

Children’s Rights and Wellbeing Impact Assessment – Domestic Abuse (Protection) (Scotland) Bill

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Executive Summary	<p>The Domestic Abuse (Protection) (Scotland) Bill provides 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.</p> <p>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.</p> <p>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.</p> <p>These new powers are 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.</p> <p>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</p>

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.

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.

These reforms are intended to reduce the risk 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.

The Bill also creates 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.

The new powers will enable social landlords to apply to the court to end the tenancy interests of the perpetrator 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 enabling them to continue living in the family home.

We consider that of the eight wellbeing indicators (Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, Included – known by the acronym, SHANARRI), the policy relates to

- Safe:
- Healthy:
- Nurtured: Having a nurturing and stimulating place to live and grow.
- Included: Having help to overcome social, educational, physical and economy inequalities and

	<p>being accepted as part of the community in which they live and learn.</p> <p>Of the UNCRC articles, the policy relates to:</p> <ul style="list-style-type: none"> • Article 3 – Best interests of the child. That is ‘every decision and action taken relating to a child must be in their best interests’. • Article 6(2) The right to life. That is, ‘ensure to the maximum extent possible the survival and development of the child’. • Article 19(1) – The right to be protected from violence and abuse while in the care of parents. • Article 27 Adequate standard of living. That is ‘the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.’
<p>Background</p>	<p>On 1 April 2019 the Domestic Abuse (Scotland) Act 2018 (“the 2018 Act”) came into effect which created a specific standalone 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.</p> <p>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.</p> <p>As part of their consideration of that Bill, the Justice Committee held an evidence session on these issues in October 2017, 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, confirming that the Scottish Government intended to publish a consultation seeking views on questions about how policy to provide for relevant powers to protect those at risk of domestic abuse might be developed.</p> <p>In December 2018, the Scottish Government published a consultation, ‘Protective Orders for People at Risk of</p>

	<p>Domestic Abuse’ 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.</p> <p>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.</p>
<p>Scope of the CRWIA</p>	<p>The proposals were developed and their likely effect assessed using a range of evidence, including a public consultation.</p> <p>Scottish Government Criminal Justice policy officials also considered evidence from a variety of studies, reports and surveys, including:</p> <ul style="list-style-type: none"> • ‘Domestic Abuse recorded by the police in Scotland, 2018-19’¹ • ‘Scottish Crime and Justice Survey 2017/18: Partner Abuse’² • ‘Consultation on protective orders for people at risk of domestic abuse’ – December 2018.
<p>Children and young people’s views and experiences</p>	<p>Given the technical nature of the powers being conferred on police, courts and social landlords, as well as the sensitive nature of the subject matter, direct engagement with children and young people by the Scottish Government was not considered appropriate.</p> <p>However, third sector groups with experience of working with children were consulted and the consultation specifically sought views on whether powers to make provision in respect of the children of a person at risk of domestic abuse should be included in any legislation to create a scheme of protective orders.</p>
<p>Key Findings</p>	<p>Context - children's experience of domestic abuse</p> <p>There is clear evidence that domestic abuse is widespread in society. In 2018-19, 60,641 domestic abuse incidents were reported to the police and one or more crimes or</p>

¹ <https://www.gov.scot/news/domestic-abuse-recorded-by-the-police-in-scotland-2018-19/>

² https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/pages/13/#_9.3_Partner_Abuse

offences were recorded in 41% of those domestic abuse incidents. There is evidence that much domestic abuse is not reported to the police. The Scottish Crime and Justice Survey's Partner Abuse Module for 2016/18 found that 15.6% of adults (20% of women and 10.9% of men) report having experienced physical or psychological partner abuse since the age of 16, and 3% report having experienced partner abuse in the previous 12 months. Only 19% of those who experienced partner abuse in the previous 12 months said that the police came to know about the most recent incident.

That survey found that 40% of those who had reported at least one incident of partner abuse in the last 12 months said that children were living in the household when the most recent incident took place, and of those who reported partner abuse in the last 12 months and said that there were children living in the house, nearly two thirds (62%) said that the children were present (in or around the house or close by) during the most recent incident.

There is also evidence demonstrating that growing up in an environment where domestic abuse is taking place can harm children. A study by Mullender et al (2000) found that the most common response amongst children was fear, which often persisted after the abuser had left, and led to sleeping difficulties and nightmares. Holden (2003) observed that children were likely to be intimidated by abusers, and face abuse themselves. There is also an established link between domestic abuse and physical abuse of children (World Health Organisation, 2002).

The available evidence therefore demonstrates that significant numbers of children grow up in an environment in which their parent or carer is a victim of domestic abuse, and that this can have a significant negative impact on children who experience it. Providing a means by which a suspected perpetrator of domestic abuse can be removed from a home that they share with a person at risk, providing time for that person to make longer-term plans to ensure their safety and address their housing situation has the potential to advance children's rights and wellbeing in Scotland by reducing the risk that the only means by which a person experiencing domestic abuse can escape their abuser is by making themselves and, in many cases, their children, intentionally homeless. Similarly, given that there is evidence that children are more likely to be living with a victim of domestic abuse where the victim lives in the social rented sector, providing a power for social landlords to apply to the courts to remove a perpetrator from a

tenancy and re-assign it in favour of a victim of abuse should assist in protecting children from the effects of domestic abuse while enabling them to stay in their home.

