for a DAPO. Police Scotland estimate that, if DAPNs are authorised by an Inspector, the cost in staff time for assessing and authorising a DAPN would be around £63 per application. For 600 DAPNs, this would amount to £37,800. For 1,530 DAPNs, this would amount to £96,390. For 3,060 DAPNs, this would amount to £192,780.

91. There will be associated administrative and governance costs relating to ensuring the notices are recorded on the police national computer and that the best evidence is recorded and prepared for the application to the

court for a DAPO. This is estimated at £21 per order. For the 3 estimates used in this memorandum (600, 1,530 and 3,060), this would be £12,600, £32,130 and £64,260.

92. There will also be costs for the police associated with the application to the court for a DAPO. The cost of this will depend on the complexity of the case. In general terms, cases where the person against whom the order is sought contests the making of the order are likely to cost considerably more than those where the person against whom the order is sought does not oppose the making of the order. Equally, where Police Scotland require to use external solicitors owing to the geographic spread of cases and overlapping court hearings resulting in Police Scotland’s own legal services team being unable to represent them in court, this will result in higher costs.

93. Police Scotland estimate that, taking all these factors into account, and assuming that external solicitors require to be used in 20% of cases, half of which are defended by the person against whom the order is sought, the average unit legal cost per order will be £880 per case. In addition to this, all civil applications made by Police Scotland to the court have a standard fee of £129.

94. Taking account of all the above, the estimated average unit cost of a DAPO, from the point at which the initial DAPN is served is £1,093. The estimated total cost to Police Scotland is as set out in the table below:

**Table 5 – annual costs to Police Scotland of applying to the court for DAPOs**

	Estimate 1 - 600 applications per year	Estimate 2 – 1,530 applications per year	Estimate 3 – 3,060 applications per year
Total cost	£655,800	£1,672,290	£3,344,580

## Costs arising from enforcement and/or breach of Domestic Abuse Protection Orders

95. There will also be costs to the police arising from the investigation and prosecution of alleged breaches of a DAPO. As noted previously in this financial memorandum, the Scottish Government has assumed that 28% of DAPOs will be breached based on information breach rates from England and Wales.

96. In 2018/19, Police Scotland attended 60,641 domestic abuse incidents. Responding to domestic abuse presents a significant demand on operation policing resources with an average of nine working hours estimated for dealing effectively with a domestic abuse incident without taking account of additional demands such as the monitoring and enforcement of bail conditions.

97. The effective management of DAPNs and DAPOs and associated victim safety planning and enforcement where conditions are breached is likely to increase demand on Police Scotland in this area. However, it is difficult to quantify this, not least because it may be that a significant proportion of all incidents amounting to a breach of a DAPN or DAPO would have required a police response, and may amount to a criminal offence. However, it could be assumed that with 28% of DAPOs likely to be breached, and that responding to a breach takes 9 hours of police time, this would equate to £30,414 for 540 DAPOs, £78,304 for 1,530 DAPOs and £156,608 for 3,060 DAPOs<sup>17</sup>.

## Costs on organisations providing support to people experiencing domestic abuse

98. The Scottish Government engaged with Scottish Women's Aid to understand how this Bill will affect the delivery of their services. They have indicated there will be a financial cost for Women's Aid groups to provide advice and assistance to victim-survivors of domestic abuse in relation to their housing options as a result of the introduction of DAPOs. They advise there can be difficulties in separating the time and resource costs of

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<sup>17</sup> With an hourly cost of a constable at £22.38 per hour, if there are 540 DAPOs made, the cost would be  $540 * 0.28 (= 151, \text{rounded}) * 9 * 22.38 = £30,414$ . Same calculation for 1377 DAPOs and 2754 DAPOs, this equates to £78,304 and £156,608

assistance with housing options, which in itself covers a range of different issues and tenures, from the wide range of interlinked concerns that women require assistance and support to address. For example applying for financial assistance - social security, tax credits, opening a bank account and criminal legal issues, legal aid, children's education, health and emotional support.

99. Following discussion by Scottish Women's Aid with individual Women's Aid members, it is considered more relevant - in terms of comparison and cost analysis - to use the example of the support and advocacy services for female victims of domestic abuse crimes going through the court process, for example the Edinburgh Women's Aid Domestic Abuse Court Service (EDDACS). This is a support and advocacy service for female victims of domestic abuse crimes being prosecuted in Edinburgh Sheriff Court. EDDACS role is to explain the court process and the potential outcomes to their client, in addition to carrying out and preparing both a personal risk assessment and individual support and safety plan with the client. EDDACS also keep clients informed of the court progress and outcomes.

