

Domestic Abuse (Protection) (Scotland) Bill

Policy Memorandum

Introduction

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy 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 Financial Memorandum (SP Bill 84-FM)
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP 84-LC)

3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

Policy objectives of the Bill

4. The provisions of this Bill are intended to improve the protections available for people who are at risk of domestic abuse, particularly where they are living with the perpetrator of the abuse.

5. The Bill will do this by providing courts with a new power to make a Domestic Abuse Protection Order ("DAPO") which can impose requirements 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 will also provide a power for the

police, where necessary, to impose a very short-term Domestic Abuse Protection Notice (“DAPN”) ahead of applying to the court for a full Order.

6. The Bill is also intended to help improve the immediate and longer-term housing outcomes of domestic abuse victims who live in social housing, including by helping to avoid homelessness. The Bill will do this by creating 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.

7. The DAPNs and DAPOs are short-term measures which are intended to provide protection to a person at risk of abuse in the immediate term and give the person at risk space in which to consider appropriate steps to address their longer term safety and housing situation without being subject to abuse by their partner or ex-partner.

8. The longer term steps they may take will depend on their particular circumstances, but could include pursuing other existing civil measures. For example, the person at risk may consider seeking a civil protective order, such as an interdict or an exclusion order. In appropriate cases, a social landlord could apply to the court for an order to end the sole tenancy interests of a perpetrator with a view to transferring it to the victim of domestic abuse. Where the police determine there is sufficient evidence to charge the suspected perpetrator with a criminal offence, and this results in a successful prosecution, the disposal upon conviction for a criminal offence may include a non-harassment order (“NHO”) to put longer term protection in place for the victim.

9. The new powers are therefore intended to fill a “gap” in that where someone is in a coercive and controlling relationship and experiencing domestic abuse, they are likely to lack the freedom of action to pursue, for example, a civil court process to remove a suspected perpetrator from a shared home.

10. As such, where a person who is experiencing domestic abuse seeks advice on what they can do to ensure their safety when they are living with the perpetrator of the abuse, they may often be advised that if they are either unwilling or unable to pursue an action in the civil courts, the only

course of action open to them is to make themselves homeless in order to protect themselves from abuse.

11. In addition, the police and criminal courts would only have powers to impose protective measures similar to those contained in the Bill where the suspected perpetrator has entered the processes of the criminal justice system i.e. where there is an ongoing investigation or there is sufficient evidence with which to charge a relevant criminal offence. The measures in the Bill will provide the person at risk with some certainty about their protection which is immediate and crucially is independent of any criminal investigation.

12. These reforms are intended to reduce the possibility of a person at risk having no choice but to render themselves homeless in order to escape an immediate risk of abuse from someone living with them and to provide immediate protection to give them a safe space to begin to seek further, longer term interventions if desired.

13. Other new powers will also enable social landlords to apply to the court to end the tenancy interests of a perpetrator of domestic abuse in circumstances where the perpetrator is a sole tenant, a joint tenant with the victim, or a joint tenant with the victim and others. This will further assist domestic abuse victims living in social housing by making it easier for a social landlord to enable the victim to continue living in the family home.

14. Importantly, the provisions in the Bill do not restrict the application of the DAPN and DAPO or the tenancy provisions to cases where the person at risk has occupancy rights to the property that they share with the person posing the risk. The intention is that during the time in which the DAPN and DAPO are in place, the person at risk will have the space to consider their long-term housing options and take steps to secure their safety.

Policy Context

Scottish Government approach to domestic abuse

15. In June 2014, the Scottish Government first launched the Equally Safe Strategy. This strategy was developed in partnership with CoSLA and in association with a wide range of partners including Scottish Women's Aid (SWA) and Rape Crisis Scotland alongside Police Scotland and NHS

Health Scotland. An updated version was published in March 2016.¹ It seeks to create a strong and flourishing Scotland where all individuals are equally safe and respected, where women and girls live free from abuse and the attitudes which perpetuate it.

16. There is a clear and unequivocal message which runs through the Strategy - that violence against women and children will not be tolerated and a bold and unapologetic approach is needed, which links systematic gender inequality with the root causes of violence against women in order to achieve necessary improvements. The Equally Safe Strategy has driven forward significant progress in this area. There are 4 work streams (Justice, Accountability, Capacity and Capability and Primary Prevention) which seek to provide clear direction of the work needed to help prevent and ultimately eradicate violence against women, girls and children, including significant steps that require to be taken not just within the justice system but across society and in a range of different sectors. It is a whole systems approach which is designed to create a major culture shift within Scottish society that will tackle this problem from all angles and seek to end tolerance for these abhorrent crimes in Scotland's communities.

17. Whilst the strategy provides an overarching framework for change, the Scottish Government recognises that it must take forward specific actions to realise these ambitions. In order to achieve this, and in partnership with a range of organisations, the Scottish Government developed the Equally Safe Delivery Plan.² The Delivery Plan was published in November 2017 and promotes a collaborative approach that recognises the different roles and expertise of organisations from the public, private and third sectors. It contains a clear outcomes framework with indicators to demonstrate progress nationally and locally towards preventing and reducing this violence and tackling the pervasive inequalities that create the conditions for it. The Equally Safe strategy demands major and sustained change but the Scottish Government firmly believes that it can realise the ambition of preventing and eradicating violence against women and girls.

18. To reaffirm Scotland's – and the four nations of the United Kingdom's - strong commitment to tackling violence against women and girls (VAWG), the United Kingdom became a signatory to the Istanbul

¹ <https://www.gov.scot/policies/violence-against-women-and-girls/equally-safe-strategy/>

² <https://www.gov.scot/publications/equally-safe-delivery-plan-scotlands-strategy-prevent-violence-against-women/>

Convention in 2012. The Convention consists of 81 articles aimed at tackling VAWG with a focus on prevention, protection of victims, prosecution, and integrated policies. The Scottish Government considers that the new protective measures provided for in the Bill help achieve the objectives of the Istanbul Convention, which are focused on the prevention of harm and the protection of victims from an immediate risk of domestic abuse.

Key background to the new protective notices and orders

19. While the protective notices and orders provided for in the Bill are civil remedies, entirely independent of any criminal process, the origins of the policy can be found during the passage of the Domestic Abuse (Scotland) Act 2018³ (“the 2018 Act”), which came into effect on 1 April 2019 and which created a specific standalone criminal offence of domestic abuse covering not just physical abuse but other forms of psychological abuse and coercive and controlling behaviour that were previously difficult to prosecute.

20. During the legislative scrutiny of that Bill, in response to the call for evidence at Stage 1 by the Justice Committee in the Scottish Parliament, a number of third sector respondents raised concerns that there is a gap in protection available to victims of domestic abuse. A person wishing to obtain protection from domestic abuse, particularly in relation to keeping a perpetrator away from their home, can only do so if the perpetrator enters the criminal justice system or if the victim themselves takes out a civil order against the perpetrator.

21. As part of their consideration of that Bill, the Justice Committee held an evidence session on these issues in October 2017,⁴ taking evidence from Police Scotland, Scottish Women’s Aid, the Law Society of Scotland and Professor Mandy Burton. Following that evidence session, the then Cabinet Secretary for Justice wrote to the Justice Committee in November 2017,⁵ confirming that the Scottish Government intended to publish a consultation seeking views on questions about how policy to provide for

³ <https://www.legislation.gov.uk/asp/2018/5/contents/enacted>

⁴ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11165>

⁵ https://www.parliament.scot/S5_JusticeCommittee/Inquiries/20171107CSfJtoMM.pdf

relevant powers to protect those at risk of domestic abuse might be developed.

22. In December 2018, the Scottish Government published a consultation, 'Protective Orders for People at Risk of Domestic Abuse'⁶ which sought views on proposals to create new protective orders for the police and courts to keep people at risk of domestic abuse safe by banning perpetrators from their homes.

23. The consultation found that the great majority of respondents supported providing the police with a power to impose emergency protective orders to remove a suspected perpetrator of domestic abuse from the household of a person at risk of domestic abuse and there was almost unanimous agreement that the courts should have a power to impose a protective order that could run for a period longer than those imposed by the police.

Current criminal and civil protective powers and remedies in Scotland

24. There are a number of existing criminal and civil law provisions currently in effect which can be used to remove a suspected perpetrator of abuse from a home they share with a person at risk or otherwise prevent them from contacting the person at risk. These are outlined below.

Police and criminal court powers

25. Where a suspected perpetrator of domestic abuse has been charged with a criminal offence, the police can release them on what is known as an 'undertaking' prior to a bail hearing. An undertaking is in place until the accused person first appears in court and such undertakings can include a condition imposed by the police that may require the accused person not to approach the complainer and/or not to return to their shared place of residence. Breach of an undertaking condition is a criminal offence.

26. Where there is insufficient evidence for the police to charge a suspect with a criminal offence, but the police have reasonable grounds for

⁶ <https://www.gov.scot/publications/consultation-protective-orders-people-risk-domestic-abuse/pages/2/>

suspecting that the person has committed a relevant offence, they can release the suspect on 'investigative liberation' and impose such conditions as are considered necessary and proportionate for the purpose of ensuring the proper conduct of the investigation into a relevant offence.