How policy takes account of the experience of children

Previous work undertaken by the Scottish Government to develop an offence of domestic abuse highlighted the extent to which perpetrators of domestic abuse may seek to direct behaviour at children or make use of children in furthering the abuse of their partner or ex-partner.

Accordingly, the definition of 'abusive behaviour' contained in the Bill which is to be used by the police and courts to decide whether to make a DAPN or DAPO is closely based on that contained in the Domestic Abuse (Scotland) Act 2018 and specifically refers to behaviour directed at a child of the person whom the order is intended to protect. The same definition is also used in establishing the new ground on which a social landlord can apply to the court for recovery of possession of a house or to end the perpetrator's interest in the tenancy.

In view of what we know about the impact of domestic abuse on children, specific provision is made requiring both the police and courts to take into account the welfare of any child whose interests the police or sheriff consider relevant in deciding whether to make a DAPN or DAPO.

For the same reason, the exhaustive list of provisions which can be contained in a DAPN made by the police includes a power to prohibit the person subject to the DAPN from approaching or contacting, or attempting to approach or contact, any child usually residing with the person whom the DAPN is intended to protect.

In contrast with the DAPN, which is a very short-term administrative notice lasting a matter of days, a DAPO, which is made by a court, can run for up to two months. The court has a wider power to impose any provisions which are necessary for the purpose of protecting the person for whose protection the order is made from abuse by the person subject to the order. This could include a prohibition against contacting or approaching a child usually residing with the person whom the order is intended to protect, but, in view of the longer time period that the order can run for, could also include provisions relating to e.g. a child of the person to be protected by the order who normally resides with that person's grandparents.

	<p>The Bill requires that, where a sheriff is considering making a provision in an order which relates directly to a child, the sheriff is required to take into account any views of the child of which the sheriff is aware, taking into account the child's age and understanding. This is intended to ensure that any such views are considered and respected as part of the decision making process.</p>			
<p>Conclusions and Recommendations</p>	<p>The Scottish Government has found that none of the proposals impinge upon articles of the UNCRC or the indicators of wellbeing (SHANARRI) and that the Bill will not have a negative impact on children and young people.</p> <p>We consider that the impact would be positive and that, by providing the police and courts with enhanced powers to address domestic abuse, there will be greater scope to enable action to be taken where domestic abuse is occurring, including, but not exclusively, where the victim has children in their care.</p>			
<p>Monitoring and review</p>	<p>Responsible Official: Patrick Down</p> <p>Timetable: Throughout the parliamentary passage of the Bill and continuing through implementation of the provisions following Royal Assent.</p> <p>Methodology: Through continued engagement with key third sector stakeholders representing children and young people.</p>			
<p>Bill - Clause</p>	<p>Aims of measure</p>	<p>Likely to impact on . . .</p>	<p>Compliance with UNCRC requirements</p>	<p>Contribution to wellbeing indicators</p>
<p>Domestic Abuse Protection Notices and Orders</p>	<p>To provide the police and courts with powers to remove a suspected perpetrator of domestic abuse from the home of a person at risk and put in place other measures to prevent them</p>	<p>Anyone who is a victim or perpetrator of domestic abuse, and those with a close connection to either a victim or perpetrator of abuse including, in particular, any children</p>	<p>This policy does not impinge on any of the UNCRC articles.</p> <p>We consider that it advances:</p> <p>Article 6(2) The right to life, survival and development;</p>	<p>The policy does not impinge on any of the indicators.</p> <p>We consider that it advances:</p> <p>Safe; Healthy; Nurtured</p>

	abusing the person at risk while the order is in effect. This is intended to provide the person at risk with time to take steps to address their longer term safety and housing situation.	who may be living with them.	Article 19(1) The right to be protected from violence and abuse while in the care of parents.	
Additional Ground for ending tenant's interest in house	To provide social landlords with a new power to apply to the court to end the tenancy of a 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.	Anyone who is a victim or perpetrator of domestic abuse, and those with a close connection to either a victim or perpetrator of abuse including, in particular, any children who may be living with them.	This policy does not impinge on any of the UNCRC articles. We consider that it advances: Article 6(2) The right to life, survival and development; Article 19(1) The right to be protected from violence and abuse while in the care of parents.	The policy does not impinge on any of the indicators. We consider that it advances: Safe; Healthy; Nurtured
CRWIA Declaration				
CRWIA required			CRWIA not required	
Yes.				

Authorisation	
Policy lead Patrick Down, Team Leader, Criminal Law and Practice Team, Criminal Justice Division	Date 6 October 2020
Deputy Director or equivalent Willie Cowan, Deputy Director, Criminal Justice Division	Date 6 October 2020



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