100. Provision of a DAPO necessitates a similar support and information process for advising/supporting women in relation to their housing rights and the legal processes around emergency barring orders. This will include preparation of a risk assessment and individual safety and support plan within the first critical stage of the protective notice/order, which will enable women to consider their housing options and plan what steps they need to take next, whether this relates to the DAPO or otherwise.

101. A further crucial part of EDDACS' work and one that is relevant to the courts' consideration of the need for, and conditions within, temporary protection orders under this Bill is preparing a report for the court setting out both the clients' perception of her risk and EDDACS formal, structured assessment of the risk.

102. The EDDACS service in Edinburgh costs £247,000 per annum which pays for 182 direct support hours per week, plus 17.5hrs management per week and 17.5 hrs administration per week. A full time worker will have around 70 cases open at any one time. The hourly rate for the EDDACS service is £26.09 per hour; this is at full cost recovery rates including management and administration. In 2019/20 EDDACS worked with 1027 women.

## **Summary of possible recurring costs to the justice system of new DAPNs and DAPOs system**

103. Subject to the various important caveats provided when specific figures have been provided within this financial memorandum which make the estimation of a cost impact of the system of DAPNs and DAPOs provided for in the Bill extremely difficult, an illustrative figure for estimated recurring costs each year for each of the 3 estimates – 600 DAPOS, 1,530 DAPOS and 3,060 DAPOs – is as follows.

104. For 600 DAPOs, this is an estimated recurring cost of £1,897,838.

105. For 1,530 DAPOs, this is an estimated recurring cost of £4,910,126.

106. For 3,060 DAPOs, this is an estimated recurring cost of £9,820,252.

107. These recurring costs relate to costs on Police Scotland, COPFS, SCTS, SPS and SLAB.

## **Costs on Scottish courts and social landlords arising from termination of Scottish Secure Tenancies in cases involving abusive behaviour**

### **New Ground for Transferring of Secure Tenancy**

108. The Bill will also create a new ground on which a social landlord can apply to the court to end the tenancy of the perpetrator with a view to transferring it to the victim of domestic abuse or end the perpetrator's interest in the tenancy where the perpetrator and victim are joint tenants, and enable the victim to remain in the family home.

109. The Bill amends powers to evict tenants which are set out in the Housing (Scotland) Act 2001.

110. The cost of eviction procedures introduced by the 2001 Act were not considered in the Parliamentary progress of that Act. At that time financial memorandums were limited, and this element was not covered in the additional evidence provided to the Finance Committee.<sup>18</sup> Context suggests

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<sup>18</sup> <https://archive.parliament.scot/business/committees/historic/finance/papers-01/fip01-05.pdf>

that cost associated with these provisions were not considered a significant change to existing procedures.

111. Eviction procedures in the 2001 Act were amended by the introduction of pre-action protocols during Stage 2 of the Housing (Scotland) Act 2010. Information about the cost of this process was set out in a supplementary Financial Memorandum.<sup>19</sup> In that Financial Memorandum it was estimated that around 20,000 social housing cases are referred to the sheriff court each year for eviction action.

112. In 2018/19 there were 29,249 eviction notices issued to local authority tenants, leading to 3,688 court orders, the vast majority of these (98%) were for rent arrears.<sup>20</sup> There were also 42,459 notices of proceedings issued tenants of registered social landlords (RSLs), leading to 5,429 court orders.<sup>21</sup> We assume that the majority of these were also for rent arrears.

113. There were 36,465 applications for homelessness assistance in Scotland in 2018/19. Of these, 3,588 were from local authority tenants and 1,844 from tenants of registered social landlords. 4,614 (13%) of all applications were due to “dispute within the household: violent or abusive”.<sup>22</sup> Of applications made on these grounds, 3,350 were made by single females or single female parents.<sup>23</sup>

114. In 2018/19 there were 3,350 applications for homeless assistance from single females or single female parents. Social housing accounts for 24% of all housing tenures in Scotland. As the provisions are untested, landlords have discretion whether or not to use the provisions, and on the assumption that cases are spread evenly amongst each sector this would indicate an estimated 840 cases coming from the social sector. Many victims of domestic abuse make repeated attempts to flee from an abusive partner and often return to them before finally being able to end the relationship permanently so a proportion of these applications will result in the victim returning to the family home. Each case is unique and in some

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<sup>19</sup> [https://www.parliament.scot/S3\\_Bills/Housing%20\(Scotland\)%20Bill/b36as3-stage2-fm.pdf](https://www.parliament.scot/S3_Bills/Housing%20(Scotland)%20Bill/b36as3-stage2-fm.pdf)