Investigative liberation conditions can be imposed for a period of up to 28 days. These are operational matters for Police Scotland, but the Scottish Government understands from discussions with Police Scotland and Scottish Women's Aid that this can include a condition prohibiting a suspect from returning to a home shared with the complainer where it is considered there is a risk that they would interfere with a witness. Breach of an investigative liberation condition is a criminal offence.

27. Equally, once an accused person appears in court (either from custody after being charged by police, following release on an undertaking or as a cited case after a report to the Procurator Fiscal), the court considers whether the accused should be remanded in custody, bailed to appear or ordained to appear. The court can remand an accused in custody prior to trial. There is a statutory presumption in favour of granting bail to an accused person which applies in the great majority of cases, but this may be over-ridden where certain criteria are met, including, for example, where the court has reason to believe that the individual may interfere with witnesses or there are reasonable grounds to believe the accused person would commit further offences before their trial.

28. There are also certain situations where the statutory presumption in favour of bail does not apply.⁷ In this regard the 2018 Act added domestic abuse offences⁸ to the list of offences where, if the accused has previously been convicted on indictment and is charged on indictment with a further offence, bail will only be granted in exceptional circumstances.

29. Where a court decides to release an accused on bail, the court will impose standard bail conditions and can, in addition, add special conditions of bail. These special bail conditions could require that the accused person does not attempt to approach or contact the complainer, or return to a place of residence that they share with the complainer. Breach of a condition of bail is a criminal offence.

⁷ <https://www.legislation.gov.uk/ukpga/1995/46/section/23D>

⁸ Either offences at section 1 of the 2018 Act or offences where the aggravation at section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 has been proven.

30. It is also possible for the court to ordain an accused to appear. This means no conditions are imposed other than the requirement to attend court for future hearings.

31. Following conviction for a domestic abuse related offence, the court is required under the terms of the 2018 Act to consider whether to make a NHO against the perpetrator. A NHO is an order requiring the person to refrain from such conduct in relation to the victim as may be specified in the order. Breach of a NHO is a criminal offence.

Civil remedies

32. There are a number of civil remedies available to a person who is at risk of domestic abuse. For example, in certain circumstances, it is possible for a person at risk to apply to a court for a civil order (an 'exclusion order') to exclude the perpetrator from a shared home. A person can apply to court for an exclusion order which can suspend the rights of a person's spouse, civil partner or, in certain circumstances, cohabitant from living in the family home. Neither the applicant nor the other party have to be living in the property at the time the application for an exclusion order is made.

33. An exclusion order can be granted by the court if it appears to the court that the making of the order is necessary for the protection of the applicant or any child of the family from any conduct or threatened or reasonably apprehended conduct of the other party which is or would be injurious to the physical or mental health of the applicant or child.

34. It is also possible for a person at risk of domestic abuse to apply for an interdict or for a NHO. An interdict or NHO can require the subject of the order to refrain from specified conduct such as phoning, texting or otherwise attempting to contact the person who has been granted, approaching or following them, or loitering outside their home or place of work.

Approach taken in other jurisdictions

35. Powers to protect persons at risk of domestic abuse without the need for the suspected perpetrator to enter the criminal justice system, or for the person at risk to apply for a civil order, have been introduced in a number of jurisdictions across Europe.

36. Some jurisdictions, such as the Netherlands, Austria and England and Wales, allow an 'administrative order' to be made by the 'competent authority' (usually the police, though in some jurisdictions, it is the local authority/mayorality) which takes immediate effect without first requiring to be approved by a court. This order usually runs for a short period of time during which the 'competent authority' can apply to the court to put an order in place for a longer period of time.

37. Some countries have introduced what are often referred to as 'Emergency Barring Orders' or 'EBOs' in their civil law. For example, in Bulgaria the victim applies for a protection order at the court and, where an emergency order is sought, the law requires a court to make a decision within 24 hours.

38. In England and Wales there has been a scheme of protective orders in place since 2014, under sections 24-33 of the Crime and Security Act 2010⁹ ("the 2010 Act"), which provides for Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs). A DVPN is an administrative order by the police which takes immediate effect without first requiring to be approved by a court in order to protect a person from violence or a threat of violence. A DVPN runs for a short period of time during which the police must apply to the court for a longer term DVPO.

39. The UK Domestic Abuse Bill¹⁰ which was introduced in the House of Commons on 3 March 2020 introduces a system of "Domestic Abuse Protection Notices" (DAPNs) and "Domestic Abuse Protection Orders" (DAPOs). These provisions, if passed, are intended to replace the provision for notices and orders under sections 24 to 33 of the 2010 Act and other longer term civil orders. The policy intention of this approach is to create a single, flexible civil order that can be used in domestic abuse cases.

Key background to new ground for ending tenant's interest in a Scottish secure tenancy

40. Domestic abuse is a major cause of homelessness for women and children in Scotland. Scottish Women's Aid published a research report on

⁹ <https://www.legislation.gov.uk/ukpga/2010/17/contents>

¹⁰ <https://publications.parliament.uk/pa/bills/lbill/58-01/124/5801124.pdf>

homelessness as a result of domestic or sexual abuse “Change Justice, Fairness”¹¹ in 2017 which identified that one of the largest barriers women face when ending a relationship with an abusive partner is where she, and in many cases her children, will live.

41. Social housing policy and practices often focus on women and children experiencing domestic abuse leaving their homes, rather than perpetrators moving out. However social housing landlords and the working group looking at preventing homelessness for women and children experiencing domestic abuse have been keen for social landlords to have the ability to improve this position in appropriate cases and take a more proactive role in supporting victims of domestic abuse to enable them to remain permanently in the family home.

42. The Homelessness and Rough Sleeping Action Group¹² (HARSAG) was set up in 2017 to make recommendations to Ministers about transforming temporary accommodation and ending homelessness in Scotland. Their reports contained recommendations on the actions needed to improve the housing outcomes of women and children experiencing domestic abuse. Specifically to clearly articulate the pathways and interventions needed to prevent homelessness for groups at higher risk of homelessness, which include women and children experiencing domestic abuse and to support and enable people to maintain tenancies; this includes taking steps to ensure victims of domestic abuse are able to maintain their tenancy if this is their choice.

43. Scottish Ministers accepted all of the HARSAG recommendations in principle and in response, in November 2018 jointly with COSLA, the Scottish Government has published the Ending Homelessness Together High Level Action Plan¹³. The Action Plan sets out how the Scottish Government will take forward the HARSAG recommendations and how national and local government and the third sector will work together to end homelessness in Scotland. Subsequently in November 2019, the Scottish Government published the Action Plan’s annual report¹⁴ with an update on

¹¹ <https://womensaid.scot/wp-content/uploads/2017/07/Change-Justice-Fairness.pdf>

¹² <https://www.gov.scot/groups/homelessness-and-rough-sleeping-action-group/>

¹³ <https://www.gov.scot/publications/ending-homelessness-together-high-level-action-plan/>

¹⁴ <https://www.gov.scot/publications/ending-homelessness-together-action-plan-annual-report-parliament/>

the progress each of the actions and included a reinforced commitment to address the needs of women experiencing homelessness.

44. The Chartered Institute of Housing (CIH) (Scotland), in partnership with SWA ran a “Make a Stand Campaign” in 2018/19 to highlight the role that social housing landlords could play in supporting victims of domestic abuse. This included making four focused commitments to provide support for people experiencing domestic abuse. These were having a policy to support tenants who are affected by domestic abuse, making information about national and local domestic abuse support services available and easily accessible for tenants, having a clear HR policy, to support members of staff who may be experiencing domestic abuse and appointing a champion at a senior level in the organisation to lead on activities to support people experiencing domestic abuse.

45. Subsequently in August 2019, SWA, CIH and partners published Domestic Abuse: a good practice guidance for social landlords¹⁵, which builds on the Make A Stand Campaign to outline how social landlords can effectively respond to people experiencing domestic abuse.

What the Bill does - Specific provisions

Sections 1-7 – Power for police to make a ‘domestic abuse protection notice’

Policy Objective

46. To protect people at risk from abusive behaviour by a partner or ex-partner where there is an immediate risk of abuse. This will be achieved through provisions to empower police officers to be able to issue a DAPN in circumstances where they have reasonable grounds to believe that the person to be subject to the notice (“person A”) has been abusive towards their partner or ex-partner (“person B”) and they have reasonable grounds to believe that the making of the notice is necessary to protect person B from abusive behaviour carried out by person A before the sheriff can make an interim DAPO or a DAPO.

¹⁵ http://www.cih.org/publication-free/display/vpathDCR/templatedata/cih/publication-free/data/Scotland/Domestic_abuse_a_good_practice_guide_for_social_landlords

Key information

Persons to whom domestic abuse protection notices may relate

47. The Bill provides that the power to issue a DAPN should be restricted to cases where person A and person B are partners or ex-partners and where person A is aged 18 or older and person B is aged 16 or older. The age restrictions reflect those in the UK Domestic Abuse Bill. They are intended to ensure that the power cannot be used to remove a person who is a child from a home they share with a person at risk. However, in view of the fact that it is possible that a 16 or 17 year old may be living with an abusive partner, we consider that a lower minimum age is appropriate for the person at risk. Where a person under the age of 16 is at risk of abuse from a partner whom they are living with, we consider that this can more appropriately be dealt with using child protection processes.

48. Restricting eligibility to partners and ex-partners aligns with the approach taken in relation to the offence of domestic abuse under section 1 of the 2018 Act and the Scottish Government's definition of domestic abuse as relating to abuse between partners and ex-partners. This reflects the fact that the degree of control that may be exercised in an abusive intimate personal relationship will typically be greater, which will make it more difficult for them to take steps to secure their safety.

Rank of police officers with power to issue a notice

49. Only a constable holding the rank of inspector or above may issue a DAPN. Limiting this power to officers of a specified level of seniority reflects the fact that it is an immediate short term notice without immediate judicial oversight which can specify a number of potentially onerous prohibitions or requirements upon the person subject to the notice and is intended to ensure an appropriate degree of oversight of the use of these powers by the police.

Grounds for issuing a notice by the police

50. The Bill provides for a three stage test before a DAPN may be issued. A senior constable may only make a DAPN in relation to person A if the constable has reasonable grounds for believing:

- person A has engaged in behaviour which is abusive of person B;
- it is necessary for a domestic abuse protection order to be made for the purpose of protecting person B from abusive behaviour by person A; and
- it is necessary to make the notice for the purpose of protecting person B from abusive behaviour by person A before the sheriff can make an interim domestic abuse protection order or a domestic abuse protection order.

51. The Bill provides that behaviour by person A is abusive of person B if a reasonable person would consider the behaviour to be likely to cause person B to suffer physical or psychological harm. Abusive behaviour may include behaviour of any kind including things said or otherwise communicated as well as things done and can be directed towards property and through making use of a third party, as well as behaviour in a personal or direct manner.

52. This three step process is intended to ensure the proportionate use of DAPNs as an immediate, emergency measure to protect the person at risk from abusive behaviour by a partner or ex-partner before a longer term court order may be put in place.

Meaning of abusive behaviour

53. Section 3 of the Bill elaborates on when person A's behaviour is abusive of person B by setting out a non-exhaustive list of behaviours which are abusive. The test is modelled on the definition of abusive behaviour used in the 'domestic abuse offence' contained in the 2018 Act.

54. The section makes it clear that behaviour which is abusive of person B includes (in particular), two kinds of behaviour, and this reflects the definition of "abusive behaviour" in the 2018 Act.

55. The first kind of behaviour is behaviour directed at person B that is “violent, threatening or intimidating”. Reference to violent behaviour includes sexual violence as well as physical violence.

56. The second relates to behaviour directed at person B, at a child of person B or at another person by reference to the effect the behaviour is intended to have or that would be considered by a reasonable person to be likely to have, on person B. This approach is intended to capture behaviour within a relationship which is abusive because it is coercive or controlling or otherwise amounts to psychological or emotional abuse of person B.

57. Rather than try to describe the exact behaviour, which would be difficult, if not impossible, to do exhaustively in such a way as to capture all the different ways in which a person may abuse their partner or ex-partner, this second part of the definition provides that behaviour directed at person B, a child of person B or another person is abusive if it has as its purpose, or a reasonable person considers it is likely to have the effect of:

- making person B dependent on, or subordinate to, person A;
- isolating person B from friends, relatives or other sources of support;
- controlling, regulating or monitoring the day-to-day activities of person B;
- depriving person B of, or restricting person B’s freedom of action;
or
- frightening, humiliating, degrading or punishing person B.

58. This approach is intended to bring within the ambit of the notice behaviour that is controlling, coercive and emotionally or psychologically abusive.

Other matters to be considered by the police before issuing a notice

59. Before deciding whether to issue a notice, the Bill provides that the police must take into account:

- any representations made to the constable by person A in relation to the notice;

- any views of person B (in relation to the notice) of which the constable is aware. This can be views made directly to the constable by the person at risk or otherwise, for example, through a third party intermediary or advocacy service; and
- the welfare of any child whose interests the constable considers to be relevant to the making of the notice.

60. While the police are required to consider the views of person B, it is not a requirement that person B should consent to the order being made. The reason for this is twofold.

61. First, there may be circumstances where the person at risk could be put at greater risk in the long term if the suspected perpetrator knows that the order could not have been made without the explicit consent of the person to be protected.

62. Secondly, while in the great majority of cases it is more likely that a DAPN will be effective in protecting the person at risk if they support its being made, there may be exceptional cases where the police assess that the person at risk is in severe danger notwithstanding their refusal to consent to an order being made (this could be either as a result of the fact that they fear the consequences of giving consent, or because they are being controlled to such an extent that they fail to appreciate the danger that their partner/ex-partner poses). The Scottish Government does not wish to rule out the possibility that there could be exceptional cases where it is appropriate to make such an order notwithstanding that the person at risk says that they do not wish it to be put in place.

Requirements and prohibitions that may be imposed by the notice

63. The Bill provides the police with the power to impose specified prohibitions or requirements when this is considered necessary by a senior constable to protect person B from abusive behaviour by person A.

64. Section 5 provides an exhaustive list of the prohibitions and requirements that a police notice may impose. These are to:

- require person A to leave the home of person B (whether or not it is also the home of person A);
- require person A to surrender keys to that home;

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- prohibit person A from entering that home;
- prohibit person A from coming within such distance of that home as is specified in the notice;
- prohibit person A from excluding person B from that home;
- prohibit person A from approaching or contacting, or attempting to approach or contact, person B;
- prohibit person A from approaching or contacting, or attempting to approach or contact, any child usually residing with person B.

65. This list is intended to provide full coverage of the prohibitions or requirements the police may consider necessary to impose in the short term in order to remove a suspected perpetrator from the shared home and prevent them from otherwise abusing the person at risk. In contrast to the discretion that a sheriff has when deciding the prohibitions or requirements to impose in a DAPO, an exhaustive list was chosen due to the fact that police notices will be in place for a very short period of time (and thus less flexibility is required) and to reflect that they will be given without any prior court oversight.

What happens next: service of the notice, length of time notice can have effect and breach of a notice

66. Section 6 of the Bill provides a DAPN must be served in writing and in person by a constable to person A. The notice should also clearly set out the grounds on which it is made, the prohibitions and requirements that it imposes on person A, and that breach of the terms of the notice without reasonable excuse is a criminal offence. This is to ensure that the person against whom any such notice is made is aware of the basis upon which it has been made, the contents of the notice and the consequences of any breach.

67. The Bill also provides a DAPN must set out that an application for a court imposed order will be made no later than the first court day after service of the DAPN, that person A will be served with notice of the hearing on the application for the court order, and that the DAPN will cease to have effect if an order or interim order is made at the hearing or, otherwise, when the hearing ends. There is also a requirement on the police officer serving the notice to ask for a contact address for person A. This is intended to help ensure that information about the future court hearing to determine whether to impose a longer term order reaches person A.

68. A DAPN is intended to act as a short term notice which has effect only until an application for a DAPO can be considered by the court. It will come to an end if, at the initial hearing, the court makes either an interim DAPO or full DAPO. If the court decides not to make an interim DAPO or a full DAPO at that hearing then the DAPN will cease to have effect when the hearing ends. This sequence allows for an unbroken chain of protection while ensuring early independent judicial oversight.

69. Section 7 of the Bill provides breach of a police notice without reasonable excuse is a criminal offence. A person who commits an offence is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine of up to £1000, or both. This is the same as the maximum penalty for breaching conditions of a police undertaking where a person has been released from custody prior to a bail hearing.

Alternative Approaches

70. Alternative approaches were considered in four main areas. The first of those was on the question of whether it would be sufficient simply to rely on an application being made directly to the court for a protective order, and not provide the police with the power to issue an immediate short term protective notice, pending the court's consideration of a longer term order.

71. The Scottish Government is of the view relying solely on an application to the court as a means of gaining a protective order may result in a 'gap' in the protection afforded to persons at risk, where the risk of harm is so immediate that any delay while the court application process is engaged would put the victim in danger of further abuse, including where behaviour is directed at a child usually residing with person B for the purpose of abusing person B. The Scottish Government considers it is important that an immediate short term power is conferred upon the police in order to mitigate this risk and provide an unbroken chain of protection for the victim.

72. A second alternative approach considered was to widen the scope of those who may apply to the court for a protective order, to include the person at risk themselves or a third party representative. In this regard the Scottish Government recognises while others have a role in advising the police when a person may be at risk, it is considered there is benefit to having a single prescribed lead on the application process in order to

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ensure clarity and consistency in the operation of the Bill's protective measures.

73. A third alternative approach considered was to extend the scope of the police notice beyond partners and ex-partners, to cover for example, any people living together, or adult family members. It is noted equivalent orders provided for in the UK Domestic Abuse Bill currently before the UK parliament extend to a person to whom the suspected perpetrator is "personally connected," which includes relatives.¹⁶

74. This issue was explored during the Scottish Government public consultation an analysis of which was published on 31 July 2020.¹⁷ There were a mix of views with regards the question of what relationships should be covered by the proposed protective orders. In general terms, consultation respondents' views can be characterised as falling into one of three categories: they either thought that the power should be restricted to cases involving partners and ex-partners, or that it should cover family members living in the same household, or that it should cover anybody living in the same household (so including, for example, unrelated people living in houses in multiple occupation.)

75. Respondents representing victims' groups and violence against women and gender-based violence partnerships were particularly likely to support restricting the scope of the power to partners and ex-partners. Respondents supporting this approach often cited the Scottish Government's definition of domestic abuse and the fact that the domestic abuse offence in the 2018 Act is also restricted to partners and ex-partners. Set against this, some other respondents highlighted that abuse could occur between, for example, parents and adult children, or people living in shared accommodation, and thought that the powers should be wide enough to enable action to be taken in such cases. This view was more frequently held by individual respondents, though a number of organisational respondents from across different sectors also took this view.