<sup>20</sup> <https://www.gov.scot/publications/housing-statistics-management-of-local-authority-housing/>

<sup>21</sup> <https://www.housingregulator.gov.scot/landlord-performance/statistical-information>

<sup>22</sup> <https://www.gov.scot/publications/homelessness-scotland-2018-2019/pages/3/>

<sup>23</sup> <https://www.gov.scot/publications/homeless-applications-from-women-due-to-domestic-violence-or-abuse-statistics/>



cases victims may not wish to take over the tenancy of the family home, and therefore a further proportion of cases will result in the victim moving to alternative accommodation as the most suitable option to secure safety and continuity for them and their family. Since the policy aim of this provision is to allow the victims domestic abuse in social housing to remain in the family home, we estimate that that the new power could be used in around 200 - 400 cases per year.

115. RSLs tend to outsource their legal services and therefore their legal costs tend to be higher than those of Local Authorities who provide in-house legal services. It is extremely difficult to estimate the actual costs of these proceedings however from information provided directly from social landlords the estimated average cost across both Local Authority and RSL landlords is likely to be in the region of £4,500 per case which includes £500 of fees to the Court and Sheriff Officer giving potential costs of between £900,000 at the lowest estimate, £ 1,295,250 at the middle estimate and £1.727,000 per year at the highest estimate. As landlords will have discretion on whether to use these powers in appropriate cases- they will consider whether the social and economic cost of raising the action outweigh the social and economic benefits of doing so. Having this power available to social landlords may also assist in resolving cases without going to court as perpetrators may decide to give up or transfer the tenancy to the victim on a voluntary basis without the need for court action.

116. The UK Government introduced provisions to protect victims of domestic abuse in the Secure Tenancies (Victims of Domestic Abuse) Act 2018. Their approach differed from that in the current Bill by allowing the victim to preserve their existing tenancy rights in a move to a new home, i.e. new housing would be provided to the victim of the abuse rather than removing the abuser from the house. It was assumed that the impact on social housing would be minimal and potentially offset by the subsequent eviction of the perpetrator, and that the minimal disadvantage to landlords would be offset by the positive benefits for victims of domestic abuse and their dependants.<sup>24</sup>

## Costs for the Scottish Courts and Tribunal Service

117. On the assumptions about volumes previously, of between 200-400 cases per year, we anticipate that costs to Scottish Courts for additional

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<sup>24</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/672145/Secure\\_Tenancies\\_Bill\\_-\\_note\\_of\\_impacts.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672145/Secure_Tenancies_Bill_-_note_of_impacts.pdf)

work as a result of the additional ground for repossession will be minimal. Court fees in the region of £500 per case would be payable to the Court and Sheriff Officers by the landlord initiating the action.

## Costs for Local Authority landlords

118. There will be a cost to local authority landlords and registered social landlords from the administration and legal costs required to seek eviction under the new powers provided by the Bill. We estimate that this cost will be largely balanced by existing costs in dealing with current cases where the victim of abuse requires temporary rehousing and /or permanent rehousing.

119. The duty of local authorities to offer accommodation to persons who are homeless are summarised at paragraph 73 of this Financial Memorandum. If a social landlord evicts a perpetrator of domestic abuse, they will potentially generate an application for housing on grounds of homelessness from the perpetrator. However, this is likely to be equivalent to the current cost of providing new housing for victims of domestic abuse. The current cost of meeting housing needs for victims is likely to be higher than the cost of meeting housing needs for perpetrators on the assumption that victims will include children and the additional duties on local authorities on addressing homelessness for families with children, though note previous material in this memorandum on the higher cost of temporary housing for single households. Overall, the provisions in the Bill are not expected to have a significant impact on the overall costs of meeting the duty to address homelessness.

## Costs for registered social landlords

120. Around 40% of social housing is provided by RSLs (220,000 homes). The power to end the tenancy of the perpetrator with a view to transferring it to the victim of domestic abuse or end the perpetrator's interest in the tenancy where the perpetrator and victim are joint tenants, and enable the victim to remain in the family home will apply to RSLs as it does to local authority landlords. RSLs also have statutory duties to assist local authorities in meeting applications under homelessness legislation. The Scottish Government estimates that costs on RSLs for administration and legal costs will be higher than local Authority legal costs as RSLs generally outsource their legal services, however this will be largely balanced by existing costs in dealing with current cases where the victim of abuse requires temporary accommodation and/or permanent rehousing.



This document relates to the Domestic Abuse (Protection) (Scotland) Bill (SP Bill 84) as introduced in the Scottish Parliament on 2 October 2020

# Domestic Abuse (Protection) (Scotland) Bill

## Financial Memorandum

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