76. The Scottish Government recognises the benefit in aligning the protective orders with the definition of domestic abuse in the 2018 Act. While other jurisdictions, such as England and Wales, intend to widen the

¹⁶ <https://publications.parliament.uk/pa/bills/lbill/58-01/124/5801124.pdf>

¹⁷ <https://www.gov.scot/publications/protective-orders-people-risk-domestic-abuse-analysis-consultation-responses/pages/1/>, at paragraphs 4.2-4.4

scope of a protective order scheme beyond partners and ex-partners, it appears the orders provided for in the UK Domestic Abuse Bill are intended to serve a much wider purpose than those within the current Bill and effectively become the order of choice in all domestic abuse cases. By contrast, the orders in this Bill are intended to fill a gap in the existing protections available to victims of domestic abuse – both civil and criminal - and complement rather than replace other longer term options which are available. It also enables a definition of ‘abuse’ to be used that reflects the specific experiences of victims of domestic abuse, which will differ from others who may be experiencing abuse from a family member or from someone that they live with.

77. A fourth alternative approach considered was to rely on a power of arrest alone rather than make breach of a DAPN a criminal offence.

78. The question of whether breach of a protective order should be a criminal offence was again explored during the Scottish Government public consultation exercise.¹⁸ Almost all respondents to the consultation thought that breach of a protective order should be a criminal offence. Many respondents highlighted what they saw as the deterrent effect that it could have, as well as noting that it would provide the police with greater powers to intervene. A number of respondents drew attention to the fact that breach of other, similar orders, such as non-harassment orders, and breach of bail conditions, are both criminal offences.

79. The Scottish Government considers that breach of both a police issued notice and court imposed order should be a criminal offence in order to aid enforceability by the police and enhance their deterrent value.

Consultation

80. Between 21 December 2018 and 29 March 2019, the Scottish Government undertook a public consultation seeking views on the question of introducing protective orders for people at risk of domestic abuse.¹⁹

81. The purpose of the consultation was to seek views on whether the police and the courts should be provided with additional powers to impose a protective order to remove a person suspected of abusing their partner

¹⁸ *ibid*, at paragraphs 4.17-4.21

¹⁹ <https://www.gov.scot/publications/consultation-protective-orders-people-risk-domestic-abuse/pages/2/>

from the home of the person at risk and if so, on how such a scheme should operate.

82. On the question of police powers, the consultation found that the great majority of respondents who expressed a view supported providing the police with a power to impose emergency protective orders to remove a suspected perpetrator of domestic abuse from the household of a person at risk of domestic abuse without first seeking court approval.

83. Those who supported providing the police with a power to make such orders included all of the victims' groups who responded and all but one of the gender-based violence/violence against women partnerships. One victims' group respondent commented:

“It is absolutely crucial that there's an immediate short term solution available. EBOs would allow police to take the necessary proactive steps to protect victims in their home, without the victim having to leave (perhaps with children) for their own safety...It will allow the police and other key support agencies an -opportunity to establish the level of risk and give the victim much needed time to consider her options and choices and for other protective procedures to be implemented.”²⁰

84. Those who were opposed to providing the police with such powers highlighted what they regarded as the risk that the existence of such powers would encourage people to make false allegations. One justice and legal sector respondent highlighted the importance of judicial oversight of any power to remove suspected perpetrators of abuse from their own home. They commented:

“The courts play an essential role in ensuring fair, transparent and proportionate exercise of powers. This is particularly important in situations where preventative measures are being sought, where an individual has not been charged with any offence. The orders being proposed could result in a significant restriction of an individual's right to private and family life and right to enjoy their property; and should therefore be handled with proper oversight and due process. Were this power to exist it would require to be a truly exceptional situation

²⁰ <https://www.gov.scot/publications/protective-orders-people-risk-domestic-abuse-analysis-consultation-responses/pages/1/>, at paragraph 2.3

and would need to be subject to judicial determination at the earliest opportunity.”²¹

85. A second question asked respondents for views on the length of time for which any order imposed by the police should have effect before requiring to be confirmed by a court. There were a wide range of views on this question. The consultation asked respondents how long such orders should run for without setting specific alternative options available. As a consequence, respondents’ answers varied from “a maximum of 48 hours” to others who were of the view that such an order should have indefinite effect.

86. A number of respondents highlighted concerns that the 48 hours which the current DVPNs issued by the police in England and Wales can run for is insufficient to enable a case to be prepared for court. For example, one victims’ group respondent commented:

“This period should be long enough to allow the victims of domestic abuse and any children in the household to feel safe, access adequate support and assess their options. The 48-hour period in England is viewed as too short to be effective.”²²

87. On the other hand, one respondent from a justice and legal sector background highlighted concerns that too long a period could raise human rights issues if an alleged perpetrator of abuse was unable to challenge the imposition of an order in court.

88. It was clear from the consultation responses, therefore, that it is important to enable immediate protection to be put in place while also ensuring that there is early judicial oversight in cases where protective measures are imposed by the police.

Sections 8-16 – Power for the court to make a ‘domestic abuse protection order’

Policy Objective

89. To protect people at risk of domestic abuse including giving them ‘breathing space’ to seek advice and make decisions to help minimise the

²¹ *ibid*, at paragraph 2.5

²² *ibid*, at paragraph 2.9

future risks they face. This will be achieved through ensuring there are no gaps in protection afforded to persons at risk of domestic abuse while ensuring early court oversight of a police issued notice.

90. The Bill provides the court with a power to issue a DAPO in circumstances where it is satisfied that the person to be subject to the order (“person A”) has been abusive towards their partner or ex-partner (“person B”) and they are satisfied that the order is necessary to protect person B from abusive behaviour by person A.

Key Figures

Persons to whom domestic abuse protection orders may relate

91. As with DAPNs, the Bill provides that the power of the court to issue a DAPO should be restricted to cases where person A and person B are partners or ex-partners and where person A is 18 or older and person B is 16 or older.

92. Where a DAPN has previously been issued, the Bill provides an application for a DAPO **must** be made to the court by the chief constable no later than the first court day after the day on which the notice is given. The court must then hold a hearing before the end of the next court day after which the application is made by the police. This is intended to ensure early court consideration of the application. In any other case, the chief constable **may** apply to the court for a DAPO.

93. Whether or not the police first issue a DAPN depends on an assessment by a senior constable as to whether it is needed to protect person B until the court can make a DAPO or an interim DAPO. Where it is not necessary, the police may instead apply directly to the court for a DAPO. This reflects the exceptional nature of police notices given without any prior court oversight. There will be varying degrees of immediacy in respect of the level of risk posed by person A to person B and in some cases the level of urgency may not be so great as to require the immediate protection of a DAPN, particularly where the timing is such that a sheriff could consider an application for an interim DAPO quickly.

Grounds for issuing an order by the court following application by the chief constable

94. The test the court applies for making a DAPO has two parts.

95. The first part of the test is that the court is satisfied that person A has engaged in behaviour which is abusive of person B.

96. The second part of the test is that the court is satisfied that the making of the order is necessary for the purpose of protecting person B from abusive behaviour by person A.

97. The first part of the test involves the court establishing the background facts and whether person A has been abusive. The second part of the test is an exercise of judgment by the court as to the necessity of the order for person B's protection.

98. The meaning of 'abusive behaviour' and what constitutes abusive behaviour is the same as discussed above at paragraphs 54 to 59 for the purpose of the police issued DAPN.

Other matters to be considered by the court before making an order

99. Before deciding whether to impose a DAPO, the sheriff must take into account:

- any representations made to the court by the chief constable or person A;
- any views of person B in relation to the application of which the court is aware (whether as a result of representations made to the sheriff by person B or otherwise);
- the welfare of any child whose interests the court considers to be relevant to the application; and
- any views of a child taking into account the child's age and understanding, where the sheriff is considering making provision in a DAPO which would relate directly to the child.

100. As with DAPNs, a DAPO may be made without the consent of person B, for the same reasons outlined at paragraphs 61 to 63 above.

Role of the person at risk (“person B”)

101. Although only the police can apply to the court for a DAPO, section 8(4) of the Bill allows person B to become a party to proceedings. It is not anticipated that person B would routinely wish to become party to proceedings, however, given that the court can impose an order without person B’s consent, it is considered that this is an important safeguard to ensure person B’s rights are respected. Whether or not person B chooses to become a party to proceedings, the Bill also provides that the sheriff must, before determining the application for a full DAPO, give person B an opportunity to make representations.

102. Section 8(6)(b) of the Bill further provides the court must take into account any views of person B in relation to the application of which the court is aware when determining the application. This may either be through direct representations to the court or through a third party. This ensures that if B does not wish to make representations themselves, they can do so either through the police or through a support worker.

103. Provision has been made in this regard to ensure there is an appropriate balance between the protection of person B and person B’s autonomy.

Requirements and prohibitions that can be imposed by a court issued order

104. The Bill provides the court with the power to impose any requirements or prohibitions which the court considers are necessary for the purpose of the order, namely to protect a person at risk from abusive behaviour by a partner or ex-partner.

105. Any such requirements or prohibitions may include but are not limited to anything which could be contained in a police issued DAPN.

106. A non-exhaustive approach has been chosen for the operation of DAPOs in order to import an element of flexibility into the contents of a court order having regard to the individual facts and circumstances of each case, as long as any prohibition or requirement falls under the overarching purpose of the order and is necessary to achieve the purpose of the order. It is for this reason the power of the court when making a DAPO is wider than the power of a constable when issuing a DAPN. While it is anticipated

that the exhaustive list of conditions that can be imposed in a DAPN will be sufficient to cover the great majority of DAPO cases, there may be individual cases where the court may consider other conditions are appropriate and necessary to protect B.

What happens next: length of time order can have effect and breach

107. The Bill provides a DAPO should only be made for a maximum period of up to two months. The maximum two month time period seeks to balance the nature of the order (being a short term emergency measure) while providing sufficient opportunity to allow the person at risk to engage with support services if desired and pursue longer term housing options.

108. The court may specify different time periods for which different prohibitions or requirements contained in the order have effect. This again is intended to provide the courts with flexibility to take account of the particular facts and circumstances of each case.

109. As with DAPNs, the Bill provides it is a criminal offence to breach the terms of a DAPO without reasonable excuse, although the maximum penalties are different. The Bill provides the maximum penalty for a person who breaches a DAPO upon conviction on indictment, is a term of imprisonment of up to 5 years and/or a fine. This matches the maximum penalties for breach of a Non-Harassment Order.

Power of the court to make an interim order

110. The Bill provides the court with the power to make an interim DAPO after receiving an application by the police, whether or not a previous DAPN has been in force. The court may make an interim order only if the court considers, on the balance of convenience, that it is just to do so. In deciding whether or not to grant an interim order, the court must have regard to all the circumstances including any risk that, if an interim order is not made, person A will cause harm to person B.

111. The court may also make an interim order against person A even though person A has not been given notice of the hearing and before giving person A or person B an opportunity to make representations about the application.

112. It is recognised that, as a hearing on a DAPO requires to take place within a very short period of a DAPN being made, the court will not always have sufficient information at that hearing to make a decision in relation to the granting of a DAPO at that hearing. This is particularly likely to be the case where person A intends to oppose the making of the DAPO and wishes to obtain legal representation. In cases where the court is considering imposing conditions in a DAPO which relate to a child, more time may be required to obtain the views of that child.

113. The power to impose an interim DAPO is intended to enable the court to ensure that person B continues to be protected, while providing the court with sufficient time to make a decision in relation to a full order. Where the court makes an interim order under either of these circumstances, the court must hold a hearing in relation to the application for a DAPO as soon as is reasonably practicable.

114. The intention is that an interim order will be in place for a short period of time, prior to a hearing on the full order. Accordingly, the Bill provides an interim order may be made for a maximum period of three weeks. An interim order will expire at the end of the period specified in the order or once the court has come to a decision in relation to the full order, whichever is earliest. Power of the court to extend, vary and discharge a DAPO

115. Section 12(1) of the Bill provides the court may make any order extending, varying or discharging a DAPO that it considers appropriate on application by the chief constable, person A or person B, before the expiry of an order.

116. Before the court determines an application under section 12(1), the chief constable, person A and person B must be given the opportunity to make representations.

117. In deciding whether to vary, extend or discharge an order, the court is required to consider the same matters that must be taken into account when determining whether to make a DAPO, as detailed at paragraph 100 above.

118. Following an application to extend or vary a DAPO, the court **may** include additional requirement(s) or prohibitions in the order, or extend the period for which the order, or any requirement or prohibition imposed by the

order, has effect, only if it is satisfied that it is necessary to do so to protect the person for whose protection the order was made from abusive behaviour by person A.

119. During the courts' consideration of an application to extend or vary a DAPO, the sheriff is under a continuing obligation to review the necessity of the order and its terms, and Bill provides the court **must** discharge the order or vary the order so as to remove any requirement or prohibition which the court is satisfied is no longer necessary. This reflects that a DAPO and any requirements or prohibitions should only be in effect for as long as is necessary to protect the person at risk from domestic abuse by person A.

120. The same approach applies following any application to discharge an order by the chief constable, person A or person B. The Bill provides the court must discharge the order if satisfied it is no longer necessary. If the court does not discharge the order, the court must vary the order so as to remove any requirement or prohibition which the court is satisfied is no longer necessary.

121. A DAPO may be extended for a period of up to one month, and the court may do so on more than one occasion up to a maximum overall period of three months. This overall time period reflects the fact the order is intended to be a short term emergency order to provide the person at risk with some certainty about their protection during which they will have the space to consider their longer term housing options. It is considered that allowing an extension of up to a month enables protection to remain in place in the event that the person at risk encounters difficulties or delays in addressing their housing situation.

122. As is the case when considering an application for a DAPO, the court may also extend or vary a DAPO on an interim basis following an application under section 12(1) pending determination of the full application. In deciding whether to do so, the Bill requires the court to have regard to all the circumstances, including any risk that, if the order is not extended or varied on an interim basis, person A will cause harm to person B. This is intended to ensure that protection can remain in place for B, where there is a continued risk of domestic abuse by person A in cases where the court is not in a position to make an immediate decision to extend or vary a DAPO.

Alternative Approaches

123. Alternative approaches were considered as regards the operation of DAPOs in three main areas, as follows:

- allow bodies other than the police to make an application to the courts for a protective order
- provide the criminal courts with a power to impose a DAPO upon conviction
- give the courts complete freedom to decide how long an order should run for (effectively replacing the need for other civil orders e.g. exclusion orders in domestic abuse cases)

124. The first two areas were explored during the consultation exercise, which sought views on whether others should be able to make such applications and whether it should be possible for a criminal court to make such an order on conviction.

125. Individual respondents were particularly likely to refer to local authority/social work officials as people who should be empowered to make applications on behalf of a person at risk of abuse. Of those who considered that the power to apply to the courts should be restricted to police officers, a number highlighted that they saw other bodies as having a role in advising the police where they consider a person may be at risk. For example, one local authority respondent commented

“...there should be a clear framework for making an application and that in the interests of developing consistent effective practice it may be appropriate to have a single agency lead on the application process. We would suggest that this should be the police with referrals in from social work, housing, housing associations or a third sector organisation like Women’s Aid...Other organisations could inform the individual that a Barring Order is an option and support the person on this decision.”²³

126. Other respondents raised concern that allowing individuals or their family to apply directly to the courts for such orders could increase the risk that perpetrators would claim to be victims of abuse in cases where they wanted the victim to be removed from the shared home. One also questioned whether third sector organisations providing support to victims

²³ <https://www.gov.scot/publications/protective-orders-people-risk-domestic-abuse-analysis-consultation-responses/pages/1/>, at paragraph 3.11

had appropriate governance arrangements in place to make decisions on whether to make an application.

127. Some respondents saw advantages in widening out the pool of organisations who could apply for such orders beyond the police. For example, one justice and legal sector respondent commented:

“A person at risk, family members and local authority professionals should also be given the opportunity to apply to court for a protective order which would provide flexibility. Where a person at risk is reluctant to involve the police, this would be beneficial, and the court could act as the gate-keeper to ensure such an application is appropriate and proportionate.”²⁴

128. The Scottish Government took the view that it is beneficial for a single organisation to act as the body responsible for making applications to the court for a DAPO. Other organisations which work with victims of domestic abuse often do so in close partnership with the police, for example through multi-agency risk assessment conferences (MARACs). In any individual case, it would be possible for such an organisation to approach the police to ask them to consider imposing a DAPN or applying for a DAPO. Ensuring that there is a single organisation responsible for making such applications avoids any risk of multiple applications being made in respect of the same case, and helps to ensure a greater degree of consistency in their use.

129. On whether the criminal courts should have a power to impose a protective order on a person convicted of a criminal offence against a person at risk when sentencing the offender, a significant majority of respondents favoured providing the courts with such a power.

130. However, it is worth noting that there was a significant split between individual and organisational respondents on this question.

131. Those who favoured providing the criminal courts with such a power considered that it would provide them with a useful tool for protecting victims from further abuse that removed the need for a separate court process. One violence against women and girls/gender based violence partnership respondent commented:

²⁴ *ibid*, at paragraph 3.13

“Yes, we believe that criminal courts should be able to give barring orders when issuing a community sentence or a custodial sentence. It will also reduce anxieties for the survivor, and see cost-savings and time savings as two processes are streamlined.”²⁵

132. However, a number of respondents, particularly justice and legal sector respondents and victims’ group respondents, were of the view that such a power was unnecessary and could even be counter-productive because a court can already impose a NHO which can be used to prohibit a perpetrator from returning to a home they share with a victim and prevent them from making contact or otherwise harassing or abusing them in such cases. One response, which was typical of those who opposed providing the courts with such a power, commented:

“No...we would not support giving the power to impose an EBO to a criminal court. The new Domestic Abuse (Scotland) Act 2018...contains a presumption on the court granting a non-harassment order (NHO) for the same by the COPFS, unless the court concludes that such protection is not necessary. Such an order can contain a direction that the perpetrator does not enter approach or be in the vicinity of the home and indeed, NHOs currently imposed in criminal proceedings can be construed equally widely.”

“We would therefore be concerned that the ability to impose an essentially, short-term, emergency order in the form of an EBO would confuse matters with the police, the COPFS and the courts, and interfere with the court’s powers to impose a NHO under the new legislation.”²⁶

133. Taking account of these views, the Scottish Government considers that the criminal courts’ existing powers to impose measures to protect victims of domestic abuse when sentencing an offender are sufficient, and that there would be no practical advantage to providing the courts with a power to impose a DAPO on an offender.

134. On the third area, as to whether the courts should be given complete freedom to decide how long an order should run for, the Scottish Government considers it is important to recognise that this order is intended to be a short term emergency order filling a relatively narrow gap

²⁵ *ibid*, at paragraph 3.20

²⁶ *ibid*, at paragraph 3.21

in the current protections to victims of domestic abuse. The order is intended to provide the person at risk with some certainty about their protection for the duration of the order while giving the person at risk the space to explore their longer term housing options.

135. The order is intended to complement but not replace the existing suite of other longer term civil orders which may be sought for the protection of the person at risk. For that reason it is considered appropriate that there is prescribed an overall time limit on the maximum length during which an order can have effect. At the same time, the Scottish Government considers it is desirable to provide an element of flexibility to the court to determine how long an initial order may run for with a power to extend all or parts of an order if necessary, subject to an overall maximum time period.

Consultation

136. The consultation sought views on whether the courts should have a power to impose a protective order barring a suspected perpetrator of domestic abuse from a home they share with a person at risk.

137. The great majority of respondents supported providing the courts with a power to make an order to protect a person at risk of domestic abuse by removing a suspected perpetrator of abuse from their home (including a small number of those who were opposed to providing the police with a power to make an order that didn't require to be confirmed by the courts). Those supporting the creation of such powers included all victims' groups, housing and local authority respondents and all but one of the violence against women and gender based violence partnerships. One victims' group respondent, whose views were typical of many of the responses received, commented:

“Yes, we agree with the proposal in the consultation document that if powers are given to the police to impose an immediate measure to protect a woman at risk of domestic abuse, a court should then be involved in considering whether protective measures should remain in place for a specified period.”²⁷

138. For the most part, the small number of respondents who opposed providing the courts with such powers were concerned that it could encourage “false allegations”, including the possibility that allegations

²⁷ *ibid*, at paragraph 3.2

would be made by people who are actually perpetrators of abuse. However, one health and social care respondent questioned whether the new powers would add to the courts and police's existing powers to deal with domestic abuse:

“...if Scottish Government are considering an additional power to work alongside bail, special bail and use of remand it would be useful to have sight of the research which supports the need for this and better understand what is not working in the present system.”²⁸

139. The question of potential abuse of emergency powers of this kind was considered during the evidence session held by the Justice Committee during the passage of the 2018 Act, which included a representative from Scottish Women's Aid and an academic expert. The advice offered by the panel was that, having regard to other countries which have legislated for EBOs there is no evidence of their significant or systematic abuse.²⁹

140. The Scottish Government recognises the measures in the Bill seek to fill a relatively narrow gap in the current protections available to victims of domestic abuse, in relation to both existing civil remedies and the protective powers that may be used where the suspected perpetrator has entered the processes of the criminal justice system. The new power for the court to make a protective order is intended to complement but not replace existing criminal or civil processes by providing some certainty about the person at risk's legal protection that is immediate and independent of any criminal investigation, where there may not be a sufficiency of evidence to proceed with a criminal prosecution and unlock existing criminal court powers, such as special conditions of bail or remand. During the period that a DAPO is in effect, the person at risk will be provided with a safe space to seek further, longer term civil protective interventions if this is desired.

141. Views were also sought on the question of how long any such order should be capable of having effect for. There was, again, a wide range of opinions from consultation respondents on the question of how long any court-imposed order should run for. Not all respondents provided a numerical answer to the question of how long orders should run for, but in very general terms, there was a split between those respondents who took the view that such court orders should be a short-to-medium term measure

²⁸ *ibid*, at paragraph 3.3

²⁹ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11165>

to be put in place to provide time for a person at risk of abuse to make longer-term plans for their housing needs (such as, for example, pursuing an exclusion order or removing the perpetrator from a joint tenancy).

142. The following gives a broad summary of the range of views on this issue:

- Short term (up to 1 month): 6 respondents
- Medium term (1-3 months): 10 respondents
- Long term (longer than 3 months, but for a fixed period): 6 respondents
- Should be capable of running indefinitely: 14 respondents

143. Generally speaking, individual respondents and those from the housing sector were most likely to be of the view that the order should either be long-term or indefinite in length. Beyond that, there was little clear correlation between the type of respondent and how long they thought the order should be capable of running for.

144. Other points raised by respondents included that there should be a mechanism to review the continuing need for a protective order (this from a housing sector respondent who favoured an approach where a court order could run for a long time), and a suggestion from a justice and legal sector respondent that a court order could run until particular agreed actions had been completed, as opposed to having a specific time limit. A number of respondents commented that it was important that an order should be capable of being extended on cause shown if this was necessary to ensure that the person whom the order was made to protect was not put at risk.

145. Ultimately, the Scottish Government considered it was important to provide for a maximum initial time period for which a DAPO could remain in place, with the option of expending this for up to one month upon application to the court, up to a maximum overall time period of three months. This approach reflects the nature of the order, being a short term emergency measure intended to provide the person at risk with a safe space to seek longer term interventions during the period in which the order has effect. This approach also recognises the balance that must be struck between providing person B with immediate and enforceable protection from person A and any interference with person A's rights as a result of the prohibitions and requirements upon them arising from the order. With

those considerations in mind, there is also scope within the Bill for varying and discharging DAPOs.

146. The consultation also sought views on a number of matters relating to the scope of any scheme of protective orders and how they will operate in practice.

147. On the scope of the power, there were mixed views with regards the question of what relationships should be covered by the proposed protective orders. Respondents representing victims' groups and violence against women and gender-based violence partnerships were particularly likely to support restricting the scope of the power to partners and ex-partners. Respondents supporting this approach often cited the Scottish Government's definition of domestic abuse and the fact that the domestic abuse offence in the 2018 Act is also restricted to partners and ex-partners.

148. On the operation of the scheme in practice, views were sought on what test should be applied by the police or courts for making an order. A number of themes emerged from the responses. Many individual respondents referred to the importance of ensuring that the test covered controlling behaviour, financial abuse, emotional abuse and psychological abuse as well as physical harm. Victims' groups respondents were particularly likely to refer to the importance that any test of 'harm' to the person at risk does not impose a 'severity threshold', for example, requiring the victim to be at risk of 'serious harm.' There were also a minority of respondents who specifically referred to the importance of ensuring that the test was not more wide-ranging than necessary.

149. Views were also sought as to whether the order making power should enable the imposition of wider conditions than simply barring the subject of the order from returning to the person at risk's home. The vast majority of respondents agreed that the order should be able to impose wider conditions, such as not approaching or contacting the person at risk, their place of work or the homes of family members or close friends. There was also widespread support for allowing these orders to be used to put in place measures to protect any children living with the person at risk.

Section 18: Additional ground for ending tenant's interest in house

Policy Objective

150. To improve the immediate and longer term housing outcomes of domestic abuse victims living in shared social housing who wish to continue living in the family home, including by helping to avoid homelessness.

151. To provide social landlords (local authority landlords, registered social landlords and Scottish Water) with the ability to support victims of domestic abuse by creating a new ground on which landlords can apply for a court order ending the perpetrator's interest in the tenancy with a view to transferring the tenancy to the victim and allowing the victim to continue living in the family home, or, where the victim and the perpetrator are joint tenants, ending the perpetrator's interest in the tenancy and allowing the victim to continue living in the family home.

Key Information

The new ground for ending a tenant's interest in a tenancy and when it can be used

152. Currently it is often the perpetrator of domestic of abuse who remains in the family home undisturbed with no change to their housing circumstances and without having to go through the upheaval of moving to alternative accommodation. The new ground for ending a tenant's interest (which is introduced by the Bill) will make it easier for social landlords to help victims of domestic abuse who live in social housing to remain in the family home and avoid them having to move out into temporary emergency accommodation, and in the longer term be rehoused permanently elsewhere. This will support their physical and mental wellbeing at a time of anxiety and stress by providing continuity and familiarity of accommodation, surroundings, support networks and schools (where there are children in the household).

153. The Bill provides a new ground for social landlords to apply to the court to end a tenant's interest in a house where a tenant ("person T") has engaged in behaviour which is abusive of a partner or ex-partner ("person P"), regardless of whether a criminal offence was committed.

154. The new ground may be used by a landlord under a Scottish secure tenancy to raise court proceedings to end person T's interest in a tenancy where person T is a sole tenant or where person T and person P are joint tenants (with or without others), and the following are also satisfied:

- the house is person P's only or principal home,
- person P wishes to continue living in the house.

155. In addition, where person T is the sole tenant, the landlord must wish to recover possession of the house for the purpose of entering into a tenancy with person P instead.

Circumstances where a court must make an order

156. Where person T is the sole tenant, the court must make an order for recovery of possession if it appears to the court that the landlord has satisfied the new ground, and either—

- a) it is reasonable to make the order, or
- b) person T has been convicted of an offence (in the last 12 months) in respect of this behaviour which is punishable by imprisonment.

157. Where person T is a joint tenant with person P (with or without others), the court must make an order for termination of person T's interest in the tenancy if it appears to the court that the landlord has satisfied the new ground and either—

- a) it is reasonable to make the order, or
- b) person T has been convicted of an offence (in the last 12 months) in respect of this behaviour which is punishable by imprisonment.

158. In considering whether it would be reasonable to make an order to end person T's interest in the tenancy, the sheriff must have regard, in particular, to any risk that the person T will engage in any further such behaviour which is abusive of person P.

Alternative Approaches

159. As the provisions are designed solely to support victims to remain in the family home, prevent them from having to move out temporarily to flee domestic abuse, and ensure they can remain in the home on a more permanent basis, no alternative approaches were considered. Without

these provisions, a large number of domestic abuse victims would be required to move to emergency accommodation such as a SWA refuge or temporary emergency accommodation provided by a local authority or their current landlord. They would then have to consider their long term housing options and in the majority of cases this would mean not returning to the family home and moving to alternative permanent accommodation. The provisions are designed to provide social landlords with a new power to support victims of domestic abuse by seeking a court order to end the tenancy interests of a perpetrator of domestic abuse, and make it easier for the victim to remain in the family home.

Consultation

160. The Homelessness and Rough Sleeping Action Group (HARSAG) was set up in 2017 to make recommendations to Scottish Ministers on the actions and solutions needed to transform temporary accommodation and end homelessness in Scotland. HARSAG published its final report “Ending Homelessness”³⁰ in June 2018. HARSAG made over 70 recommendations informed by discussions with more than 400 people with recent or current experience of homelessness at that time, from across Scotland.

161. Early intervention with high risk groups, including domestic abuse victims, to prevent homelessness was identified as a clear priority within the “Ending Homelessness” report. Recommendation 23 in the report specifically focusses on supporting tenancy sustainment for domestic abuse victims:

Recommendation 23: Social Landlords, both housing associations and local authorities, to use all opportunities to support housing sustainment:

All social landlords to have clear policies on domestic abuse, and ensuring that experience of abuse or violence does not lead to someone losing their tenancy – for example, arrangements should be put in place so that tenancies can transfer seamlessly to the person who has experienced abuse, and reciprocal arrangements

³⁰<https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2018/06/homelessness-and-rough-sleeping-action-group-final-report/documents/hrsag-final-report-june-2018-pdf/hrsag-final-report-june-2018-pdf/govscot%3Adocument/HRSAG%2BFinal%2BReport%2BJune%2B2018.pdf>

should be put in place to ensure people who experience domestic abuse can move to a safer place and have continuity of tenancy

162. Following the publication of the Ending Homelessness Together Action Plan³¹ in November 2018, and in recognition that domestic abuse is a major reason for women experiencing homelessness, the Scottish Government convened a working group co-chaired by Scottish Women's Aid and the Chartered Institute of Housing to look at the actions needed to improve housing outcomes for women and children experiencing domestic abuse and build on the previously published good practice guidance for social landlords. Membership of the working group includes the Association of Local Authority Chief Housing Officers, COSLA, Shelter Scotland, Engender, Almond Housing Association, Fife Council and Brodies' solicitors along with representatives from the Scottish Government's Homelessness and Social Housing Services Teams.

163. The work of the group has included detailed consideration of transferring social housing tenancies to domestic abuse victims and whether legislation was the best way to achieve this. The working group strongly supported taking forward arrangements to enable social landlords to take legal action to end a perpetrator's interest in a tenancy with a view to transferring the tenancy to the victim of domestic abuse. Having the legal ability to end a perpetrator's tenancy in domestic abuse cases will allow landlords, in appropriate cases, to take a more proactive role in supporting and protecting victims of domestic abuse and enable the victim to remain permanently in the family home.

Impact Assessments

Equal Opportunities

164. An Equality Impact Assessment (EQIA) has been carried out and the results will be published on the Scottish Government's website.

165. The Scottish Government considers that the Bill's provisions do not discriminate on the basis of the protected characteristics namely age, maternity and pregnancy, marriage and civil partnership, gender reassignment, race, disability, religion and belief, sex or sexual orientation. The Scottish Government considers that the provisions will help to advance

³¹ <https://www.gov.scot/publications/ending-homelessness-together-high-level-action-plan/>

equality by providing greater protection under the law to victims of domestic abuse, whom available evidence suggests are disproportionately likely to be female.

Children and Young People

166. The Scottish Government undertook a Child Rights and Wellbeing Impact Assessment. This assessment found that the Bill will have a positive impact on young people by improving the protection available where their parent or carer is experiencing domestic abuse. A Child Rights and Wellbeing Impact Assessment will be published on the Scottish Government's website.

Human Rights

167. Section 29 of the Scotland Act 1998 sets out the limits on the legislative competence of the Scottish Parliament. One of those limits is the need not to contravene any of the rights under the European Convention on Human Rights ("ECHR"). The Scottish Government is of the view that none of the provisions in the Bill are incompatible with any of the Convention rights.

Part 1

168. The Scottish Government is of the view that the provisions in Part 1 engage Article 5 (right to liberty and security). This is because breach of a DAPN or DAPO without reasonable excuse will be a criminal offence which can result in the arrest and detention of person A and a sentence of imprisonment if person A is convicted. No deprivation of liberty will be lawful unless it falls within one of the grounds specified in Article 5(1)(a) to (f). It is submitted that the grounds upon which person A is deprived of his liberty by virtue of these provisions will fall under the scope of the exceptions in Article 5(1)(a), (b) or (c) as person A will only be deprived of his liberty if they are: lawfully convicted by a court of breaching a police notice or court order without reasonable excuse; arrested and detained for an offence of breaching a police notice or court order without reasonable excuse or; found to be in contempt of court. Therefore, the Scottish Government is of the view that the provisions relating to DAPNs and DAPOs are compatible with Article 5 ECHR.

169. The making of DAPNs and DAPOs is likely to engage Article 6 (right to a fair trial). The orders in Part 1 are civil in nature both in terms of

domestic classification and the ECHR. In exceptional cases – where, for example, the effectiveness of the measure sought depends on a rapid decision-making process – it may not be possible immediately to comply with all of the requirements of Article 6. The key objective of a DAPN is to provide person B with immediate and enforceable protection from person A. To delay acting until there can be some form of court oversight would be prejudicial to the objective of providing immediate protection to person B.³²

170. Although DAPNs can be made without immediate court oversight, they can only exist as a precursor to an application to the court for a DAPO. There are safeguards built in to the process of making a DAPN. A DAPN can only be made by a constable holding the rank of Inspector or above and where the statutory test of necessity is met. Where a DAPN is given, the chief constable must apply to the court for a DAPO no later than the next court day and the court will be required to hold a hearing in relation to such an application not later than the first court day after the day on which the application is made. Person A will therefore still have an opportunity to present their case before a court, albeit not during the immediate period during which the DAPN subsisted. Any interference with Article 6 by virtue of the giving of a DAPN is considered to be proportionate and justified.

171. When an application for a DAPO is being considered by a court, the provisions in the Bill enable the sheriff to act in a way which is ECHR compatible. There is a requirement to give person A an opportunity to make representations before determining an application for a DAPO and there are provisions within the Bill which allow for applications to vary and discharge the orders. The orders can be appealed by virtue of section 110 of the Courts Reform (Scotland) Act 2014. The court in determining whether to grant a DAPO is bound under the Human Rights Act 1998 to exercise its powers compatibly with person A's Convention rights.

172. DAPNs and DAPOs are likely to interfere with person A's Article 8 rights (right to respect for private life and family life) but the Scottish Government considers that any such interference will be in accordance with the law, in pursuit of the legitimate aims of the prevention of disorder or crime and the protection of the rights and freedoms of others and will be necessary in a democratic society. The measures in Part 1 of this Bill, if passed, will be set out in primary legislation which prescribes the criteria for

³² Micallef v Malta (2010) 50 EHRR 37

granting a DAPN or DAPO and the Scottish Government considers the provisions will be clear, foreseeable and adequately accessible.³³ Article 8 also imposes positive obligations on states which extends to protecting individuals from each other.³⁴ Any interferences with person A's Article 8 rights as a consequence of these provisions are considered to be outweighed by the positive obligation to protect the Article 8 rights of the person at risk (person B). The Scottish Government considers that, in light of the procedural safeguards contained within the Bill, such interferences can be regarded as proportionate to the legitimate aims. The provisions ensure that any DAPN will be subject to court oversight soon after it is given. Person A will have the opportunity to make representations before a DAPO is granted.

173. Although the consent of person B is not required before making a DAPN or DAPO, there is provision in the Bill which requires the senior constable who is considering making a DAPN to consider any views of person B of which they are aware and before making a DAPO the sheriff must take into account any views of person B. Person B has the right to make representations in relation to an application for a DAPO and the sheriff may also permit person B to become a party to proceedings. These safeguards will assist in protecting against a breach of Article 8 even when person B does not consent to the making of the order.

174. Article 11 (freedom of assembly and association) may be engaged depending on what conditions are imposed in a DAPN or DAPO. Whether Article 11 will be engaged will depend on the individual circumstances of each case. By way of example, Article 11 may be engaged if the provisions in a DAPO restrict the movement of person A by prohibiting him or her from entering or coming within a specified distance of a place which is usually frequented by person B.

175. This is not an absolute right and restrictions can be justified where they are prescribed by law and necessary in a democratic society for any of the legitimate aims under Article 11(2). As with Article 8, the relevant legitimate aims under Article 11(2) are the protection of the rights and freedoms of others and the prevention of disorder or crime. Any restrictions can only be imposed if the statutory test is met and this involves a consideration of whether any prohibition or requirement is necessary to

³³ *Silver and Others v. the United Kingdom* (App. No.s 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75) 25 March 1983.

³⁴ *X and Y v Netherlands* [1985] ECHR 4

protect person B from abusive behaviour by person A. Whether such a restriction is ‘necessary in a democratic society’ requires an assessment of proportionality. The Scottish Government considers that the procedural safeguards which have been built in to the process for making a DAPN or DAPO mean that any interferences can be regarded as proportionate to the aim.

176. DAPNs and DAPOs may prohibit person A from entering the home of person B or coming within a specified distance of that home. If this results in an inability to gain access to property which person A occupies with legal title then this may amount to an interference with person A’s peaceful enjoyment of that property. Article 1 of Protocol 1 (protection of property) does not in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in the general interest.

177. Any interference with Article 1, Protocol 1 rights must also meet the requirement of “lawfulness” and satisfy the “fair balance” test.

178. The general or public interest which is being served by the provisions in the Bill is the prevention of domestic abuse and the Scottish Government considers that the provisions, which will be in primary legislation, will be “subject to conditions provided for by law”.

179. In the third strand of the test, an interference must strike a “fair balance” between the general interest of the community and the protection of the individual’s fundamental rights. The question will be whether person A has to bear an excessive or disproportionate burden.

180. The Scottish Government is of the view that the procedural safeguards described at paragraph 170 above mean that any interferences will be proportionate and strike a “fair balance”.

181. The police and the court (as public authorities under section 6 of the Human Rights Act 1998) will be under a duty to act in a way which is compatible with the ECHR when deciding what provisions ought to be imposed in a DAPN or DAPO and the safeguards in the Bill assist in ensuring that the provisions imposed are proportionate.

Part 2

182. The social housing provisions engage Article 8 of ECHR (right to respect for private life and family life), but in the Scottish Government's view the social housing provisions are compatible. Article 8 imposes positive obligations on the state to protect individuals from each other³⁵. In cases of domestic violence, States are responsible for protecting victims³⁶ and have a positive responsibility to protect children from witnessing domestic violence in their homes³⁷.

183. Any interference with Article 8 rights must, as with the DAPNs and DAPOs, be in accordance with law, in pursuit of a legitimate aim, and be necessary in a democratic society. The social housing provisions will form part of primary legislation and the Scottish Government considers that they are clear, foreseeable and adequately accessible³⁸. The Scottish Government considers therefore that the social housing provisions are in accordance with the law.

184. The primary aim of the social housing provisions is the protection of the rights of others, namely the person at risk (person P) and any children in the household. These aims are linked to the "legitimate aims", under paragraph 2 of Article 8, of the protection of the rights and freedoms of others and the prevention of disorder or crime. It is clear that a State has a positive obligation to protect individuals, including women and children, from domestic violence. The State's positive obligation includes the protection of the physical and psychological integrity of an individual from other persons, and these provisions will also address psychological abuse. In the Scottish Government's view, therefore, the social housing provisions have a legitimate aim.

185. The third requirement is that the measure is necessary in a democratic society. The Court has clarified this requirement, stating that the notion of "necessity" for the purposes of Article 8 means that the interference must correspond to a pressing social need, and, in particular, must remain proportionate to the legitimate aim pursued. The need to

³⁵ X and Y v Netherlands [1985] ECHR 4.

³⁶ Bevacqua and S v Bulgaria [2008] ECHR 498.

³⁷ Eremia v. the Republic of Moldova (App. No. 3564/11) 28 May 2013. See also Kaluczka v Hungary (App. No. 57693/10).

³⁸ Silver and Others v. the United Kingdom (App. No.s 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75) 25 March 1983.

protect persons from domestic violence and to support the victim, and any children of the family, remaining in the family home can be characterised as a pressing social need.

186. In determining the proportionality of a provision, judicial review of the measure and procedural safeguards are relevant in determining whether the State has remained within its margin of appreciation. The social housing provisions require a sheriff to be satisfied that the landlord has established that person T has engaged in abusive behaviour and either that it is reasonable to make an order terminating person T's interest in the tenancy, or that person T has been convicted of an offence in respect of that abusive behaviour. In considering whether it is reasonable to grant an order, the court is required to consider the risk of further domestic abuse. In addition, the court, by virtue of section 6 of the Human Rights Act 1998, will be under an obligation to act in a way which is compatible with the ECHR. In the Scottish Government's view, the social housing provisions are therefore proportionate and compatible with Article 8 obligations.

187. Although the social housing provisions may bring a person's tenancy, or interest in a tenancy, to an end, the Scottish Government does not consider that Article 1 of Protocol 1 (protection of property) is engaged to the extent that the provision interferes with the tenant's interest in the secure tenancy. The right to live in a particular property does not constitute a possession for the purposes of Article 1 of Protocol 1³⁹.

188. The social housing provisions can be considered to engage Article 1 of Protocol 1 to the extent that they interfere with the landlord's interest in the lease, and can be characterised as a control on the landlord's use of the property which, in order to be compatible with Article 1 of Protocol 1, requires to meet the criteria of being in accordance with the law, pursuing a legitimate aim in the public interest, and striking a fair balance between the general interest and the rights of landlords with which the measure interferes.

189. The Scottish Government is satisfied that the social housing provisions will be clear, foreseeable and adequately accessible and can therefore be said to be in accordance with the law. The provisions will pursue a legitimate aim in the public interest, which is to support victims of domestic abuse remaining in the family home. The Scottish Government

³⁹ *Durini v Italy* (App. 19217/91), *J.L.S. v Spain* (App. 41917/98), and *Larkos v Cyprus* (App. 29515/95).

considers that the proposal strikes a fair balance between the general interest and the rights of landlords. The purpose of the provision is to support victims of domestic abuse by removal of a perpetrator's tenancy interest in their family home. Although the measure can be characterised as a control on a landlord's property, the effect of the provision will be to provide a new ground on which a social landlord may terminate a tenant's interest in his or her lease. There is no novelty in the regulation of the grounds on which a landlord is entitled to seek recovery of a residential tenancy. Schedule 2 of the Housing (Scotland) Act 2001 sets out a number of grounds on which a Court is entitled to order recovery of possession, including conviction for certain offences (ground 2) and anti-social behaviour (ground 7).

190. The Scottish Government is therefore of the view that the social housing provisions are compatible with Article 1 of Protocol 1.

191. The Scottish Government is of the view that the provisions of the Bill are compatible with Convention rights.

Island Communities

192. Domestic abuse can occur in urban, rural and island communities. The Bill's provisions apply across the whole of Scotland. However, victims of domestic abuse who live in remote, rural and island communities may face particular difficulties. This is due to potential barriers in accessing services, including police, social services, solicitors and support services, particularly in small rural communities and/or remote communities. More generally, the shortage of alternative housing in some island and remote communities can be an issue. Conversely, the protective measures provided for in the Bill could be especially useful for people experiencing abuse in these communities, by providing another means of protecting them from the risk of domestic abuse, and strengthening the civil protection orders available.

Local Government

193. Local authorities have a legal duty to help people who are homeless or at risk of becoming homeless. Therefore there may be additional costs for local authorities arising from the use of domestic abuse protection orders provided for in the Bill, which may 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. Where a person is convicted of breaching a DAPO, the court may impose a community penalty, which will have financial implications for local authorities. The financial implications for local authorities are set out in the Financial Memorandum accompanying the Bill.

Sustainable Development

194. The Scottish Government is satisfied that the Bill has no negative effect on sustainable development. The Bill is expected to provide social benefits by helping to prevent domestic abuse, and by providing additional protection to victims of domestic abuse. The potential environmental impact of the Bill has been considered. A pre-screening report confirmed that the Bill has no impact on the environment and consequently that a full Strategic Environmental Assessment does not need to be undertaken. It is, therefore, exempt for the purposes of section 7 of the Environmental Assessment (Scotland) Act 2005. The Government Economic Strategy, which has Inclusive Growth at its heart, sets out the Scottish Government's dual ambition to tackle inequality and boost competitiveness, so that the benefits of a flourishing Scotland can be shared by all. Tackling domestic abuse and the negative impact it has on victims' lives will help to enable a skilled healthy productive workforce that can face up to economic challenges and create prosperity in future.

Data Protection Impact Assessment

195. A copy of the Data Protection Impact Assessment, which includes an Article 36(4) Enquiry Form, will be published on the Scottish Government's website.

Strategic Environmental Assessment

196. A pre-screening Strategic Environmental Assessment consultation was carried out by the Scottish Government which found that the requirements of the Environment (Scotland) Act 2005 have been met. A copy of the Strategic Environmental Assessment pre-screening notification will be published on the Scottish Government's website.

Digital

197. The Bill has been written in such a way as to ensure it is future proofed as far as possible in anticipation of future changes to technology

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

and how these impact on, and are utilised by the justice system and by society at large. Specifically, it does not place requirements on individuals or organisations which are dependent on the use of particular technology which may later be superseded.

Fairer Scotland Duty

198. A copy of the Fairer Scotland Duty Impact Assessment will be published on the Scottish Government's website.

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Domestic Abuse (Protection) (Scotland) Bill

Policy Memorandum

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